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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. 15-09-102-MTCC. June 26, 2019]

RE: INVESTIGATION REPORT OF JUDGE ENRIQUE TRESPECES ON THE 25 FEBRUARY 2015 INCIDENT INVOLVING UTILITY WORKER I MARION M. DURBAN, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 9, ILOILO CITY, ILOILO

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; FAILURE TO OBSERVE THE PRESCRIBED WORKING HOURS, COMMITTED; IN VIEW OF THE PRESENCE OF MITIGATING CIRCUMSTANCES, THE COURT DEEMS IT APPROPRIATE TO ADMONISH RESPONDENT. — [T]he investigations revealed that Durban was in the lobby of the Hall of Justice and not in his work station during office hours. Clearly, he failed to strictly observe the prescribed working hours. As shown by the transcript of stenographic notes of the clarificatory hearing on April 8, 2015, Durban himself testified that he "was busy playing" with his mobile phone and "it was already 11:30 o'clock in the morning." While he stated in his Affidavit (Comment) that he was in the lobby of the Hall of Justice at 10:40 a.m. after washing his mop and during the clarificatory hearing on May 24, 2018, he testified that he was in the ground floor at 11:00 a.m. after he "brought [sic] something from the sari-sari store outside." It is clear from all of his

> statements that he was not at his work station during office hours. x x x In finding that Durban failed to strictly observe the prescribed working hours, the Court also takes into consideration his advanced age, his years of service, and the fact that this is his first offense. In determining the penalty to be imposed, the Court considers the facts of the case and factors which may serve as mitigating circumstances, such as the respondent's length of service, the respondent's acknowledgment of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, and respondent's advanced age, among others. Thus, the Court deems it appropriate to admonish Durban.

D E C I S I O N

CAGUIOA, *J.*:

The present administrative matter arose from an alleged altercation between Security Officer Marlino G. Agbayani (Agbayani) (former employee of Eaglematrix Security Agency, Inc.) and respondent Mr. Marion M. Durban (Durban), Utility Worker I, Branch 9, Municipal Trial Court in Cities (MTCC), Iloilo City, Iloilo on February 25, 2015.[1] Agbayani filed an Incident Report[2] dated February 26, 2015 addressed to then Executive Judge Loida J. Diestro-Maputol (Executive Judge Diestro-Maputol), Regional Trial Court (RTC), Iloilo, copy furnished Executive Judge Enrique Z. Trespeces (Executive Judge Trespeces), MTCC, Iloilo, alleging the following:

> Your Honor, at around 1048H dated (*sic*) February 25, 2015, one of the staff of Branch 5 looking of (*sic*) the maintenance personnel because of their (*sic*) fluorescent light in their office was overheated' (*sic*)
>
> At around 1050H, Your Honor, the undersigned immediately proceed at (*sic*) the Annex Building to check the information. Suddenly, a certain name (*sic*) Boy Durban, employee of Branch 9 shouted me (*sic*) "BAKIT KA NANDITO? ANO PAKIALAM MO?" I answer

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[1] *Rollo*, p. 3.

[2] *Id*. at 10.

him (*sic*) it is part of my work to check the incident and to make a report. He replied me (*sic*) (still in a high voice) "SUBUKAN MO LANG" (maybe he is referring to me not to make a report)"WALA KANG PAKIALAM DIYAN". (*sic*)

He shouted me (*sic*) your Honor, in front of many litigants, MTCC personnel, PNP personnel, Janitor and two guards on duty at the said area. I left the area even (*sic*) Mr. Durban is angry with me to avoid arguments with him and it was almost I lost my temper. (*sic*)

At around 1110H, I return (*sic*) to the Annex building to check the logbook entry of the guards about the incident for my report. Mr. Boy Durban (*sic*) still in the lobby while his office is in the second floor (Branch 9) and threatening me by saying "Chief MAG INGAT KA BAKA MAY MANGYARI SA IYO".

In this regard, your Honor I am appealing in (*sic*) your good office to call the attention of Mr. Durban to discuss the incident happened (*sic*) to avoid any problem may happen (*sic*) in the future.[3]

Due to the said Incident Report, then Executive Judge Diestro-Maputol issued Memorandum 55-15[4] dated March 3, 2015, addressed to Executive Judge Trespeces, directing him to conduct an investigation and to submit a report on the said matter. Pursuant thereto, Executive Judge Trespeces directed Durban to comment on the said Incident Report.[5] In his Comment,[6] Durban denied the allegations in the said Incident Report. Thereafter, Executive Judge Trespeces directed Agbayani, Durban and their respective witnesses, if any, to appear during the clarificatory hearing on March 26, 2015.[7] Moreover, Executive Judge Trespeces also directed Lawrence Antiquiera (Antiquiera), PO1 Jose Manuel Pineda (PO1 Pineda), Durban and his witnesses, if any, to appear during the clarificatory

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[3] *Id.*

[4] *Id.* at 9.

[5] *Id.* at 12.

[6] *Id.* at 11.

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

hearing on April 8, 2015.[8] Furthermore, Executive Judge Trespeces also directed Security Guard Yvette Leocario (Leocario) and Rene Huervana[9] (Huervana) to appear during the clarificatory hearing on April 23, 2015.[10]

During the clarificatory hearing on March 26, 2015, Agbayani affirmed his allegations and testified that Antiquiera, PO1 Pineda, Leocario and a certain Dayro[11] were also present during the alleged incident.

In the succeeding clarificatory hearing on April 8, 2015, Antiquiera testified that he could only recall that both Agbayani and Durban were talking to each other in a loud voice, but he could not remember the exact words.[12] During the same hearing, Durban denied Agbayani's allegations, and he testified that he greeted Agbayani during the alleged incident, "*Yani, kasali ka rin dyan?*" but he was surprised when Agbayani shouted at him, "*trabaho lang.*" Thereafter, Durban said that he just kept quiet and played with his mobile phone. Durban also said that it was already 11:30 a.m. and he already took his lunch.[13] Furthermore, in the same hearing, PO1 Pineda testified that he thought that Agbayani and Durban were only teasing each other, and that "it is normal for us that when Boy [Durban] speaks, it seems that he is shouting."[14]

During the final clarificatory hearing on April 23, 2015, Huervana testified that he did not see or hear the alleged altercation.[15] In the same hearing, Leocario testified that she witnessed the alleged incident and narrated as follows:

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[8] *Id*. at 15-17.

[9] Erroneously spelled as "Huernava" in some parts of the record.

[10] *Id*. at 18-19.

[11] *Id*. at 27.

[12] *Id*. at 39.

[13] *Id*. at 43-45.

[14] *Id*. at 48.

[15] *Id*. at 54.

A: I saw Mr. Agbayani walking towards the lobby from the back exit with a piece of paper on his hand. He was about to enter the lobby when Mr. Durban asked him, "*Maano ka di? Maentra ka man?*" I did not mind it, Your Honor because we were used to Mr. Durban's attitude. Mr. Agbayani did not mind him. Mr. Agbayani showed me the paper, it's regarding the busted bulb at Branch 5. Then Mr. Durban approached him and said "*Maano ka di? Gusto mo pati ikaw?*" Then Mr. Agbayani replied to him, "*Ari ang akon ginkadto di. Wala ko na kabalo kon ano ang imo buot silingon. Ari ang ginkadto ko diri.*" He did not mind Mr. Durban anymore, but he uttered these words to Mr. Agbayani, "*Indi ka mag-amo sina kay basi pa lang*" I did not mind what I heard because I know Mr. Agbayani can control the situation then Mr. Agbayani then [(*sic*)] left and when he came back, Mr. Durban was still uttering words.

Q: What are those words that he was uttering?

A: There were many words that he was uttering, Your Honor but I heard him saying, "*Basi indi ka magdugay diri.*" Then Mr. Agbayani replied to him, "*Hindi ka mag-amo sina kay kapila mo na na ginhimo sa akon. Bastos ka*."

x x x x x x x x x

Q: Was he shouting?

A: Yes. His voice was high and that was not the first time that his voice was high.

Q: Was he always like that?

A: Yes, Your Honor.[16]

After the said clarificatory hearings, Executive Judge Trespeces submitted to then Executive Judge Diestro-Maputol his Investigation, Report and Recommendation[17] dated July 27, 2015, finding Durban guilty of conduct prejudicial to the best interest of the service, and recommending that he be suspended for nine (9) months and one (1) day. Giving more weight to

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[16] *Id*. at 57-58.

[17] *Id.* at 3-8.

the testimonies of Agbayani and Leocario, Executive Judge Trespeces concluded that Durban undeniably berated and threatened Agbayani within the premises of the Hall of Justice during office hours.[18] Executive Judge Trespeces did not give credence to Durban's denial, or to the testimonies of Antiquiera and PO1 Pineda when they said that they could not remember what Durban said, thus obviously covering up for him out of camaraderie.[19] Moreover, Executive Judge Trespeces did not consider Durban's eight years of service, but took into account that this is his first offense, thus offsetting the aggravating circumstance of loafing.[20]

In an Indorsement[21] dated August 12, 2015, then Executive Judge Diestro-Maputol forwarded the Report of Executive Judge Trespeces to the Office of the Court Administrator (OCA). In a 1st Indorsement[22] dated September 16, 2015, the OCA directed Durban to comment on the said Report. In compliance therewith, Durban submitted his Affidavit, together with the Affidavits of Huervana, Antiquiera, and Hon. Ofelia M. Artuz (Judge Artuz), then Presiding Judge of MTCC, Branch 5, Iloilo City.[23] In his Affidavit, Durban alleged the following:

> That at around 10:40 o'clock in the morning of February 25, 2015, I was in the vicinity of the lobby at the Iloilo City Hall of Justice Annex Building, after hanging out to dry the mop I washed;
>
> That while seated on a bench, SO Marlino Agbayani came over from the main building where he holds office;
>
> That in the manner of a small talk and simple curiosity, I asked him why he was at the Annex Building. He answered and I bantered with him;

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[18] *Id*. at 4.

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

[20] *Id*. at 7.

[21] *Id*. at 1.

[22] *Id*. at 61.

[23] *Id*. at 62-67.

That he thereafter went back to the main building and I got a paper to read while waiting for my mop to properly drip out before taking it back to the second floor;

That nothing out of the ordinary took place, and I was surprised when MTCC-Iloilo City Executive Judge Enrique Trespeces called my attention to my alleged unruly behavior;

That I did not shout at SO Marlino Agbayani nor did I threaten him. Had I done so, and there being some police officers around, he would have been in the right to have me arrested right then and there, or, being a Security Officer himself, he could have himself effected a citizen's arrest. x x x[24]

In his Affidavit, Huervana stated that he "did not perceive" any loud, harsh or abusive language nor threats from Durban directed against Agbayani.[25] Moreover, Antiquiera stated in his Affidavit that he "did not perceive" any unruly behavior from Durban as alleged by Agbayani.[26] Furthermore, Judge Artuz stated that she did not hear Durban shouting at Agbayani, and that the incident was just concocted by Executive Judge Trespeces, using the security guards as accomplices, since he has bad blood against Durban.[27] In a Report[28] dated December 12, 2016, the OCA noted that the instant administrative matter presents factual issues which cannot be resolved on the basis of the pleadings submitted by the parties. Thus, the OCA recommended that the matter be referred to the Executive Judge of RTC, Iloilo City for investigation, report and recommendation.[29]

Thereafter, the said matter was referred to the new Executive Judge Gloria G. Madero (Executive Judge Madero) (since then Executive Judge Diestro-Maputol had been relieved of her

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[24] *Id*. at 66.

[25] *Id*. at 63.

[26] *Id*. at 64.

[27] *Id*. at 65.

[28] *Id*. at 74-75.

[29] *Id*. at 75.

functions as Executive Judge).[30] Thereafter, Executive Judge Madero conducted a clarificatory hearing on May 24-25, 2018, wherein only Agbayani and Durban testified.[31]

In a 1st Indorsement[32], Executive Judge Madero forwarded to the OCA her Report[33] dated June 20, 2018, wherein she adopted Executive Judge Trespeces' finding of guilt against Durban, but recommended a lesser penalty of reprimand in view of the familiarity between Executive Judge Trespeces and Agbayani, Agbayani's age (*i.e.*, he is 56 years old as of May 24, 2018), and Agbayani's "physical condition (voicebox)."[34] Excerpts from her Report are as follows:

> From the testimonial declarations of the witnesses during the investigation conducted by Judge Trespeces, it is clear that witness Rene Huervana, the electrician of the Hall of Justice did not know what was happening in the lobby for he was busy fixing the busted bulb in MTCC, Branch 5; PO1 Jose D. Pineda, the Police Officer assigned at the Annex Building did not give due attention to the banter between the two for he thought that they were just teasing each other and that there was no misunderstanding between the two for they were even on speaking terms. He did not notice any untoward incident as well. Another witness, Laurence Antiquiera alleged that the two were talking in a loud voice but he could not specifically recall what the argument was all about because he was six (6) meters away from them and his attention was focused on a couple looking for a certain Tessie Jamolo and that [sic] he approached the table where the alleged incident took place, whatever argument there was between the two had already ceased. Yvette Leocario, a security guard justified that she did not mind the manner by which Mr. Durban asked x x x Agbayani because they had been used to Mr. Durban's attitude where she noticed that his voice was set at a higher tone. x x x[35]

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[30] *Id*. at 83.

[31] *Id*. at 90, 102.

[32] *Id*. at 110.

[33] *Id*. at 111-112.

[34] *Id*. at 112.

[35] *Id*. at 111-112.

After Executive Judge Madero's Report (with the attached Report of Executive Judge Trespeces) was forwarded to the OCA, it made the following findings and recommendation in a Memorandum[36] dated January 24, 2019: Based on the investigations and reports of Executive Judges Trespeces and Madero, the OCA found that it was not sufficiently proven that Durban "berated and threatened" Agbayani within the premises of the Hall of Justice. The witnesses (*i.e.*, Antiquiera and PO1 Pineda) "either did not know what was happening in the lobby when the incident occurred or they only thought that SO Agbayani and respondent Durban were just teasing each other and that there was no actual misunderstanding" between them. While Executive Judge Trespeces refused to believe Durban's "defense that he naturally speaks at the top of his lungs," Executive Judge Madero noted that it is "common knowledge among the employees of the Iloilo court that Durban has an unusually loud voice and the same may be interpreted differently." After an evaluation of the facts presented, the OCA concluded that, for lack of merit and evidence, the charge of conduct prejudicial to the best interest of the service may be dismissed. Moreover, the allegation of loafing (which means frequent absence from the work station during office hours) may also be dismissed for lack of proof that Durban committed the said act more than once.[37] The OCA cited *Office of the Court Administrator v. Runes*,[38] where loafing is defined as "frequent unauthorized absences from duty during office hours"[39] and the word "frequent" connotes that the employees absent themselves from duty more than once.[40] However, while the above charges may be dismissed, the OCA recommended that Durban should be

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[36] *Id*. at 126-130.

[37] *Id*. at 128-130.

[38] 730 Phil. 391 (2014).

[39] *Id*. at 396, citing Section 22, Rule XIV, Omnibus Rules Implementing Book V of Executive Order No. 292.

[40] *Id*., citing *Office of the Court Administrator v. Mallare*, 461 Phil. 18, 26 (2003).

sternly warned that a repetition of the same or similar offense shall be dealt with more severely by the Court.[41]

The Court adopts the OCA's findings and recommendation with modification.

While the Court agrees with dismissing the charges of conduct prejudicial to the best interest of the service and loafing, the investigations revealed that Durban was in the lobby of the Hall of Justice and not in his work station during office hours. Clearly, he failed to strictly observe the prescribed working hours. As shown by the transcript of stenographic notes of the clarificatory hearing on April 8, 2015, Durban himself testified that he "was busy playing" with his mobile phone and it was already 11:30 o'clock in the morning.[42] While he stated in his Affidavit (Comment) that he was in the lobby of the Hall of Justice at 10:40 a.m. after washing his mop[43] and during the clarificatory hearing on May 24, 2018, he testified that he was in the ground floor at 11:00 a.m. after he "brought [sic] something from the sari-sari store outside."[44] It is clear from all of his statements that he was not at his work station during office hours. In *Roman v. Fortaleza*,[45] the Court reiterated the following: Court personnel must devote every moment of official time to public service; the conduct and behavior of court personnel should be characterized by a high degree of professionalism and responsibility, as they mirror the image of the court; and court personnel must strictly observe official time to inspire public respect for the justice system. In *Lopena v. Saloma*,[46] the Court stressed that public officials and employees must observe the prescribed office hours and the efficient use of every moment thereof for public service if only to recompense

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[41] *Rollo*, p. 130.

[42] *Id*. at 44.

[43] *Id*. at 66.

[44] *Id*. at 91.

[45] 650 Phil. 1, 6 (2010).

[46] 567 Phil. 217, 225 (2008).

the government and ultimately the people who shoulder the cost of maintaining the judiciary.

In finding that Durban failed to strictly observe the prescribed working hours, the Court also takes into consideration his advanced age, his years of service, and the fact that this is his first offense. In determining the penalty to be imposed, the Court considers the facts of the case and factors which may serve as mitigating circumstances, such as the respondent's length of service, the respondent's acknowledgment of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, and respondent's advanced age, among others.[47] Thus, the Court deems it appropriate to admonish Durban.

WHEREFORE, while the charges of conduct prejudicial to the best interest of the service and loafing are hereby dismissed, Mr. Marion M. Durban, Utility Worker I, Branch 9, Municipal Trial Court in Cities, Iloilo City, Iloilo, is hereby **ADMONISHED** for failure to strictly observe the prescribed working hours, with a warning that a repetition of the same or similar act shall be dealt with severely.

SO ORDERED.

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

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[47] *Office of the Court Administrator v. Egipto, Jr.*, A.M. No. P-05-1938, January 30, 2018 accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/l/63838>, citing *Arganosa-Maniego v. Salinas*, 608 Phil. 334 (2009).

FIRST DIVISION

[G.R. No. 193276. June 26, 2019]

NOVA COMMUNICATIONS, INC., ANGELINA G. GOLOY, YEN MAKABENTA and MA. SOCORRO NAGUIT, *petitioners, vs.* **ATTY. REUBEN R. CANOY and SOLONA T. CANOY,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; LIBEL; DEFINED; IN DETERMINING WHETHER A STATEMENT IS DEFAMATORY, THE WORDS USED ARE TO BE CONSTRUED IN THEIR ENTIRETY AND SHOULD BE TAKEN IN THEIR PLAIN, NATURAL, AND ORDINARY MEANING AS THEY WOULD NATURALLY BE UNDERSTOOD BY THE PERSONS READING THEM, UNLESS IT APPEARS THAT THEY WERE USED AND UNDERSTOOD IN ANOTHER SENSE. — Libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to cause dishonor, discredit or contempt of a natural or juridical person, or to blacken the memory of one who is dead. Thus, it is an offense of injuring a person's character or reputation through false and malicious statements. In *Manila Bulletin Publishing Corporation v. Domingo*, the Court said that: In determining whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural, and ordinary meaning as they would naturally be understood by the persons reading them, unless it appears that they were used and understood in another sense. x x x.

2. ID.; ID.; WORDS IMPUTED TO RESPONDENT AS A VERITABLE MENTAL ASYLUM PATIENT, A MADMAN AND A LUNATIC, IN ITS PLAIN AND ORDINARY MEANING, ARE CONDITIONS OR CIRCUMSTANCES TENDING TO DISHONOR OR DISCREDIT HIM; AS SUCH, WORDS ARE DEFAMATORY OR LIBELOUS *PER SE*. — Despite being included as a crime under the Revised Penal Code (RPC), a civil action for damages may be instituted by the injured party, which shall proceed independently of any

criminal action for the libelous article and which shall require only a preponderance of evidence, as what Atty. Canoy did in this case. Beyond question, the words imputed to Atty. Canoy as a veritable mental asylum patient, a madman and a lunatic, in its plain and ordinary meaning, are conditions or circumstances tending to dishonor or discredit him. As such, these are defamatory or libelous *per se*.

3. ID.; ID.; EVERY DEFAMATORY IMPUTATION IS PRESUMED TO BE WITH MALICE, EVEN IF THE SAME IS TRUE, UNLESS IT IS SHOWN THAT IT WAS MADE WITH GOOD INTENTION AND JUSTIFIABLE MOTIVE; EXCEPTIONS. — Under Article 354 of the RPC, it is provided that every defamatory imputation is presumed to be with malice, even if the same is true, unless it is shown that it was made with good intention and justifiable motive, except in the following circumstances: 1. A private communication made by any person to another in the performance of any legal, moral or social duty; and 2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

4. ID.; ID.; PRIVILEGED COMMUNICATION; ABSOLUTELY PRIVILEGED COMMUNICATION DISTINGUISHED FROM QUALIFIEDLY PRIVILEGED COMMUNICATION. — A privileged communication may be classified as either absolutely privileged or qualifiedly privileged. The absolutely privileged communication are not actionable even if the same was made with malice, such as the statements made by members of Congress in the discharge of their duties for any speech or debate during their session or in any committee thereof, official communications made by public officers in the performance of their duties, allegations or statements made by the parties or their counsel in their pleadings or during the hearing, as well as the answers of the witnesses to questions propounded to them. The qualifiedly privileged communications are those which contain defamatory imputations but which are not actionable unless found to have been made without good intention or justifiable motive, and to which "private communications" and "fair and true report without any comments or remarks" belong.

Indubitably, the defamatory words imputed to Atty. Canoy cannot be considered as "private communication" made by one person to another in the performance of any legal, moral or social duty. Neither is it a fair and true report without any comments or remarks.

5. ID.; ID.; DOCTRINE OF FAIR COMMENT; WHILE IN GENERAL EVERY DISCREDITABLE IMPUTATION PUBLICLY MADE IS DEEMED FALSE, BECAUSE EVERY MAN IS PRESUMED INNOCENT UNTIL HIS GUILT IS JUDICIALLY PROVED, AND EVERY FALSE IMPUTATION IS DEEMED MALICIOUS, NEVERTHELESS, WHEN THE DISCREDITABLE IMPUTATION IS DIRECTED AGAINST A PUBLIC PERSON IN HIS PUBLIC CAPACITY, IT IS NOT NECESSARILY ACTIONABLE; IN ORDER THAT SUCH DISCREDITABLE IMPUTATION TO A PUBLIC OFFICIAL MAY BE ACTIONABLE, IT MUST EITHER BE A FALSE ALLEGATION OF FACT OR A COMMENT BASED ON A FALSE SUPPOSITION. — [I]n the case of *Borjal v. CA*, fair commentaries on matters of public interest is provided as another exception by this Court, thus: x x x. To reiterate, fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts. In this case, the defamatory words imputed to Atty. Canoy cannot be said to be fair commentaries on matters of public interest. To be sure, informing the public as to the rebellion of Col. Noble is a matter of public interest. However, calling Atty. Canoy as a veritable mental asylum patient, a madman and a lunatic is not in furtherance of the public interest. The defamatory

words are irrelevant to the alleged participation of Atty. Canoy in the rebellion staged by Col. Noble.

6. ID.; ID.; EVERY DEFAMATORY REMARK DIRECTED AGAINST A PUBLIC PERSON IN HIS PUBLIC CAPACITY IS NOT NECESSARILY ACTIONABLE BUT IF THE UTTERANCES ARE FALSE, MALICIOUS, OR UNRELATED TO A PUBLIC OFFICER'S PERFORMANCE OF HIS DUTIES OR IRRELEVANT TO MATTERS OF PUBLIC INTEREST INVOLVING PUBLIC FIGURES, THE SAME MAY BE ACTIONABLE. — As alleged by the petitioners, the subject articles were centered in the rebellion of Col. Noble, and Atty. Canoy was merely mentioned incidentally. This allegation does not help the position of the petitioners. Rather, it even weakens their cause, as it further established the existence of malice in causing dishonor, discredit or put in contempt the person of Atty. Canoy. It is true that every defamatory remark directed against a public person in his public capacity is not necessarily actionable but if the utterances are false, malicious, or unrelated to a public officer's performance of his duties or irrelevant to matters of public interest involving public figures, the same may be actionable.

7. ID.; ID.; A TOPIC OR STORY SHOULD NOT BE CONSIDERED A MATTER OF PUBLIC INTEREST BY THE MERE FACT THAT THE PERSON INVOLVED IS A PUBLIC OFFICER, UNLESS THE SAID TOPIC OR STORY RELATES TO HIS FUNCTIONS AS SUCH; ASSUMING A PUBLIC OFFICE IS NOT TANTAMOUNT TO COMPLETELY ABDICATING ONE'S RIGHT TO PRIVACY. — Examination of the defamatory remarks reveals that the same pertain to Atty. Canoy's mental capacity and not to his alleged participation with Col. Noble's rebellion, and neither does it pertain to Atty. Canoy's duties and responsibilities as a radio broadcaster. While Atty. Canoy is a public figure, the subject articles comment on the mental condition of the latter, thus, the defamatory utterances are directed to Atty. Canoy as a private individual, and not in his public capacity. As such, the petitioners' allegation that the subject articles are fair commentaries on matters of public interest are unavailing. As stated in *Gertz v. Robert Welch, Inc.*, a newspaper or broadcaster publishing defamatory falsehoods about an individual who is

neither a public official nor a public figure may not claim a constitutional privilege against liability for injury inflicted, even if the falsehood arose in a discussion of public interest. The mere fact that Atty. Canoy is a public figure does not automatically mean that every defamation against him is not actionable. In *Yuchengco v. The Manila Chronicle Publishing Corp., et al.*, the Court stated that: A topic or story should not be considered a matter of public interest by the mere fact that the person involved is a public officer, unless the said topic or story relates to his functions as such. Assuming a public office is not tantamount to completely abdicating one's right to privacy. x x x.

8. ID.; ID.; ID.; MALICE IS PRESUMED IN EVERY DEFAMATORY REMARK, AND THIS PRESUMPTION OF MALICE STANDS AND NEED NOT BE ESTABLISHED SEPARATE FROM THE EXISTENCE OF THE DEFAMATORY REMARKS, WHERE IT WAS NOT ESTABLISHED THAT THE SAID DEFAMATORY REMARK IS CLASSIFIED AS A PRIVILEGED COMMUNICATION. — Having established that the defamatory remarks are not privileged, the law provides that malice is presumed. Petitioners claimed that the defamatory remarks are privileged since Atty. Canoy failed to prove actual malice on their part. We disagree. Generally, malice is presumed in every defamatory remark. What destroys this presumption is the finding that the said defamatory remark is classified as a privileged communication. In such case, the onus of proving actual malice is on the part of the plaintiff. In this case, however, the petitioners were not able to establish that the defamatory remarks are privileged, as such, the presumption of malice stands and need not be established separate from the existence of the defamatory remarks.

9. ID.; ID.; THE REPUTATION OF A PERSON IS PERSONAL, SEPARATE AND DISTINCT FROM ANOTHER. — Rule 2, Section 2 of the Rules of Court states that a cause of action is the act or omission by which a party violates a right of another. In this case, no right of Mrs. Canoy was violated. As held, the reputation of a person is personal, separate and distinct from another. The reputation of Atty. Canoy that has been dishonored and discredited by the subject articles is not the

same from the reputation of Mrs. Canoy. As such, no cause of action for damages is present in favor of the latter.

10. CIVIL LAW; DAMAGES; MORAL DAMAGES MAY BE RECOVERED IN CASES OF LIBEL, SLANDER OR ANY OTHER FORM OF DEFAMATION; AWARD OF MORAL AND EXEMPLARY DAMAGES, ATTORNEY'S FEES AND EXPENSES OF LITIGATION, AFFIRMED. — Under Article 2219(7) of the Civil Code, moral damages may be recovered in cases of libel, slander or any other form of defamation. Further, Article 2229 of the Civil Code states that exemplary damages are imposed by way of example or correction for the public good. Article 2208 of the same Code provides, among others, that attorney's fees and expenses of litigation may be recovered in cases when exemplary damages are awarded and where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In this case, We hold that the award of moral damages of ₱300,000.00, exemplary damages of ₱50,000.00, attorney's fees of ₱100,000.00 and litigation expenses of ₱20,000.00 is deemed just and equitable.

APPEARANCES OF COUNSEL

Glenn C. Manahan for petitioners.
Guerrero Adaza & Associates for respondents.

D E C I S I O N

CARANDANG, *J.*:

Before Us is a Petition for Review on *Certiorari* filed by petitioners Nova Communications Inc., (Nova Communications), Angelina G. Goloy (Goloy), Yen Makabenta (Makabenta) and Ma. Socorro Naguit (Naguit), collectively referred to as petitioners, assailing the Decision[1] dated January 28, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 00552 which

[1] Penned by Associate Justice Leoncia R. Dimagiba, with Associate Justices Rodrigo F. Lim, Jr. and Angelita A. Gacutan, concurring; *rollo*, pp. 30-45.

affirmed with modification the Decision[2] dated March 8, 2005 of the Regional Trial Court (RTC) in Civil Case No. 91-003, finding herein petitioners liable for damages in connection with a publication containing defamatory remarks against Atty. Reuben R. Canoy (Atty. Canoy). The other defendants of the case in the trial court, namely Teodoro Locsin, Jr. (Locsin, Jr.), Teodoro M. Locsin (Teodoro Locsin), Enrique L. Locsin (Enrique Locsin), Esmeraldo Z. Izon (Izon), Louise Molina (Molina), Ruben R. Lampa (Lampa), Benjamin C. Ramos (Ramos) and LR Publications Inc., (LR Publications) opted not to join the petitioners in the instant Petition.

The Facts of the Case

In 1990, Col. Alexander Noble (Col. Noble), a Philippine Military Academy graduate and former Presidential Security Guard of the late President Corazon Aquino led a rebellion in Mindanao.[3] Atty. Canoy was suspected[4] to be one of Col. Noble's supporters because of his involvement with the Independent Mindanao Movement which espoused the view of an independent Mindanao.[5]

On October 1990, a series of articles were written by Locsin, Jr. and Molina that were printed in the Philippine Free Press issue of October 13, 1990 published by LR Publications and Philippine Daily Globe issues of October 7, 1990, October 9, 1990 and October 11, 1990 published by Nova Communications.[6] Herein petitioners Goloy, Makabenta and Naguit were the News Editor, Associate Publisher and Editor-in-Chief, and Associate Editor, respectively.[7]

The excerpts of the subject articles are quoted by the trial court as follows:

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[2] Penned by Judge Noli T. Catli; *id*. at 48-61.

[3] *Id*. at 31.

[4] *Id*. at 54.

[5] *Id*.

[6] *Id*. at 48.

[7] *Id*. at 51.

I

x x x His revolt was doomed not least because he teamed up with a veritable mental asylum patient, Reuben Canoy and adopted as his own Canoy's ludicrous federalism/secessionist movement[.] (p. 13 under the editorial entitled, 'Lunatic Rebellion', x x x).

x x x [A]long the way, he was joined by Reuben Canoy, a madman with about 10,000 deranged followers. Canoy has been preaching the establisment of a separate Mindanao Republic, with him as the head naturally. x x x[.] (p. 13, under the cover of 'War in Mindanao' by Louise Molina, x x x).

II

x x x He and a composite force of rebel soldiers, tribesmen and a large slice of the lunatic federalist fringe of Mindanao led by Reuben Canoy had received a rapturous welcome from the AFP in every camp he and his ragged band pass from Butuan to Cagayan x x x[.] (2nd sentence, 2nd paragraph, Daily Globe).

x x x He walked into Camp Evangelista at the head of a motley crowed (sic); a composite force of renegade AFP, tribesmen and a large slice of the lunatic federalist fringe in Mindanao led by radio commentator Reuben Canoy x x x[.] (2nd sentence, 2nd paragraph, Free Press x x x).

III

x x x He delivered his side of the bargain. Every camp and outpost he passed cheered him on his way from Butuan to Cagayan de Oro. But the RAM let him down and later, even the lunatic Canoy. No wonder, he thought surrendering at once x x x. (middle of the 5th paragraph, Daily Globe x x x, reproduced verbatim in the Free Press) x x x.

IV

x x x Something was going wrong. He was being cheered but not joined except by a certified lunatic Reuben Canoy, who was clamoring for the very thing that soldiers like himself, has fought to stop the dismemberment of the republic. He joined his shout[s] to Canoy's — but his had no conviction for an independent Mindanao — what choice did he have, Canoy was the only one in the pier when he arrived x x x. (2nd half of paragraph 11, under Opinion of the Daily Globe, x x x, reprinted verbatim as page 16 of the Free Press) x x x.[8]

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[8] *Id.* at 48-49.

Because of the subject articles, Atty. Canoy and his wife, Solona T. Canoy (Mrs. Canoy), filed a civil case for damages for the libelous articles.

Atty. Canoy claimed that the articles were designed to malign, embarrass, humiliate and ridicule him and Mrs. Canoy.[9]

LRP Publications maintained that the articles in question were made without malice and without any intention to cast dishonor, discredit, contempt or ridicule upon Atty. Canoy and his wife; that the same were made in good faith and for a justifiable reason, that is, pursuant to its duty to protect the government from threats of rebellion of Col. Noble. Further, Atty. Canoy is a national and political figure, as such, he has effectively placed himself under public scrutiny.[10]

Nova Communications, on the other hand, claimed that Atty. Canoy was merely tangentially mentioned in the subject articles with no intention to cast dishonour, discredit, contempt or ridicule upon his person. Also, as a public figure, Atty. Canoy's activities are matters imbued with public interest. Further, Nova Communications maintained that Mrs. Canoy has not been mentioned in any of the subject articles, hence, she has no cause of action whatsoever. Likewise, since the subject articles were opinion write-ups, no cause of action accrues against Makabenta, Goloy and Naguit.[11]

During the trial, Locsin, Jr., testified stating that the articles were made in good faith, for justifiable reasons and as part of his moral commitment to defend the government from threats of rebellion and insurrection and to defeat any attempt to destabilize the government. He also claimed that the articles were written to emphasize his strong opposition to Atty. Canoy's political beliefs to remove Mindanao from the government.[12]

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[9] *Id*. at 49.

[10] *Id*. at 50.

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

[12] *Id*. at 53-54.

In a deposition, the late President Corazon Aquino and General Voltaire Gazmin, testified as to the existence of intelligence reports identifying Atty. Canoy as part of the civilian component of Col. Noble's rebellion.[13]

In a Decision[14] dated March 8, 2005, the RTC ruled in favor of Atty. Canoy and ordered petitioners, as well as the other defendants before the trial court namely, Locsin, Jr., Teodoro Locsin, Enrique Locsin, Izon, Molina, Lampa, and LR Publications, except Benjamin Ramos, to pay Atty. Canoy and Mrs. Canoy ₱50,000.00 as litigation expenses, ₱500,000.00 as moral damages, ₱100,000.00 as exemplary damages and ₱300,000.00 as attorney's fees.[15]

Aggrieved, the petitioners filed an appeal to the CA raising the same arguments they alleged before the trial court. In a Decision[16] dated January 28, 2010, the CA reduced the amount of damages awarded to Atty. Canoy from ₱500,000.00 moral damages and ₱100,000.00 exemplary damages to ₱300,000.00 and ₱50,000.00, respectively. Further, the award of ₱300,000.00 attorney's fees and ₱50,000.00 litigation expenses were reduced to ₱100,000.00 and ₱20,000.00, respectively.[17]

Hence, this petition.

Petitioners' arguments

Petitioners alleged that the libelous words in the subject articles were not directed on the person and the mental condition of Atty. Canoy, but on his proven identification with and involvement in the Noble rebellion. There was an actual threat to the security of the state and an attack on its sovereignty, thus, the said articles should be viewed in the context of the

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[13] *Id*. at 54.

[14] *Id*. at 48-61.

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

[16] *Id*. at 30-45.

[17] *Id*. at 44-45.

gravity of the event. The said words should be understood as descriptive of an act which had sinister consequences on the security of the state.[18]

Petitioners further claimed that the said articles are covered by the doctrine of qualifiedly privileged communication. Such articles were written in good faith on a subject matter in which the writer has a duty, as a member of the press, to inform the public.[19] Viewed from another perspective, petitioners claim that the subject articles constitute fair commentaries on matters of public interest, hence, are not actionable.[20]

Petitioners also alleged that actual malice was not proved by Atty. Canoy. Further, the fact that malice is presumed in defamatory words does not relieve Atty. Canoy of his burden to prove actual malice on the part of the petitioners.[21]

Also, the petitioners maintain that the subject articles should be protected since the same is covered by the freedom of the press. To hold otherwise would be to curtail the exercise of the freedom of the press protected by the Constitution.[22]

Respondents' arguments

Atty. Canoy argued that calling, describing, singling out and naming a person as veritable mental asylum patient, madman and certified lunatic is libelous *per se*. Those words were repeatedly published in two newspapers on different dates and were intended to discredit, dishonor and defame him under the guise of fair comment. Further, Atty. Canoy claimed that those words refer not to the act of the person but to the person himself. Attacking his person, name and character is not a response to a social duty. It was not their duty to defame him and claim it

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

[19] *Id*. at 17.

[20] *Id*. at 19.

[21] *Id*. at 21.

[22] *Id*. at 24.

as social responsibility so it may be protected under the mantle of a qualified privileged communication.[23]

Issues

1. Whether the subject articles are libelous.
2. Whether the subject articles are covered by the doctrine of qualifiedly privileged communication, hence, not actionable.
3. Whether actual malice was established.

Ruling of the Court

The petition is denied.

Libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to cause dishonor, discredit or contempt of a natural or juridical person, or to blacken the memory of one who is dead.[24] Thus, it is an offense of injuring a person's character or reputation through false and malicious statements.[25] In *Manila Bulletin Publishing Corporation v. Domingo*,[26] the Court said that:

> In determining whether a statement is *defamatory*, the words used are to be construed in their entirety and should be taken in their plain, natural, and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense. x x x.[27] (Citations omitted)

Despite being included as a crime under the Revised Penal Code (RPC), a civil action[28] for damages may be instituted by

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[23] *Id*. at 86-89.

[24] Revised Penal Code, Article 353.

[25] *Yuchengco v. The Manila Chronicle Publishing Corp., et al.*, 620 Phil. 697, 716 (2009).

[26] G.R. No. 170341, July 5, 2017, 830 SCRA 40.

[27] *Id*. at 61.

[28] Article 33 of the New Civil Code.

the injured party, which shall proceed independently of any criminal action for the libelous article and which shall require only a preponderance of evidence, as what Atty. Canoy did in this case.

Beyond question, the words imputed to Atty. Canoy as a veritable mental asylum patient, a madman and a lunatic, in its plain and ordinary meaning, are conditions or circumstances tending to dishonor or discredit him. As such, these are defamatory or libelous *per se*.

Under Article 354 of the RPC, it is provided that every defamatory imputation is presumed to be with malice, even if the same is true, unless it is shown that it was made with good intention and justifiable motive, except in the following circumstances:

1. A private communication made by any person to another in the performance of any legal, moral or social duty; and
2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

A privileged communication may be classified as either absolutely privileged or qualifiedly privileged. The absolutely privileged communication are not actionable even if the same was made with malice, such as the statements made by members of Congress in the discharge of their duties for any speech or debate during their session or in any committee thereof,[29] official communications made by public officers in the performance of their duties, allegations or statements made by the parties or

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In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only preponderance of evidence.

[29] *Borjal v. CA*, 361 Phil. 1, 18 (1999).

their counsel in their pleadings or during the hearing, as well as the answers of the witnesses to questions propounded to them.[30]

The qualifiedly privileged communications are those which contain defamatory imputations but which are not actionable unless found to have been made without good intention or justifiable motive, and to which "private communications" and "fair and true report without any comments or remarks" belong.[31]

Indubitably, the defamatory words imputed to Atty. Canoy cannot be considered as "private communication" made by one person to another in the performance of any legal, moral or social duty. Neither is it a fair and true report without any comments or remarks. However, in the case of *Borjal v. CA*,[32] fair commentaries on matters of public interest is provided as another exception by this Court, thus:

> To be sure, the enumeration under Art. 354 is not an exclusive list of qualifiedly privileged communications since fair commentaries on matters of public interest are likewise privileged. The rule on privileged communications had its genesis not in the nation's penal code but in the Bill of Rights of the Constitution guaranteeing freedom of speech and of the press. As early as 1918, in *United States v. Cañete*, this Court ruled that publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech. This constitutional right cannot be abolished by the mere failure of the legislature to give it express recognition in the statute punishing libels.
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> x x x x x x x x x
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> To reiterate, fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because

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[30] *Manila Bulletin Publishing Corporation v. Domingo*, *supra* note 26, at 69.

[31] *Id*.

[32] 361 Phil. 1 (1999).

every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts.[33] (Citations omitted)

In this case, the defamatory words imputed to Atty. Canoy cannot be said to be fair commentaries on matters of public interest. To be sure, informing the public as to the rebellion of Col. Noble is a matter of public interest. However, calling Atty. Canoy as a veritable mental asylum patient, a madman and a lunatic is not in furtherance of the public interest. The defamatory words are irrelevant to the alleged participation of Atty. Canoy in the rebellion staged by Col. Noble.

Locsin, Jr., alleged that he only made those utterances to show his strong opposition to the political beliefs of Atty. Canoy to remove Mindanao from the government based on the alleged intelligence reports identifying Atty. Canoy as part of the civilian component of Col. Noble's rebellion.

As found by both the RTC and the CA, the said intelligence reports are neither proved nor established by the petitioners. As such, the intelligence reports are unconfirmed. As such, the said defamatory remarks cannot be considered as an expression of opinion based on established facts nor can it reasonably inferred from established facts. Nevertheless, even if the supposed intelligence reports were verified and Atty. Canoy supported Col. Noble's rebellion, the defamatory remarks are not related to the alleged participation of Atty. Canoy in the rebellion, but directed as to his mental condition. Further no evidence was presented to support that Atty. Canoy was indeed a mental asylum patient or a lunatic. As such, the petitioners

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

made those defamatory remarks without any regard as to the truth or falsity of the same.

As alleged by the petitioners, the subject articles were centered in the rebellion of Col. Noble, and Atty. Canoy was merely mentioned incidentally. This allegation does not help the position of the petitioners. Rather, it even weakens their cause, as it further established the existence of malice in causing dishonor, discredit or put in contempt the person of Atty. Canoy.

It is true that every defamatory remark directed against a public person in his public capacity is not necessarily actionable[34] but if the utterances are false, malicious, or unrelated to a public officer's performance of his duties or irrelevant to matters of public interest involving public figures, the same may be actionable.[35]

Examination of the defamatory remarks reveals that the same pertain to Atty. Canoy's mental capacity and not to his alleged participation with Col. Noble's rebellion, and neither does it pertain to Atty. Canoy's duties and responsibilities as a radio broadcaster. While Atty. Canoy is a public figure, the subject articles comment on the mental condition of the latter, thus, the defamatory utterances are directed to Atty. Canoy as a private individual, and not in his public capacity. As such, the petitioners' allegation that the subject articles are fair commentaries on matters of public interest are unavailing. As stated in *Gertz v. Robert Welch, Inc.*,[36] a newspaper or broadcaster publishing defamatory falsehoods about an individual who is neither a public official nor a public figure may not claim a constitutional privilege against liability for injury inflicted, even if the falsehood arose in a discussion of public interest. The mere fact that Atty. Canoy is a public figure does

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[34] *Tulfo v. People, et al.*, 587 Phil. 64, 85-86 (2008).

[35] *Manila Bulletin Publishing Corporation v. Domingo, et al*., *supra* note 26, at 71.

[36] 418 U.S. 323 (1974), as cited in *Philippine Journalists Inc. (People's Journal) v. Thoenen*, 513 Phil. 607 (2005).

not automatically mean that every defamation against him is not actionable. In *Yuchengco v. The Manila Chronicle Publishing Corp., et al.*,[37] the Court stated that:

> A topic or story should not be considered a matter of public interest by the mere fact that the person involved is a public officer, unless the said topic or story relates to his functions as such. Assuming a public office is not tantamount to completely abdicating one's right to privacy. x x x.[38]

Having established that the defamatory remarks are not privileged, the law provides that malice is presumed.[39] Petitioners claimed that the defamatory remarks are privileged since Atty. Canoy failed to prove actual malice on their part. We disagree.

Generally, malice is presumed in every defamatory remark. What destroys this presumption is the finding that the said defamatory remark is classified as a privileged communication. In such case, the *onus* of proving actual malice is on the part of the plaintiff.[40] In this case, however, the petitioners were not able to establish that the defamatory remarks are privileged, as such, the presumption of malice stands and need not be established separate from the existence of the defamatory remarks.[41]

Petitioners claimed that Mrs. Canoy has no cause of action against them since she has not been mentioned in the articles. We agree.

Rule 2, Section 2 of the Rules of Court states that a cause of action is the act or omission by which a party violates a right of another. In this case, no right of Mrs. Canoy was violated. As held, the reputation of a person is personal, separate and

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[37] 620 Phil. 697 (2009).

[38] *Id*. at 733-734.

[39] Article 354 of the Revised Penal Code.

[40] *Borjal v. CA, et al*., *supra* note 32, at 24.

[41] *Brilliante v. Court of Appeals*, 483 Phil. 568, 591 (2004).

distinct from another.[42] The reputation of Atty. Canoy that has been dishonored and discredited by the subject articles is not the same from the reputation of Mrs. Canoy. As such, no cause of action for damages is present in favor of the latter.

Under Article 2219(7) of the Civil Code, moral damages may be recovered in cases of libel, slander or any other form of defamation. Further, Article 2229 of the Civil Code states that exemplary damages are imposed by way of example or correction for the public good. Article 2208 of the same Code provides, among others, that attorney's fees and expenses of litigation may be recovered in cases when exemplary damages are awarded and where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.[43]

In this case, We hold that the award of moral damages of ₱300,000.00, exemplary damages of ₱50,000.00, attorney's fees of ₱100,000.00 and litigation expenses of ₱20,000.00 is deemed just and equitable.

WHEREFORE, the premises considered, the instant Petition is **DENIED**. The Decision dated January 28, 2010 of the Court of Appeals in CA-G.R. CV No. 00552 is **AFFIRMED** *in toto*.

SO ORDERED.

Bersamin, C.J. (Chairperson), del Castillo, and *Gesmundo, JJ.*, concur.

Jardeleza, J., on official leave.

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[42] *MVRS Pub. Inc. v. Islamic Da'wah Council of the Phils., Inc.*, 444 Phil. 230, 243 (2003).

[43] *Yuchengco v. Manila Chronicle Publishing Corp., et al.*, 677 Phil. 422, 436 (2011).

THIRD DIVISION

[G.R. No. 198366. June 26, 2019]

REPUBLIC OF THE PHILIPPINES, represented by the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *petitioner, vs.* **THE HONORABLE OMBUDSMAN, RAMON C. LEE, JOHNNY TENG, ANTONIO DM. LACDAO, and CESAR R. MARCELO (as members of the BOARD OF DIRECTORS and of ALFA INTEGRATED TEXTILE MILLS, INC.), CESAR ZALAMEA, ALICIA LL. REYES, J.V. DE OCAMPO, JOSEPH LL. EDRALIN, and RODOLFO MANALO (former members of the Board of Governors of the Development Bank of the Philippines),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; FOR THE SUPREME COURT TO REVIEW THE OFFICE OF THE OMBUDSMAN'S EXERCISE OF ITS INVESTIGATIVE AND PROSECUTORIAL POWERS IN CRIMINAL CASES, THERE MUST BE A CLEAR SHOWING OF GRAVE ABUSE OF DISCRETION; NOT PRESENT IN CASE AT BAR. — It is established that this Court generally does not interfere when the Office of the Ombudsman has made its finding on the existence of probable cause. This exercise is an executive function, and is in accordance with its constitutionally-granted investigatory and prosecutorial powers. In *Presidential Ad Hoc Committee on Behest Loans v. Tabasondra*: x x x The Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. This is basically his prerogative. In recognition of this power, the Court has been consistent not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers. x x x The rationale underlying the Court's ruling has been explained in numerous cases. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon

practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant. x x x For this Court to review the Office of the Ombudsman's exercise of its investigative and prosecutorial powers in criminal cases, there must be a clear showing of grave abuse of discretion. x x x "[Disagreement with [its] findings is not enough to constitute grave abuse of discretion." There must be a showing that it conducted the preliminary investigation "in such a way that amounted to a virtual refusal to perform a duty under the law." Here, petitioner was unable to prove that public respondent Office of the Ombudsman committed grave abuse of discretion in not finding probable cause against the other respondents. It did not even point to any specific act or omission on the part of public respondent Office of the Ombudsman that would show capricious or whimsical exercise of judgment amounting to lack or excess of jurisdiction.

2. **ID.; ID.; ID.; THE SUPREME COURT WILL NOT OVERTURN THE FINDINGS OF THE OFFICE OF THE OMBUDSMAN THAT THERE WAS NO PROBABLE CAUSE TO CHARGE RESPONDENTS WITH VIOLATION OF SECTION 3 (E) AND (G) OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT WHEN THEY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE; CASE AT BAR. —** Indeed, the expertise of the Committee on Behest Loans should be respected, as it is in the position to determine whether standard banking practices had been followed in loan transactions. In *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*: x x x No doubt, the members of the Committee are experts in the field of banking. On account of their special knowledge and expertise, they are in a better position to determine whether standard banking practices are followed in the approval of a loan or what would generally constitute as adequate security for a given loan. Absent a substantial showing that their findings were made from an erroneous estimation of the evidence presented, they are

conclusive and, in the interest of stability of the governmental structure, should not be disturbed. x x x [T]he records of this case support public respondent Office of the Ombudsman's finding that Development Bank exercised sound business judgment and acted under existing banking regulations in its loans to ALFA Integrated Textile. Petitioner failed to show how the risk Development Bank had taken in extending the loans to ALFA Integrated Textile was arbitrary or malicious. Likewise, it was unable to prove the element of undue injury; that is, the losses that would have been unavoidable in the ordinary course of business, as contemplated by *Presidential Commission on Good Government*. x x x As petitioner was unable to substantially prove its allegations, this Court rules that public respondent Office of the Ombudsman did not gravely abuse its discretion in finding that there was no probable cause to charge private respondents with violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act. This Court will not overturn its findings when they are supported by substantial evidence.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Cayañga, Zuñiga and Angel Law Offices for respondents Ramon C. Lee, *et al.*

Trio & Regalado Law Offices for respondent Alicia LL. Reyes.

Gerodias Suchianco Estrella for respondent LL. Edralin.

D E C I S I O N

LEONEN, *J.*:

Generally, this Court does not interfere when the Office of the Ombudsman has made its finding on the existence of probable cause. This exercise is an executive function, and is pursuant to its constitutionally-granted investigatory and prosecutorial powers. For this Court to review its findings in criminal cases, there must be a clear showing of grave abuse of discretion on its part.

This Court resolves a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court, assailing the July 31, 2006 Resolution[2] and January 21, 2011 Order[3] of the Office of the Ombudsman in OMB-C-C-03-0271-D.

The Office of the Ombudsman found no probable cause to charge the officers of the Development Bank of the Philippines (Development Bank) and ALFA Integrated Textile Mills, Inc. (ALFA Integrated Textile) for violation of Section 3(e) and (g) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act. It held that the six (6) loans obtained by ALFA Integrated Textile from Development Bank were not behest loans.

Administrative Order No. 13, series of 1992, issued by then President Fidel V. Ramos (President Ramos), created the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (Committee on Behest Loans) to investigate "allegations of loans, guarantees, and other forms of financial accommodations granted, directly or indirectly, by government-owned or controlled bank or financial institutions, at the behest, command, or urging by previous government officials to the disadvantage and detriment of the Philippine Government and the Filipino people[.]"[4]

Presidential Memorandum Order No. 61 laid down the factors that the Committee on Behest Loans used to determine if certain loans were behest:

a) The borrower corporation in undercollateralized[.]

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[1] *Rollo*, pp. 3-43.

[2] *Id*. at 44-86. The Resolution was penned by Graft Investigation & Prosecution Officer II Lolita Micu-Bravo, reviewed by PIAB-B Acting Director Orlando I. Ines, recommended for approval by PAMO Assistant Ombudsman Pelagio S. Apostol, and approved by Deputy Ombudsman for Luzon Mark E. Jalandoni of the Office of the Ombudsman.

[3] *Id*. at 87-106. The Order was penned by Graft Investigation & Prosecution Officer II Lolita Micu-Bravo, recommended for approval by PAMO Acting Assistant Ombudsman Mary Susan S. Guillermo, and approved by Acting Ombudsman Orlando C. Casimiro of the Office of the Ombudsman.

[4] Administrative Order No. 13 (1992).

b) The borrower corporation is undercapitalized.

c) Direct or indirect endorsement (of the loan or accommodation) by high government officials like presence of marginal notes.

d) Stockholders, officers or agents of the borrower corporation are identified as cronies.

e) Deviation of use of loan proceeds from the purpose intended.

f) Use of corporate layering.

g) Non-feasibility of project for which financing is being sought.

h) Extra-ordinary speed in which loan release was made[.][5]

To assist the Committee on Behest Loans, a Technical Working Group was organized, consisting of officers and employees of government financial institutions.[6]

On February 27, 1987, Development Bank transferred its rights, interests, and titles in certain loans and assets to the government. In exchange, the government assumed some of Development Bank's obligations.[7] Among these loans and assets was the account of textile company ALFA Integrated Textile,[8] which was then examined by the Technical Working Group.

The Technical Working Group's findings, including on ALFA Integrated Textile's account, were later adopted by the Committee on Behest Loans in an Executive Summary.[9]

In a March 15, 1993 Fortnightly Report to President Ramos, the Committee on Behest Loans found that certain loans and accommodations that ALFA Integrated Textile had obtained from Development Bank had "positive characteristics of behest loans[.]"[10] These loans were:

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[5] *Rollo*, pp. 109-110.

[6] *Id*. at 110.

[7] *Id*. at 111.

[8] *Id*. at 112.

[9] *Id*. at 111.

[10] *Id*.

Loan Amount	Purpose of the Loan	Date Approved and DBP Board Resolution Number	Approving Officers
a) US$10 Million	To refinance ALFA's short-term obligations and partially finance ALFA's working capital requirements	Approved under DBP Board Resolution No. 2025 dated June 27, 1979.	DBP Acting Chairman Rafael A. Sison and DBP Executive Officer Alicia Ll. Reyes
b) US$20 Million	To refinance ALFA's obligations with other commercial banks	Approved per DBP Board Resolution No. 3796 dated November 21, 1979.	DBP Acting Chair Rafael A. Sison and DBP Exec. Officer Alicia Ll. Reyes
c) ₱11.4 Million	Supposed to cover ALFA's procurement of locally-grown cotton.	Approved in 1980 under DBP Board Resolution No. 2655.	DBP Vice Chairman J.V. De Ocampo and DBP Acting Exec. Officer Joseph Ll. Edralin
d) ₱25 Million	To finance ALFA's working capital requirements for 6 months.	Approved under DBP Board Resolution No. 4096 dated 10 December 1980.	DBP Vice-Chairman J.V. De Ocampo and DBP Acting Executive Officer Joseph Ll. Edralin. Acting DBP Chairman Rafael A. Sison
e) US$2,666,667	To cover ALFA's operations for one (1) month.	Approved in 1981 under DBP Board Resolution No. 947.	DBP Vice-Chairman Jose R. Tengco, Jr. and DBP Exec. Officer R.D. Manalo
f) ₱137 Million	1) Acquisition of plant equipment; 2) Payment of rehabilitation loan earlier extended to ALFA by DBP; and 3) Working capital.	Approved in 1981 under DBP Board Resolution No. 1811.	DBP Acting Chairman Rafael A. Sison and DBP Executive Officer R.D. Manalo[11]

The Committee on Behest Loans alleged that the collaterals offered as security for the US$10 million loan were the land, buildings, and machinery with a collective value of

[11] *Id*. at 113-114.

₱294,993,000.00.[12] The same collaterals were used to secure the US$20 million loan. After securing these loans, ALFA Integrated Textile's paid-up capital was ₱65,746,900.00 as of December 1979.[13]

The third and fourth loans were also secured with the same collaterals used for the first two (2) loans, although the paid-up capital did not increase. As for the fifth loan, other assets, machinery, and equipment valued at ₱98,811,000.00 were offered as security in addition to the same collaterals as the first three (3) loans. By this time, ALFA Integrated Textile's paid-up capital increased to ₱71,746,900.00.[14]

Then, in 1981, despite incurring a net loss of ₱649,345,035.00, which resulted in a ₱458,187,453.00 capital deficiency, ALFA Integrated Textile was able to secure from Development Bank its sixth loan, using the same collaterals it had offered for its five (5) other loans.[15]

In sum, as of September 30, 1982, ALFA Integrated Textile had a total outstanding obligation of ₱634,800,000.00 to Development Bank.

According to the Committee on Behest Loans, Development Bank President Cesar Zalamea (Zalamea) wrote to former President Ferdinand Marcos (President Marcos), recommending a rehabilitation plan that would stifle the bank's chances of recouping the amounts that ALFA Integrated Textile had borrowed. In a marginal note to the letter, President Marcos approved the plan.[16]

The Committee on Behest Loans further reported that in 1986, Development Bank agreed to sell ALFA Integrated Textile's fixed assets worth ₱462,323,000.00 to Cape Industries, Inc., a

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[12] *Id.* at 114.

[13] *Id.* at 115.

[14] *Id.*

[15] *Id.* at 116.

[16] *Id.* at 117-118.

company owned by Eduardo Cojuangco, Jr. (Cojuangco), who was "a known crony of former President Ferdinand E. Marcos."[17] The assets were sold for only ₱100 million.[18]

At the time of these transactions, the corporate officers of ALFA Integrated Textile were: (1) Ramon C. Lee (Lee), its president; (2) Johnny Teng (Teng), the vice president for finance; (3) Antonio Dm. Lacdao (Lacdao), the vice president and general manager; and (4) Cesar R. Marcelo (Marcelo), the vice president and comptroller. The relevant Development Bank officers were: (1) Zalamea, its president; (2) Rafael A. Sison (Sison), the acting chair; (3) Alicia Ll. Reyes (Reyes), the executive officer; (4) J.V. de Ocampo (de Ocampo), the vice chair; (5) Joseph Ll. Edralin (Edralin), an acting executive officer; and (6) Rodolfo D. Manalo (Manalo), an executive officer.[19]

Based on these findings, the Presidential Commission on Good Government filed before the Office of the Ombudsman an Affidavit-Complaint[20] for violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act against the officers of ALFA Integrated Textile and Development Bank.

The Presidential Commission on Good Government alleged that the loans that Development Bank had extended to ALFA Integrated Textile caused gross disadvantage to the government and the Filipino people because these loans were made under unfavorable circumstances. There was also a rehabilitation plan that supposedly made it difficult for Development Bank to recover its exposure from ALFA Integrated Textile.[21]

On July 31, 2006, the Office of the Ombudsman issued a Resolution[22] dismissing the Complaint. Its dispositive portion read:

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[17] *Id.* at 118. Cape Industries, Inc. later changed its name to Southern Textile Mills, Inc.

[18] *Id*. at 119.

[19] *Id*. at 112-113 and 122-124.

[20] *Id*. at 109-124.

[21] *Id*. at 121.

[22] *Id*. at 44-86.

WHEREFORE, it is hereby recommended that the instant complaint for violation of Section 3(e) and (g) of R.A. 3019, as amended, against Public Respondents, namely: Cesar Zalamea, Rafael Sison, Alicia Reyes, J.V. De Ocampo, Joseph Edralin and Rodolfo Manalo, all officers of the DBP, as well as Private Respondents, namely: Ramon Lee, Johnny Teng, Antonio DM. Lac[d]ao, and Cesar Marcelo, all officers of ALFA, be DISMISSED.

SO RESOLVED.[23]

Preliminarily, the Office of the Ombudsman found that the Complaint had not been barred by prescription, citing *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,[24] in which this Court held that prescription of the offense in behest loans started to run from the day of discovery, not commission. Here, the period of prescription commenced on March 15, 1993, when the Fortnightly Report was issued. The Presidential Commission on Good Government filed the Complaint on March 12, 2003, which was still within the 10-year prescriptive period under the Anti-Graft and Corrupt Practices Act.[25]

Nonetheless, the Office of the Ombudsman found that there was no reasonable ground to indict the ALFA Integrated Textile and Development Bank officers.[26]

The Office of the Ombudsman held[27] that not all the elements under Section 3(e)[28] of the Anti-Graft and Corrupt Practices Act existed, citing *Quibal v. Sandiganbayan*:[29]

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[23] *Id*. at 83.

[24] 375 Phil. 697 (1999) [Per *C.J.* Davide, *En Banc*].

[25] *Rollo*, pp. 70-71.

[26] *Id*. at 71.

[27] *Id*. at 71-72.

[28] Republic Act No. 3019, Sec. 3(e) states:

SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

1. The accused is a public officer discharging official administrative or judicial functions or private persons in conspiracy with them;
2. The public officer committed the prohibited act during the performance of his official duty in relation to his public position;
3. The public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
4. His actions caused undue injury to the Government or any private party, or gave any party unwarranted benefit, advantage or preference.[30] (Citation omitted)

The Office of the Ombudsman pointed out that the Committee on Behest Loans itself stated in its Fortnightly Report that it "did not find any characteristics to classify ALFA [Integrated Textile]'s loans as behest."[31]

Furthermore, the Office of the Ombudsman found that the Presidential Commission on Good Government failed to establish with certainty that the value of the real estate, buildings, machinery, and equipment offered by ALFA Integrated Textile to secure its loans were insufficient.[32]

For the ₱25 million loan, the additional security of ₱45,470,700.00 in chattel mortgages and equipment was given, covered by a trust receipts agreement. The US$2,666,667.00 loan was applied for and released when ALFA Integrated Textile

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. . . . . .

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.

This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[29] 314 Phil. 66 (1996) [Per *J.* Puno, Second Division].

[30] *Rollo*, pp. 71-72.

[31] *Id*. at 72 *citing* the Fortnightly Report.

[32] *Id*. at 73.

was already managed by a Development Bank-controlled board, and was secured by real estate and chattel mortgages valued at ₱418,290,800.00.[33]

Similarly, the ₱137 million loan was applied for and released by the bank-controlled board.[34] Nonetheless, as the Office of the Ombudsman found, this loan was given under certain conditions:

> However, Private Respondent Lee was still required to (a) constitute a first mortgage on ALFA's 126,483 sq.m. land in Calamba, Laguna on 6 July 1981 including the buildings, machinery and equipment found thereat; (b) to assume joint and several obligations with ALFA for the repayment of the obligation; and (c) to assign to DBP ALFA's export sales proceeds in an amount sufficient to cover the yearly amortization on the loans approved by the DBP. And as a condition for the ₱137 Million loan, ALFA had to execute a Voting Trust Agreement (VTA) dated March 11, 1981 granting the DBP full and complete control over ALFA. Once in full control, the DBP-controlled Board of ALFA constituted additional mortgages over several other valuable assets of ALFA, which mortgages should have no longer been necessary as the constitution of the same was not agreed upon nor necessary under the terms of the VTA.[35]

Moreover, the Office of the Ombudsman pointed out that there was no law requiring a corporation's capital to be fully paid-up or be increased to be equivalent or greater than a loan obtained from a bank. It noted that a loan would only be under-collateralized if the loan amount exceeded the maximum allowable proportion of the mortgaged assets' appraised value. As the Technical Working Group of the Committee on Behest Loans itself found, ALFA Integrated Textile had favorable debt-equity ratios in 1978 and 1979.[36]

The Office of the Ombudsman also found that prioritizing payment of taxes and duties, along with ALFA Integrated

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

[34] *Id*. at 74.

[35] *Id*.

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

Textile's obligations to foreign suppliers, over servicing its debts to Development Bank did not make the plan disadvantageous to the bank. It pointed out that the priority for taxes and duties was required by law, and that foreign loans were covered by a sovereign guarantee. Their payment, it noted, benefited the government.[37]

Likewise, the Office of the Ombudsman did not consider the sale of ALFA Integrated Textile's fixed assets to Cape Industries, Inc. as a behest sale. While the disposal price of ₱100 million was much lower than ₱462,323,000.00, the value appraised by Development Bank—an indication that a sale may have been behest—it noted that what finally determined a behest sale was "the resulting effect of the sale or disposal, [or] whether such sale or disposal could be considered highly prejudicial, inimical and iniquitous or manifestly disadvantageous to the government given the circumstances surrounding the approval of the sale and the policies and rules governing such sale or disposal."[38] Since the sale included a repayment schedule for ALFA Integrated Textile's loans to Development Bank and other obligations, it was not, "by itself, disadvantageous to the government."[39]

Thus, the Office of the Ombudsman ruled that there was no showing that the Development Bank and ALFA Integrated Textile officers acted with manifest partiality, evident bad faith, or gross inexcusable negligence. Instead, it held that the acts complained of were done in the exercise of the bank officials' sound business judgment in Development Bank's interest.[40] It also found no showing that they gave unwarranted benefits, advantage, or preference to ALFA Integrated Textile, Cape Industries, Inc., or any party. Likewise, it declared that no undue injury to any party or the government had been proven.[41]

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[37] *Id*. at 77.

[38] *Id*. at 78-79 and 154.

[39] *Id*. at 79.

[40] *Id*. at 80.

[41] *Id*. at 81.

Similarly, the Office of the Ombudsman found no violation of Section 3(g) of the Anti-Graft and Corrupt Practices Act:

> SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful: . . .
>
> (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

According to the Office of the Ombudsman, the Presidential Commission on Good Government failed to prove that the loans and accommodations in favor of ALFA Integrated Textile, the rehabilitation plan, and the fixed assets sale were grossly or manifestly disadvantageous or prejudicial to the government. It found that between the Development Bank and ALFA Integrated Textile officers, there had been no proven conspiracy that would permit prosecuting them for violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act.[42]

In its January 21, 2011 Order,[43] the Office of the Ombudsman denied the Presidential Commission on Good Government's Motion for Reconsideration.

On September 15, 2011, the Republic of the Philippines, represented by the Presidential Commission on Good Government, filed before this Court a Petition for *Certiorari*[44] assailing the Office of the Ombudsman's July 31, 2006 Resolution and January 21, 2011 Order.

Petitioner argues that public respondent Office of the Ombudsman acted with grave abuse of discretion when it found no probable cause to charge private respondents with violation

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[42] *Id*. at 81-83.

[43] *Id*. at 87-106.

[44] *Id*. at 3-43. In its June 27, 2012 Resolution, this Court noted that Rafael A. Sison was not informed of the pendency of this case as his address could not be found. He was not named a party to the Petition.

of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act.[45]

First, petitioner claims that public respondent Office of the Ombudsman should not have given weight to the statement in the Committee on Behest Loans' Fortnightly Report that the loans to ALFA Integrated Textile were not behest loans. Instead, it points to the Committee's March 15, 1993 letter to President Ramos, where it stated that ALFA Integrated Textile's loan accounts had "positive findings[.]"[46] To petitioner, public respondent Office of the Ombudsman should have independently ascertained whether there was a violation of the law instead of relying on the Committee's findings.[47]

Second, petitioner claims that the Committee on Behest Loans' actual finding in its Terminal Report was that the loans to ALFA Integrated Textile were all behest loans, which were manifestly and grossly disadvantageous to the government.[48] It claims that the Committee found that ALFA Integrated Textile obtained its loans after it had incurred heavy losses, with a negative net worth, a collateral ratio in excess of the level set by the Committee, and a negative debt-equity ratio for 1980, 1981, and 1983.[49] Moreover, it asserts that the additional collaterals did not legitimize the loans since public respondent Office of the Ombudsman based its findings on evidence presented by private respondent Lee, an officer of ALFA Integrated Textile who, petitioner adds, only presented the mortgages, not the transfer certificates of title on which they were annotated.[50]

Third, petitioner argues that there was sufficient ground to find probable cause for a violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act. It asserts that the

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[45] *Id*. at 20-21.

[46] *Id*. at 21.

[47] *Id*. at 20-21.

[48] *Id*. at 23.

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

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

Committee on Behest Loans' findings are entitled to great weight and respect as the "body specifically with its own specific field of expertise and charged precisely to investigate behest loans."[51]

Fourth, petitioner argues that ALFA Integrated Textile's sale of its assets to Cape Industries, Inc. was made with manifest partiality in favor of Cape Industries, Inc. and Cojuangco,[52] and that the repayment schedule in the sale did not benefit the government.[53]

In its October 10, 2011 Resolution,[54] this Court ordered respondents to comment on the Petition.

Public respondent Office of the Ombudsman filed its Comment on February 1, 2012.[55] Private respondents Lee, Teng, Lacdao, and Marcelo filed their Joint Comment on December 20, 2011,[56] while public respondents Zalamea and Reyes filed theirs on January 11, 2012[57] and January 20, 2012,[58] respectively.

In its Comment, public respondent Office of the Ombudsman claims that petitioner failed to convincingly show that there was probable cause to warrant the filing of an information in court, because the evidence it presented was insufficient.[59] It points out that it has the discretion to determine whether a criminal case should be filed based on the attendant facts.[60]

In their Joint Comment, private respondents Lee, Teng, Lacdao, and Marcelo argue that public respondent Office of

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

[52] *Id*. at 31.

[53] *Id*. at 32-33.

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

[55] *Id*. at 284-307.

[56] *Id*. at 211-228.

[57] *Id*. at 235-241.

[58] *Id*. at 263-283.

[59] *Id*. at 297-298.

[60] *Id*. at 298.

the Ombudsman's finding on the lack of probable cause was entitled to great respect, as it was based on a properly conducted investigation and receipt of evidence from all parties.[61] Petitioner allegedly failed to present substantial and convincing evidence to prove its charges against them.[62]

In his Comment, public respondent Zalamea adopts by way of reference all of public respondent Office of the Ombudsman's findings on the status of the loans extended to ALFA Integrated Textile,[63] similarly arguing that it did not commit grave abuse of discretion.[64]

In her Comment, public respondent Reyes argues that petitioner has not shown that public respondent Office of the Ombudsman committed grave abuse of discretion, maintaining that it has broad powers to determine whether probable cause exists.[65]

This Court required public respondents Edralin and Manalo to show cause why they should not have been held in contempt for failing to file their comments.[66] Public respondent Edralin later manifested[67] that he would be adopting his co-respondents' Comments.

On January 20, 2014,[68] this Court ordered petitioner to file its consolidated reply, which it did on May 2, 2014.[69]

In its Reply, petitioner insists that it has proved all the elements for violation of Section 3(e) and (g) of the Anti-Graft and Corrupt

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[61] *Id*. at 223.

[62] *Id*. at 224.

[63] *Id*. at 236-239.

[64] *Id*. at 239.

[65] *Id*. at 278.

[66] *Id*. at 412-413.

[67] *Id*. at 426-433.

[68] *Id*. at 435-436.

[69] *Id*. at 449-471.

Practices Act, and as such, there was probable cause to charge private respondents and public respondents Zalamea, Reyes, de Ocampo, Edralin, and Manalo.[70]

The sole issue for this Court's resolution is whether or not public respondent Office of the Ombudsman committed grave abuse of discretion in not finding probable cause to charge private respondents Ramon C. Lee, Johnny Teng, Antonio Dm. Lacdao, and Cesar R. Marcelo, officers of ALFA Integrated Textile Mills, Inc., as well as Cesar Zalamea, Alicia Ll. Reyes, J.V. de Ocampo, Joseph Ll. Edralin, and Rodolfo Manalo, officers of the Development Bank of the Philippines, with violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act.

It is established that this Court generally does not interfere when the Office of the Ombudsman has made its finding on the existence of probable cause.[71] This exercise is an executive function, and is in accordance with its constitutionally-granted investigatory and prosecutorial powers.[72] In *Presidential Ad Hoc Committee on Behest Loans v. Tabasondra*:[73]

> The Ombudsman has the power to investigate and prosecute any act or omission of a public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient. In fact, the Ombudsman has the power to dismiss a complaint without going through a preliminary investigation, since he is the proper adjudicator of the question as to the existence of a case warranting the filing of information in court. The Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. This is basically his prerogative.
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> In recognition of this power, the Court has been consistent not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers.

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[70] *Id*. at 453.

[71] *Presidential Commission on Good Government v. Office of the Ombudsman*, G.R. No. 187794, November 28, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64814> [Per *J*. Leonen, Third Division].

[72] *Id*.

[73] 579 Phil. 312 (2008) [Per *J*. Chico-Nazario, Third Division].

Various cases held that it is beyond the ambit of this Court to review the exercise of discretion of the Office of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.

The rationale underlying the Court's ruling has been explained in numerous cases. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant. In order to insulate the Office of the Ombudsman from outside pressure and improper influence, the Constitution as well as Republic Act No. 6770 saw fit to endow that office with a wide latitude of investigatory and prosecutory powers, virtually free from legislative, executive or judicial intervention. If the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings unless they are tainted with grave abuse of discretion.[74] (Citations omitted)

For this Court to review the Office of the Ombudsman's exercise of its investigative and prosecutorial powers in criminal cases, there must be a clear showing of grave abuse of discretion. In *Casing v. Ombudsman*:[75]

The Constitution and R.A. No. 6770 endowed the Office of the Ombudsman with wide latitude, in the exercise of its investigatory and prosecutory powers, to pass upon criminal complaints involving public officials and employees. Specifically, the determination of whether probable cause exists is a function that belongs to the Office of the Ombudsman. Whether a criminal case, given its attendant facts and circumstances, should be filed or not is basically its call.

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[74] *Id*. at 324-325.

[75] 687 Phil. 468 (2012) [Per *J*. Brion, Second Division].

As a general rule, the Court does not interfere with the Office of the Ombudsman's exercise of its investigative and prosecutorial powers, and respects the initiative and independence inherent in the Office of the Ombudsman which, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service." While the Ombudsman's findings as to whether probable cause exists are generally not reviewable by this Court, where there is an allegation of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power and duty "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner — which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law — in order to exceptionally warrant judicial intervention.[76] (Citations omitted)

Otherwise, this Court does not generally interfere with the Office of the Ombudsman's findings.[77] "[D]isagreement with [its] findings is not enough to constitute grave abuse of discretion."[78] There must be a showing that it conducted the preliminary investigation "in such a way that amounted to a virtual refusal to perform a duty under the law."[79]

Here, petitioner was unable to prove that public respondent Office of the Ombudsman committed grave abuse of discretion in not finding probable cause against the other respondents. It did not even point to any specific act or omission on the part of public respondent Office of the Ombudsman that would show capricious or whimsical exercise of judgment amounting to lack or excess of jurisdiction.

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[76] *Id*. at 475-476.

[77] *Reyes v. Office of the Ombudsman*, 810 Phil. 106, 114 (2017) [Per *J.* Leonen, Second Division].

[78] *Id*. at 115.

[79] *Id*.

Petitioner insists that the Committee on Behest Loans' findings should have been given great weight:

> Moreover, sight must not be lost of the fact that the complaint was based on the findings of the Ad Hoc Committee, a body specifically with its own specific field of expertise and charged precisely to investigate behest loans. Despite the statement oft-cited by the respondents herein, the conclusive findings of this special body are therefore entitled to great weight and respect.[80]

Indeed, the expertise of the Committee on Behest Loans should be respected, as it is in the position to determine whether standard banking practices had been followed in loan transactions. In *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*:[81]

> It behooves the Ombudsman, while he asks the Court to respect his findings, to also accord a proper modicum of respect towards the expertise of the Committee, which was formed precisely to determine the existence of behest loans. Considering the membership of the Committee — representatives from the Department of Finance, the Philippine National Bank, the Asset Privatization Trust, the Philippine Export and Foreign Loan Guarantee Corporation and even DBP itself — its recommendation should be given great weight. No doubt, the members of the Committee are experts in the field of banking. On account of their special knowledge and expertise, they are in a better position to determine whether standard banking practices are followed in the approval of a loan or what would generally constitute as adequate security for a given loan. Absent a substantial showing that their findings were made from an erroneous estimation of the evidence presented, they are conclusive and, in the interest of stability of the governmental structure, should not be disturbed.[82] (Citations omitted)

However, as both petitioner and public respondent Office of the Ombudsman have observed, the Committee on Behest Loans made seemingly contradictory findings on the nature of the loans obtained by ALFA Integrated Textile from Development Bank.

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[80] *Rollo*, pp. 28-29.

[81] 603 Phil. 18 (2009) [Per *J.* Carpio Morales, Second Division].

[82] *Id*. at 36.

While its Fortnightly Report declared that "the committee did not find any characteristics to classify ALFA [Integrated Textile]'s loans as behest[,]"[83] it later stated in its Terminal Report several alleged factors that would show that the loans were behest.[84]

Petitioner did not satisfactorily explain why the Committee contradicted itself or, at the very least, reconciled these contradictions. It merely brushed aside the finding it disagreed with, undermining its own argument on the weight that ought to be accorded to the Committee's findings:

> It should be underscored, however, that the foregoing declaration made by the PAHFFC is not controlling considering that in the same PAHFFC's letter dated March 15, 1993 to then President Fidel V. Ramos, it unequivocally stated that ALFA's loan account possesses "POSITIVE FINDINGS", which said letter defined to "mean that at least two or more characteristics of a behest loan are present in the loan account."
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> . . . . . .
>
> . . . More importantly, the PAHFFC itself did not in any way – which should properly be the case, in light of the limited and restrictive function of the PAHFFC – preempt any action that may be taken by other appropriate government agencies, such as herein complainant PCGG. . . .
>
> . . . . . .
>
> . . . The provisions of Memorandum Order No. 61 which guided the PAHFFC serve as guidelines for the existence of behest loans. However, the ultimate legal basis for prosecution of the subject actions is Republic Act No. 3019 and other laws. Thus, what is ultimately to be ascertained is whether there was a violation of any law by the respondents for which they can be charged. And as the complainant (herein petitioner), as representative of the Republic, found that there exists a cause to prosecute the respondents for violation of R.A. 3019, it consequently did not hesitate to institute the present complaint.[85] (Citation omitted)

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[83] *Rollo*, p. 56.

[84] *Id*. at 24.

[85] *Id*. at 21-23.

On the other hand, in its Resolution and Order, public respondent Office of the Ombudsman evaluated the findings made by the Committee on Behest Loans on the other evidence presented during the investigation. While it took into account the Committee's declaration in its Fortnightly Report, it did not merely rely on this statement to conclude that probable cause does not exist.

A review of this case shows no compelling reason why this Court should interfere with public respondent Office of the Ombudsman's findings.

In *Presidential Commission on Good Government v. Ombudsman*:[86]

> *Presidential Commission on Good Government* stated that for a charge to be valid under Section 3(e) of Republic Act No, 3019, it must be shown that the accused "acted with manifest partiality, evident bad faith, or inexcusable negligence." On the other hand, for liability to attach under Section 3(g), it must be shown that the accused "entered into a grossly disadvantageous contract on behalf of the government."
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> . . . . . .
>
> Section 3, paragraphs (e) and (g) of Republic Act No. 3019 should not be interpreted in such a way that they will prevent Development Bank, through its managers, to take reasonable risks in relation to its business. Profit, which will redound to the benefit of the public interests owning Development Bank, will not be realized if our laws are read constraining the exercise of sound business discretion.
>
> Thus, Section 3(e) requires "manifest partiality, evident bad faith or gross inexcusable negligence" and the element of arbitrariness and malice in taking risks must be palpable. Likewise, there must be a showing of "undue injury" to the government. Section 3(g), on the other hand, requires a showing of a "contract or transaction manifestly and grossly disadvantageous to the [government]."
>
> Definitely, this means that it must not only be proven that Development Bank suffered business losses but that these losses, in the ordinary course of business and with the exercise of sound judgment, were inevitably unavoidable.[87] (Citations omitted)

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[86] G.R. No. 187794, November 28, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64814> [Per *J.* Leonen, Third Division].

[87] *Id*.

As public respondent Office of the Ombudsman had determined, petitioner did not sufficiently prove that public respondents–Development Bank officers acted with manifest partiality, evident bad faith, or inexcusable negligence when the bank extended the loans to ALFA Integrated Textile. Neither did petitioner prove that these loans were grossly disadvantageous to the government.

Petitioner roots its contentions in allegations that: (1) the loans to ALFA Integrated Textile were secured by inadequate collaterals; (2) these loans were extended despite ALFA Integrated Textile's continuous losses; and (3) the use of the loan proceeds to pay off existing obligations rather than investing denied Development Bank the opportunity to recoup its exposure.[88] However, public respondent Office of the Ombudsman found that there were sufficient collaterals securing ALFA Integrated Textile's fourth to sixth loans:

> It appears that for the ₱25 Million loan (fourth loan), additional collaterals were given consisting of chattel mortgages on machinery and equipment covered by Trust Receipts Agreement for the sum of ₱45,470,700.00. According to Private Respondent Lee, there is no truth then to the averment of the complainant that the same collaterals were used to secure the said ₱25 Million loan. The $2,666,667 loan obtained on 14 May 1981 (fifth loan) was applied for and released to ALFA when ALFA was already managed by the DBP-controlled Board. Apparently, though, additional security had been given by ALFA in the form of real estate mortgage on land and on buildings and other improvements, and chattel mortgage on machinery and equipment, valued at an aggregate sum of ₱418,290,800.00. The ₱137 Million loan obtained from DBP on 6 July 1981 which was funded out of the Central Bank's Industrial Rehabilitation Fund (sixth loan) was likewise applied for and released to ALFA at the time ALFA was completely in the hands of the DBP, and the proceeds of the same disbursed by the DBP-controlled Board. However, Private Respondent Lee was still required to (a) constitute a first mortgage on ALFA's 126,483 sq.m. land in Calamba, Laguna on 6 July 1981 including the buildings, machinery and equipment found thereat; (b) to assume joint and several obligation[s] with ALFA for the repayment of the obligation; and (c) to assign to DBP ALFA's export

[88] *Rollo*, p. 23.

sales proceeds in an amount sufficient to cover the yearly amortization on the loans approved by the DBP. And as a condition for the ₱137 Million loan, ALFA had to execute a Voting Trust Agreement (VTA) dated March 11, 1981 granting the DBP full and complete control over ALFA. Once in full control, the DBP-controlled Board of ALFA constituted additional mortgages over several other valuable assets of ALFA, which mortgages should have no longer been necessary as the constitution of the same was not agreed upon nor necessary under the terms of the VTA. A ₱50 Million guarantee line obtained on 22 June 1982 was also extended by the DBP to ALFA.[89] (Citations omitted)

Furthermore, public respondent Office of the Ombudsman found that the rehabilitation plan public respondent Zalamea had recommended would not be disadvantageous to the government since its terms and conditions were not contrary to law and actually benefited the government.[90] All the decisions made by the bank officials were based on recommendations of its different departments.[91]

Thus, the records of this case support public respondent Office of the Ombudsman's finding that Development Bank exercised sound business judgment and acted under existing banking regulations[92] in its loans to ALFA Integrated Textile. Petitioner failed to show how the risk Development Bank had taken in extending the loans to ALFA Integrated Textile was arbitrary or malicious. Likewise, it was unable to prove the element of undue injury; that is, the losses that would have been unavoidable in the ordinary course of business, as contemplated by *Presidential Commission on Good Government*.[93]

On the asset sale to Cape Industries, Inc., public respondent Office of the Ombudsman found that Development Bank included

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[89] *Id*. at 73-75.

[90] *Id*. at 77.

[91] *Id*. at 79.

[92] *Id*.

[93] G.R. No. 187794, November 28, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64814> [Per *J*. Leonen Third Division].

a repayment schedule of ALFA Integrated Textile's loans from Development Bank and other obligations.[94] In contrast, petitioner was unable to prove how the sale, by itself, was a contract grossly disadvantageous to the government.

As petitioner was unable to substantially prove its allegations, this Court rules that public respondent Office of the Ombudsman did not gravely abuse its discretion in finding that there was no probable cause to charge private respondents with violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act. This Court will not overturn its findings when they are supported by substantial evidence.[95]

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The Office of the Ombudsman's July 31, 2006 Resolution and January 21, 2011 Order in OMB-C-C-03-0271-D are **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 199052. June 26, 2019]

JEBSEN MARITIME INC., VAN OORD SHIPMANAGEMENT B.V. and/or ESTANISLAO SANTIAGO, *petitioners, vs.* **TIMOTEO GAVINA, substituted by his heirs, represented by surviving spouse NORA J. GAVINA,** *respondents.*

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[94] *Rollo*, p. 79.

[95] *Vergara v. Ombudsman*, 600 Phil. 26, 43 (2009) [Per *J.* Carpio, *En Banc*].

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; OVERSEAS EMPLOYMENT; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION – STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SECTION 32-A PROVIDES FOR THE CONDITIONS IN DETERMINING WHETHER AN ILLNESS OF A SEAFARER IS WORK-RELATED. —** While the POEA-SEC does not expressly define what "work-related death" means, it could be deduced that such term refers to the seafarer's death resulting from work-related injury or illness. Hence, contrary to what petitioners insist, the principle that those illnesses not listed in Section 32 of the POEA SEC are disputably presumed as work-related shall stand. Section 32-A of the POEA-SEC provides for the conditions in determining whether an illness of a seafarer is work-related. Thus, 1. The seafarer's work must involve the risks described herein; 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and other factors necessary to contract it; 4. There was no notorious negligence on the part of the seafarer. In *Nonay v. Bahia Shipping Services, Inc., Fred Olsen Lines and Mendoza*, the Court held that: Settled is the rule that for an illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.

2. **ID.; ID.; WORK-RELATED DEATH OF THE SEAFARER; AWARD OF MEDICAL EXPENSES IS PROPER. —** Under Section 20-A-2 of the POEA-SEC, "if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician." Petitioners, not having been able to provide the necessary medical attention to Timoteo, and respondent shouldering the expenses in connection with Timoteo's illness, the amount of laboratory procedures, hospitalization bills, doctors' professional fees,

medicines and medical apparatus should be reimbursed to respondents.

3. CIVIL LAW; DAMAGES; EMPLOYER'S BAD FAITH SHOWN BY HIS FAILURE TO EXTEND DISABILITY BENEFITS, AFTER THE CHECK UP, OF THE REPATRIATED SEAMAN; AWARD OF MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES ARE PROPER. — As stated by the NLRC in its Decision, "After the check-up, disability benefits (sic) was not extended to the deceased seaman. This to us (sic) evinced is bad faith on the part of the respondent." Bad faith is not simply bad judgment or negligence. "[I]t imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud." Verily, since petitioners are in bad faith, the award of moral damages amounting to fifty thousand pesos (₱50,000.00) is proper. As to the award of exemplary damages, the New Civil Code provides that, "exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." To discourage other employers who may be emboldened to follow the example of petitioners in trying to evade liability, the award of exemplary damages amounting to fifty thousand pesos (₱50,000.00) is proper. Lastly, as to the attorney's fees, the Supreme Court provides that, "The Court also holds that [respondent] is entitled to attorney's fees in the concept of damages and expenses of litigation. Attorney's fees are recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest." Moreover, under Article 2208 of the New Civil Code, attorney's fees may be recovered in actions for indemnity under workmen's compensation and employer's liability laws.Hence, the award of attorney's fees ten percent (10%) of the aggregate monetary awards is warranted.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Offices for petitioners.
Thelma M. Concepcion for respondents.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated August 25, 2011 and Resolution[3] dated October 19, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 113608, filed by Jebsen Maritime, Inc., Van Oord Ship Management B.V. and/or Estanislao Santiago (petitioners).

Facts of the Case

This case arose from a disability complaint filed by seaman Timoteo O. Gavina (Timoteo substituted by his heirs, represented by the surviving spouse, Nora J. Gavina, herein referred to as respondent) against petitioners.[4]

The respondent averred that on May 5, 2007, Timoteo embarked on vessel M/V Volvos Terranova as a fitter for a four-month employment contract. This was his 17th employment term after having been a seafarer for 34 years. As a fitter, Timoteo is engaged in welding all piping materials, including the cutting of iron pipes, grinding and/or sanding of iron pipes necessary for fittings.[5]

On July 11, 2007, his employment contract was cut short as he was repatriated due to persistent cough and difficulty in breathing. He arrived in Manila on July 12, 2007 and proceeded to the PHILAMCARE Health Systems, Inc. for a check up on July 14, 2007. The initial results of the check-up showed him having pneumonia and bronchiectasis.[6]

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[1] *Rollo*, pp. 39-70.

[2] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio, concurring; *id*. at 18-35.

[3] *Id*. at 37.

[4] *Id*. at 109.

[5] *Id*. at 110.

[6] *Id*. at 111.

On September 27, 2007, Dr. Dennis C. Teo (Dr. Teo), Timoteo's attending physician, issued a certification that "the patient is no (sic) condition to work." He was certified to be unfit for sea service with disability grade I.[7] On October 24, 2007, Timoteo filed the instant complaint to the Labor Arbiter (LA). After a series of further tests, he was diagnosed of having lung cancer.[8]

Upon request of petitioners, on January 11, 2008, Timoteo was seen by Dr. Rhoel Salvador (Dr. Salvador) of the Manila Doctor's Hospital with the same diagnosis of lung cancer. On February 26, 2008 and during the pendency of the case, Timoteo died.[9]

For their part, petitioners alleged that while it was true that Timoteo embarked the vessel as a fitter in May of 2007, nevertheless, he disembarked and signed off due to the end of his employment term and was not medically repatriated. Timoteo never consulted with the company-designated physician in compliance with the three-day mandatory reportorial requirement under the Philippine Overseas Employment Administration (POEA) Standard Employment Contract (SEC).[10]

Petitioners insisted that it was only several months after disembarkation that Timoteo filed the complaint. Petitioners asked Timoteo to support his claim of disability but to no avail. After much probing, it was only in January 2008 that Timoteo agreed to be checked up by the company-designated physician, Dr. Salvador who confirmed the earlier diagnosis of Dr. Teo that Timoteo suffered from lung cancer.[11]

Petitioners argued that lung cancer is not work-related, hence, the complaint should be dismissed.

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[7] *Id*. at 113.

[8] *Id*. at 114.

[9] *Id*. at 114-115.

[10] *Id*. at 187-188.

[11] *Id*. at 188-189.

On May 28, 2008, the LA rendered its Decision[12] dismissing the complaint. The LA held that Timoteo was not able to establish the essential link between lung cancer and his employment as a fitter. Moreover, while lung cancer was listed as an occupational disease, it is compensable only among vinyl chloride workers and plastic workers.

Respondent filed an appeal to the National Labor Relations Commission (NLRC) which overturned the LA Decision on October 22, 2009 and held petitioners liable to pay respondent US$50,000.00 as death benefits, US$2,526.00 as sickness allowance, reimbursement of hospital expenses and ten percent (10%) of the judgment award as attorney's fees.[13]

Both parties moved for reconsideration, hence, on February 26, 2010, the NLRC issued a Resolution specifying the medical expenses to be paid to respondent in the amount of ₱564,099.15. The NLRC also awarded moral damages amounting to ₱50,000.00; exemplary damages amounting to ₱50,000.00 and ten percent (10%) attorney's fees.[14]

Aggrieved, petitioners filed a petition for *certiorari* to the CA.

In its August 25, 2011 Decision,[15] the CA affirmed the Decision and Resolution of the NLRC except that Estanislao Santiago, Jebsen's former Assistant Vice President cannot be held personally liable because his employer's obligations and responsibilities are separate and distinct from the people compromising it.[16]

The CA was convinced that Timoteo was able to prove that he contracted the illness during the term of his employment with petitioners. It banked on the fact that Timoteo was exposed to iron dusts, diesel fumes and other toxic substances throughout

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[12] *Id*. at 271-274.

[13] *Id*. at 21.

[14] *Id*. at 22.

[15] *Id*. at 79-97.

[16] *Id*. at 95.

his employment. Moreover, the CA opined that petitioners failed to substantiate their claim that Timoteo was a heavy smoker and that his cigarette smoking was the only cause of his lung cancer.[17]

Still aggrieved, petitioners filed a motion for reconsideration which was denied via a Resolution[18] dated October 19, 2011.

Hence, this petition.

Issues

The issues raised by petitioners are the following:

1. Whether the death caused by lung cancer after the employment contract had terminated is compensable;
2. Whether the award of medical reimbursement is proper; and
3. Whether damages and attorney's fees are proper.

Ruling of the Court

The death of Timoteo due to lung cancer was proven to be work-related

Contrary to what petitioners wanted this Court to believe, Timoteo was not able to finish his four-month contract because he was medically repatriated only two months into the same. There was sufficient proof of the fact that Timoteo arrived in the Philippines on July 12, 2007 and proceeded to the hospital for a check up on July 14, 2007.

While Timoteo died after the supposed completion of his employment contract, nevertheless, such death was a result of his lung cancer which was substantially proven by respondents to be work-related.

According to Section 20-B of the POEA-SEC:

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[17] *Id*. at 90.

[18] *Id*. at 37.

In case of work-related death of the seafarer, during the term of his contract, the employer shall pay his beneficiaries the Philippine currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

In *Heirs of Marceliano N. Olorvida, Jr., et al. v. BSM Crew Service Centre Philippines, Inc., et al.,*[19] the Court ruled that:

This provision thus placed the burden on the seafarer's heirs to establish that: (a) the seafarer's death was work-related; and (b) the death occurred during the term of employment. These are proven by substantial evidence, or such level of relevant evidence that a reasonable mind might accept as sufficient to support a conclusion.[20]

While the POEA-SEC does not expressly define what "work-related death" means, it could be deduced that such term refers to the seafarer's death resulting from work-related injury or illness. Hence, contrary to what petitioners insist, the principle that those illnesses not listed in Section 32 of the POEA SEC are disputably presumed as work-related shall stand.

Section 32-A of the POEA-SEC provides for the conditions in determining whether an illness of a seafarer is work-related. Thus,

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and other factors necessary to contract it;
4. There was no notorious negligence on the part of the seafarer.

In *Nonay v. Bahia Shipping Services, Inc., Fred Olsen Lines and Mendoza*,[21] the Court held that:

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[19] G.R. No. 218330, June 27, 2018.

[20] *Id*.

[21] 781 Phil. 197 (2016).

Settled is the rule that for an illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.[22] (Citation omitted)

The disputable presumption that a seafarer's sickness is work-related does not mean that he would only sit idly while waiting for the respondent to dispute the presumption. What the law requires is for the seafarer to show a causal connection between the illness and the work for which he was contracted.

Here, Timoteo was shown to have been inevitably exposed to iron dusts, diesel fumes and other toxic substances because of the nature of his work as a fitter.[23] More than 30 years of being exposed to these will definitely take a toll on his health.

It was undisputed that since 1997 until his last assignment in 2007 as a fitter or in the last ten years prior to his demise, Timoteo was deployed by respondent Jebsen Maritime Inc. as his manning agency.

In a study by Siew, Kauppinen, Kyyronen, Heikkila and Pukkala (2008),[24] it was found that the relative risks for lung cancer increased as the cumulative exposure to iron and welding fumes increased. Even in the medical certificate issued by Dr. Salvador, he did not categorically set aside the fact that exposure to carcinogens may still cause lung cancer. It was stated that, "Cancer of the lung has a multifactorial pathogenesis that

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[22] *Id*. at 216-217, citing *Dayo v. Status Maritime Corporation, et al.,* 751 Phil. 778, 789 (2015).

[23] *Rollo*, p. 425.

[24] Siew, S., Kauppinen, T., Kyyronen, P., Heikkila, P. & Pukkala, E. (2008). Exposure to iron and welding fumes and the risk of lung cancer. Scandinavian Journal of Work, Environment and Health. Vol. 34, No. 6 (December 2008), pp. 444-450.

generally includes genetic predisposition as well as exposure to carcinogens."[25]

As to the allegation that Timoteo was a heavy smoker, petitioners presented a certification from the master of the vessel that during his nine weeks stay in the vessel, Timoteo purchased five boxes of cigarettes containing 200 pieces wherein he concluded that Timoteo smoked about 15 cigarettes a day. The same could not be given much weight because it could not be concluded with certainty whether he consumed the five boxes in nine weeks. The fact remains that while cigarette smoking is the leading cause of lung cancer, other causes are not discounted especially for those exposed to toxic substances for more than three decades. It bears stressing that the fact that Timoteo's work condition is a contributing factor to the development of lung cancer, even to a small degree, cannot be discounted.

The award of medical expenses is proper, however, there is a need to recompute the amount actually expended

Under Section 20-A-2 of the POEA-SEC, "if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician."

Petitioners, not having been able to provide the necessary medical attention to Timoteo, and respondent shouldering the expenses in connection with Timoteo's illness, the amount of laboratory procedures, hospitalization bills, doctors' professional fees, medicines and medical apparatus should be reimbursed to respondents.

However, upon checking the receipts[26] presented by respondent, it is proper to recompute the same, hence, the correct

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[25] *Rollo*, p. 408.

[26] *Id*. at 163-183.

medical expenses to be reimbursed to respondent should be ₱309,156.93.

The award of moral damages, exemplary damages and attorney's fees are proper

As stated by the NLRC in its Decision, "After the check-up, disability benefits (sic) was not extended to the deceased seaman. This to us (sic) evinced is bad faith on the part of the respondent."

Bad faith is not simply bad judgment or negligence. "[I]t imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud."[27]

Verily, since petitioners are in bad faith, the award of moral damages amounting to fifty thousand pesos (₱50,000.00) is proper.

As to the award of exemplary damages, the New Civil Code provides that, "exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."[28]

To discourage other employers who may be emboldened to follow the example of petitioners in trying to evade liability, the award of exemplary damages amounting to fifty thousand pesos (₱50,000.00) is proper.

Lastly, as to the attorney's fees, the Supreme Court provides that, "The Court also holds that [respondent] is entitled to attorney's fees in the concept of damages and expenses of litigation. Attorney's fees are recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest."[29]

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[27] *Sharpe Sea Personnel, Inc., Monte Carlo Shipping and Moises R. Florem, Jr. v. Macario Mabunay, Jr.*, G.R. No. 206113, November 6, 2017, 844 SCRA 18, 41.

[28] New Civil Code, Article 2229.

[29] *Santiago v. CF Sharp Crew Management, Inc.*, 554 Phil. 63, 76 (2007).

Moreover, under Article 2208 of the New Civil Code, attorney's fees may be recovered in actions for indemnity under workmen's compensation and employer's liability laws.

Hence, the award of attorney's fees ten percent (10%) of the aggregate monetary awards is warranted.

WHEREFORE, the instant petition is **DENIED**. The Decision dated August 25, 2011 and Resolution dated October 19, 2011 of the Court of Appeals in CA-G.R. SP No. 113608 is **AFFIRMED WITH MODIFICATION**. Petitioners Jebsen Maritime, Inc. and Van Oord Ship Management B.V. are **ORDERED** to pay respondent ₱309,156.93 as reimbursement for medical expenses, aside from the other awards granted by the National Labor Relations Commission in its Decision dated October 22, 2009 and Resolution dated February 26, 2010.

SO ORDERED.

Bersamin, C.J. (Chairperson), del Castillo, and *Gesmundo, JJ.,* concur.

Jardeleza, J., on official leave.

FIRST DIVISION

[G.R. No. 199813. June 26, 2019]

PEOPLE OF THE PHILIPPINES,[*] *plaintiff-appellee, vs.* **ALLAN BERMEJO *y* DE GUZMAN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; APPEALS OF CRIMINAL CASES SHALL BE BROUGHT

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[*] Corrected title.

TO THE SUPREME COURT BY FILING A PETITION FOR REVIEW ON *CERTIORARI*, EXCEPT WHEN THE COURT OF APPEALS IMPOSED THE PENALTY OF *RECLUSION PERPETUA*, LIFE IMPRISONMENT OR A LESSER PENALTY IN WHICH CASE, THE APPEAL SHALL BE MADE BY A MERE NOTICE OF APPEAL FILED BEFORE THE COURT OF APPEALS. — [T]he Court notes that Bermejo filed a petition for review on *certiorari* under Rule 45 of the Rules of Court. As a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court; except when the CA imposed the penalty of *reclusion perpetua*, life imprisonment or a lesser penalty in which case, the appeal shall be made by a mere notice of appeal filed before the CA. Bermejo clearly availed of a wrong mode of appeal by filing a petition for review on *certiorari* before the Court, despite having been sentenced by the CA of life imprisonment.

2. **ID.; ID.; ID.; IN CRIMINAL CASES, AN APPEAL THROWS THE ENTIRE CASE WIDE OPEN FOR REVIEW AND THE REVIEWING TRIBUNAL CAN CORRECT ERRORS, THOUGH UNASSIGNED IN THE APPEALED JUDGMENT, OR EVEN REVERSE THE TRIAL COURT'S DECISION BASED ON GROUNDS OTHER THAN THOSE THAT THE PARTIES RAISED AS ERRORS. —** [T]he Comment filed shall be treated as respondent's Supplemental Brief. In *Ramos, et al. v. People*, the Court held that: [I]n criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

3. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; APART FROM SHOWING THAT THE ELEMENTS OF SALE ARE PRESENT, THE FACT THAT THE DANGEROUS DRUG ILLEGALLY SOLD IS THE SAME DRUG OFFERED IN COURT AS EXHIBIT MUST LIKEWISE BE**

ESTABLISHED WITH THE SAME DEGREE OF CERTITUDE AS THAT NEEDED TO SUSTAIN A GUILTY VERDICT. — After a judicious examination of the entire records of the case, the Court found material facts and circumstances that the trial court had overlooked or misappreciated which, if properly considered, would justify a conclusion different from that arrived at by the trial court. While the Court understands the importance of buy-bust operations as an effective method of apprehending drug pushers who are the scourge of society, We are likewise aware that buy-bust operation is susceptible to abuse. It is for this reason that the Court must be extra vigilant in trying drug cases. In every prosecution for the illegal sale of dangerous drugs, conviction cannot be sustained if doubt persists on the identity of said drugs. The identity of the dangerous drug must be established with moral certainty. Apart from showing that the elements of sale are present, the fact that the dangerous drug illegally sold is the same drug offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.

4. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE INDISPENSABLE REQUIREMENT OF PROVING THE *CORPUS DELICTI* IS NOT COMPLIED WITH WHEN THE DANGEROUS DRUGS ARE MISSING, OR WHEN THERE ARE SUBSTANTIAL GAPS IN THE CHAIN OF CUSTODY OF THE SEIZED DANGEROUS DRUGS THAT RAISE DOUBTS ON THE AUTHENTICITY OF THE EVIDENCE ULTIMATELY PRESENTED IN COURT. — In *People v. Zakaria, et al.*, the Court ruled that: To discharge its overall duty of proving the guilt of the accused beyond reasonable doubt, the State bears the burden of proving the *corpus delicti*, or the body of the crime. The prosecution does not comply with the indispensable requirement of proving the *corpus delicti* either when the dangerous drugs are missing, or when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence ultimately presented in court. That proof of the *corpus delicti* depends on a gapless showing of the chain of custody. x x x. x x x. We have carefully examined the records and found glaring gaps in the chain of custody that seriously taint the integrity of the *corpus delicti*. We agree with petitioner's assertion that the *corpus delicti* was not proven as the chain of custody was defective. There are substantial gaps in the chain

of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence ultimately presented in court.

5. ID.; ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY. — In *People v. Siaton*, the Court said that: Jurisprudence has been instructive in illustrating the links in the chain that need to be established, *to wit*: *First*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *Second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *Third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *Fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

6. ID.; ID.; ID.; ID.; ID.; THE MARKING OF THE DRUG MUST BE DONE IN THE PRESENCE OF THE ACCUSED AND AT THE EARLIEST POSSIBLE OPPORTUNITY, WHICH IS IMMEDIATELY AT THE PLACE WHERE IT WAS SEIZED, IF PRACTICABLE, TO AVOID THE RISK THAT THE SEIZED ITEM MIGHT BE ALTERED WHILE IN TRANSIT; FAILURE TO COMPLY WITH THIS REQUIREMENT IS FATAL TO THE PROSECUTION'S CASE. — In *People v. Saragena*, the Court held that: [I]n a warrantless search as in this case, the marking of the drug must be done in the presence of the accused and at the earliest possible opportunity. The earliest possible opportunity to mark the evidence is immediately at the place where it was seized, if practicable, to avoid the risk that the seized item might be altered while in transit. In *People v. Sabdula*: x x x Marking after seizure is the starting point in the custodial link; hence, it is vital that *the seized contraband be immediately marked* because succeeding handlers of the specimens will use the markings as reference. 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. PO3 Rodillo and SPO3 Eleazar failed to explain why they had to wait to arrive at the police station before marking the seized sachets. Likewise, there is no showing that the seized sachets were marked in the presence of Bermejo. What the prosecution established was that Bermejo refused to sign the inventory receipt. However,

they failed to prove the presence of Bermejo at the time of marking. The presence of the accused is necessary at the time the marking is done in order to assure that the identity and integrity of the drugs were properly preserved. "Failure to comply with this requirement is fatal to the prosecution's case."

7. ID.; ID.; ID.; ID.; ID.; NONCOMPLIANCE WITH THE REQUIREMENTS UNDER JUSTIFIABLE GROUNDS, AS LONG AS THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICER/ TEAM, SHALL NOT RENDER VOID AND INVALID SUCH SEIZURES OF AND CUSTODY OVER SAID ITEMS, PROVIDED THE PROSECUTION FIRST RECOGNIZES AND EXPLAINS THE LAPSE OR LAPSES IN PROCEDURE COMMITTED BY THE ARRESTING LAWMEN. — The police officers likewise failed to take photographs of the seized drugs. Moreover, they failed to offer any explanation for its noncompliance. The last paragraph of Section 21(a) contains a saving *proviso* to the effect 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." But in order for the saving *proviso* to apply, the prosecution must first recognize and explain the lapse or lapses in procedure committed by the arresting lawmen. That did not happen in this case because the prosecution neither recognized nor explained the lapses.

8. ID.; ID.; ID; ID.; GLARING GAPS IN THE CHAIN OF CUSTODY SERIOUSLY TAINT THE INTEGRITY OF THE *CORPUS DELICTI*. — PSI Cordero testified that the specimen was turned over by the crime laboratory of Calapan City to the provincial crime laboratory in Tiniguiban, Puerto Princesa City and received by their evidence custodian. Regrettably, no specific details were given as to who turned over the specimen, who is the evidence custodian in Tiniguiban, Puerto Princesa City who received the same, and how the specimen was handled while in the custody of these persons. Clearly, these are glaring gaps in the chain of custody that seriously taint the integrity of the *corpus delicti*. Considering the substantial gaps that happened in the third link, there is no certainty that

the two (2) sachets of white crystalline substance presented in court as evidence were the same sachets seized from Bermejo. While it was PSI Cordero, the forensic chemist, who brought the specimen to the Court, given the obvious evidentiary gaps in the chain of custody as shown above, the Court concludes that the integrity and the evidentiary value of the seized items were not preserved.

9. ID.; ID.; ID.; ID.; ACQUITTAL OF THE ACCUSED FOR THE CRIME OF ILLEGAL SALE OF DANGEROUS DRUGS WARRANTED WHERE THE PROSECUTION FAILED TO PROVE THE *CORPUS DELICTI* OF THE CRIME, TO ESTABLISH AN UNBROKEN CHAIN OF CUSTODY OF THE SEIZED DRUGS, AND TO OFFER ANY EXPLANATION WHY THE PROVISIONS OF SECTION 21, RA 9165 WERE NOT COMPLIED WITH. — [T]he Court finds that the prosecution failed to: (1) prove the *corpus delicti* of the crime; (2) establish an unbroken chain of custody of the seized drugs; and (3) offer any explanation why the provisions of Section 21, RA 9165 were not complied with. Consequently, the Court is constrained to acquit Bermejo for failure of the prosecution to prove his guilt beyond reasonable doubt.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Jean Lou N. Aguilar for accused-appellant.

D E C I S I O N

CARANDANG, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the Decision[1] dated February 8, 2011 and the Resolution[2] dated June 2, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03997, which affirmed

[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rebecca De Guia-Salvador and Elihu A. Ybañez, concurring; *rollo*, pp. 22-34.

[2] *Id*. at 36.

the Decision dated May 18, 2009 of the Regional Trial Court (RTC) of Puerto Princesa City, Branch 48, finding petitioner Allan Bermejo *y* De Guzman guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) and imposing the penalty of life imprisonment and a fine of five hundred thousand pesos (₱500,000.00).

The Facts of the Case

The Information[3] charging petitioner Allan Bermejo *y* De Guzman (Bermejo) for violation of Section 5, Article II of RA 9165 reads as follows:

> That on or about the 12th day of February, 2003, at more or less 11:30 o'clock in the evening, along Rizal Avenue, Dagomboy Village, Bgy. San Miguel, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously sell and trade two (2) heat sealed plastic sachet of Methamphetamine Hydrochloride commonly known as Shabu, a regulated drug, weighing more or less 0.2 grams, without being authorized by law to possess and sell the same.
>
> CONTRARY TO LAW.[4]

Bermejo, duly assisted by counsel, entered a plea of "not guilty" during the arraignment.[5] Trial on the merits ensued. The prosecution presented the testimonies of PO3 Rosauro Ordoñez Rodillo, PO2 Benjamin Eleazar Martinez, Police Senior Inspector Mary Jane Cordero, SPO3 Saul B. Eleazar, and Roger Abendanio. Bermejo was the lone witness for the defense.

Version of the prosecution

Bermejo was arrested pursuant to a buy-bust operation conducted by the members of the Philippine National Police (PNP) stationed at Puerto Princesa City, under the Drug Enforcement Action Division (DEAD).

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[3] RTC records, p. 1.

[4] *Id.*

[5] *Id.* at 33; RTC order dated March 24, 2003.

Prior to the buy-bust operation, members of the team conducted surveillance on the activities of Bermejo.[6] It was found out that Bermejo was indeed selling *shabu*.[7] Police Senior Inspector Jerome Enriquez (PSI Enriquez) immediately formed a buy-bust team and planned an entrapment operation against Bermejo. The buy-bust team was composed of PO3 Rosauro Ordoñez Rodillo (PO3 Rodillo), PO2 Benjamin Eleazar Martinez (PO2 Martinez), SPO3 Saul B. Eleazar (SPO3 Eleazar), SPO2 Renato Badajos, and PSI Enriquez, the team leader. The civilian asset, Roger Abendanio, acted as the poseur-buyer. Four (4) pieces of ₱100.00 bills were marked by SPO3 Eleazar with "SBE" at the upper left hand portion thereof and were turned-over to PO3 Rodillo to be used as marked money by the civilian asset.

On February 12, 2003 at around 11:30 o'clock in the evening, the buy-bust team proceeded to the Balik Harap Sing Along and Refreshment Parlor located along Rizal Avenue, Puerto Princesa City. They parked their tinted van infront of said establishment and let their civilian asset transact with Bermejo. The civilian asset then went out of the van and talked to Bermejo. The members of the buy-bust team were left inside the van where they can see in plain view the transaction between the civilian asset and Bermejo, which was more or less two (2) meters in distance.[8]

After a short while, the buy-bust team saw the civilian asset handling to Bermejo the four (4) marked ₱100.00 bills in exchange for two (2) sachets of white crystalline substance suspected to be "*shabu*." When the transaction was consummated, the civilian asset made the pre-arranged signal by removing the white towel from his head. PO3 Rodillo and PO2 Martinez immediately went out of the van and arrested Bermejo. The police officers informed Bermejo of his constitutional rights, then he was brought to the police station and turned over to the duty investigator.

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[6] TSN, May 30, 2003, p. 5.

[7] *Id*. at 16.

[8] TSN, May 30, 2003, p. 7.

While on their way to the police station, PO3 Rodillo handed over to SPO3 Eleazar the buy-bust money and the two (2) plastic sachets containing the suspected "*shabu*" which he marked with the initials "SBE-1" and "SBE-2" upon arrival at the police station. An *Inventory of Seized/Confiscated Items* (Exh. "B")[9] was prepared and signed by PO3 Rodillo, PO2 Martinez and representatives from the DOJ, media and a *barangay kagawad*. The specimen was later submitted for laboratory examination which yielded positive result for the presence of methamphetamine hydrochloride or "*shabu*", per Chemistry Report No. D-0031-03[10] prepared by Police Inspector Rhea Fe B. Dela Cruz, Forensic Chemist of the Regional Crime Laboratory of Calapan City.

Version of petitioner

Bermejo denied the charge. He testified[11] that on February 12, 2003, at around 10:30 p.m., he fetched his wife at the boarding house of her niece, on Abad Santos Extension. They boarded a tricycle but Bermejo alighted at the corner of Rengel Road and Rizal Avenue Extension to buy *chao-long* (rice noodles) while his wife proceeded to Kristine Bar to leave the keys of the boarding house with her niece. While Bermejo was on his way to the *chao-long* store, a van suddenly stopped beside him. Police officers alighted and he was apprehended. Bermejo was immediately brought to the police station. He further testified that he saw Roger Abendanio, the civilian asset, that night. Bermejo claimed that Roger was driving the van of the police officers who arrested him. Bermejo personally knows Roger who was working as a helper in the truck where he would usually load dried fish bought from a certain Rio Tuba.

Ruling of the RTC

In a Decision[12] dated May 18, 2009, the RTC convicted Bermejo for violation of Section 5, Article II of RA 9165 and

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[9] RTC records, p. 274.

[10] *Id*. at 277.

[11] TSN, September 22, 2008.

[12] Penned by Presiding Judge Perfecto E. Pe; RTC records, pp. 297-307.

sentenced him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00). The RTC ruled that the elements of illegal sale of drugs were proven by the prosecution. The integrity and evidentiary value of the two (2) plastic sachets of *shabu* were preserved, as testified by PO3 Rodillo. The dispositive portion of the May 18, 2009 Decision reads:

> **WHEREFORE**, in view of the foregoing, the prosecution having satisfactorily proven the guilt of accused **ALLAN BERMEJO**, the Court hereby found him **GUILTY** beyond reasonable doubt for the crime of Violation of **Section 5, Article II of R.A. 9165** for illegal sale of dangerous drugs and to suffer the penalty of life imprisonment and a fine of five hundred thousand pesos (₱500,000.00).
>
> The confiscated two (2) heat-sealed plastic sachets containing methamphetamine hydrochloride is hereby ordered to be turned over to the local office of the Philippine Drug enforcement Agency (PDEA) for proper disposition.
>
> **IT IS SO ORDERED.**[13]

Bermejo moved for reconsideration but it was denied by the RTC in the Order[14] dated June 10, 2009.

Bermejo filed an appeal before the CA.

Ruling of the CA

On February 8, 2011, the CA issued a Decision affirming *in toto* the RTC Decision. The CA ruled that the testimonial as well as the physical evidence presented by the prosecution clearly established the elements of the offense charged. Bermejo, who claimed that he was illegally apprehended and that no illegal drug transaction actually took place, failed to present any witness who could corroborate his statement. Anent the contention of Bermejo that the police officers failed to comply with the provisions of paragraph 1, Section 21 of RA 9165, the CA declared that the prosecution's evidence had established the

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[13] *Id.* at 307.

[14] *Id.* at 326.

unbroken chain of custody of the seized drugs from the buy-bust team, to the investigating officer and to the forensic chemist. SPO3 Eleazar marked the confiscated sachets of *shabu* with his initials "SBE-1" and "SBE-2" while on their way to the police station and were entered in the police blotter upon arrival thereat. The markings were done immediately prior to the turnover of the items to the investigation section of the PNP, which forwarded the items to the forensic chemist for examination. The CA further stated that the failure to inventory and photograph the confiscated drug will not render the seizure void as long as the integrity and evidentiary value of the drugs are properly preserved by the apprehending officers.

As to the assertion of Bermejo that it was an error on the part of the RTC to allow and admit the prosecution's formal offer of evidence despite the lapse of five (5) months from the time the prosecution was given ten (10) days to formally offer its evidence, the CA ruled that the prosecution orally offered its evidence the earliest possible time after the trial court gave ten (10) days to the prosecution to file its formal offer of evidence. Further, the CA stated that Bermejo failed to move for reconsideration after the trial court issued its Order[15] dated September 22, 2008 admitting the exhibits or even questioning the same through *certiorari*. Lastly, the CA declared that Bermejo was not denied his right to speedy trial. The delays in the trial of the case were all due to unavailability of the witnesses and continuances were granted to serve the ends of justice.

Bermejo moved for reconsideration but it was denied in the CA Resolution dated June 2, 2011.

Hence, this petition.

Issues

-A-

THE HONORABLE COURT OF APPEALS ERRED IN ITS APPRECIATION OF THE INTEGRITY OF THE EVIDENCE

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[15] *Id*. at 264.

DESPITE FAILURE OF THE GOVERNMENT TO PROVE THE CHAIN OF CUSTODY.

-B-

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THE CIVILIAN ASSET TO BE A CREDIBLE WITNESS DESPITE EVIDENCE TO THE CONTRARY.

-C-

THE HONORABLE COURT OF APPEALS ERRED IN ADMITTING THE EVIDENCE FORMALLY OFFERED MORE THAN FIVE (5) MONTHS AFTER THE DATE IT WAS ORDERED TO DO SO. COURT A QUO GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT IS GUILTY DESPITE THE PROSECUTION'S FAILURE TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE ALLEGEDLY SEIZED DANGEROUS DRUGS.

-D-

THE HONORABLE COURT OF APPEALS FAILED TO APPRECIATE THAT THE DELAY IN THE PROSECUTION OF THE ACCUSED DENIED HIM HIS RIGHT TO SPEEDY TRIAL.

In the Resolution[16] dated October 5, 2011, this Court, without necessarily giving due course to the petition, required respondent to file Comment thereon, not a motion to dismiss, within the (10) days from notice.

Respondent filed its Comment[17] on January 31, 2012 asserting the same arguments in its Brief[18] filed with the CA. Among others, respondent avers that the prosecution was able to establish the chain of custody of the subject illegal drug, thus maintaining the identity and integrity of the *corpus delicti*. From the time the subject *shabu* was confiscated from Bermejo's person to its presentation in the trial court, the prosecution preserved its identity. Despite failure to mark the *shabu* at the scene of the

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[16] *Rollo*, pp. 40-41.

[17] *Id*. at 61-87.

[18] CA *rollo*, pp. 119-152.

crime, both PO3 Rodillo, who made the arrest, and SPO3 Eleazar, who actually made the markings, and who both testified in this case, were present from the time the subject *shabu* was bought from Bermejo to the time it was brought to the police station for marking. Further, SPO3 Eleazar was present from the time of the arrest to the time the subject *shabu* was brought to the crime laboratory. Thus, the chain of custody was not broken. Also, the elements of the crime have been sufficiently established by the prosecution. Roger Abendanio, the poseur-buyer positively identified Bermejo as the person who sold to him the sachet of *shabu*. Respondent can no longer assail his credibility as a witness more so if the findings of fact of the trial judge who saw the witness testify are sustained by the CA.

Preliminarily, the Court notes that Bermejo filed a petition for review on *certiorari* under Rule 45 of the Rules of Court. As a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court; except when the CA imposed the penalty of *reclusion perpetua*, life imprisonment or a lesser penalty in which case, the appeal shall be made by a mere notice of appeal filed before the CA. Bermejo clearly availed of a wrong mode of appeal by filing a petition for review on *certiorari* before the Court, despite having been sentenced by the CA of life imprisonment. Nonetheless, in the interest of substantial justice, the Court will treat his petition, filed within the 15-day period, as an ordinary appeal in order to resolve the substantive issue at hand with finality.[19]

Likewise, the Comment filed shall be treated as respondent's Supplemental Brief. In *Ramos, et al. v. People*,[20] the Court held that:

> [I]n criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors.

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[19] *Ramos, et al. v. People*, 803 Phil. 775, 783 (2017).

[20] 803 Phil. 775 (2017).

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.[21] (Citation omitted)

Ruling of the Court

The appeal is meritorious.

After a judicious examination of the entire records of the case, the Court found material facts and circumstances that the trial court had overlooked or misappreciated which, if properly considered, would justify a conclusion different from that arrived at by the trial court. While the Court understands the importance of buy-bust operations as an effective method of apprehending drug pushers who are the scourge of society, We are likewise aware that buy-bust operation is susceptible to abuse. It is for this reason that the Court must be extra vigilant in trying drug cases.[22]

In every prosecution for the illegal sale of dangerous drugs, conviction cannot be sustained if doubt persists on the identity of said drugs. The identity of the dangerous drug must be established with moral certainty. Apart from showing that the elements of sale are present, the fact that the dangerous drug illegally sold is the same drug offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.[23]

In *People v. Zakaria, et al.*,[24] the Court ruled that:

To discharge its overall duty of proving the guilt of the accused beyond reasonable doubt, the State bears the burden of proving the *corpus delicti*, or the body of the crime. The prosecution does not comply with the indispensable requirement of proving the *corpus*

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[21] *Id*. at 783.

[22] *People v. Tiu*, 460 Phil. 95, 103 (2003).

[23] *People v. Jefferson Del Mundo y Abac, et al.*, G.R. No. 208095, September 20, 2017.

[24] 699 Phil. 367 (2012).

delicti either when the dangerous drugs are missing, or when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence ultimately presented in court. That proof of the *corpus delicti* depends on a gapless showing of the chain of custody. x x x.[25] (Citations omitted)

In *People v. Jefferson Del Mundo y Abac, et al.*,[26] the Court ruled that:

The chain of custody is established by testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would be able to 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.[27]

We have carefully examined the records and found glaring gaps in the chain of custody that seriously taint the integrity of the *corpus delicti*. We agree with petitioner's assertion that the *corpus delicti* was not proven as the chain of custody was defective. There are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence ultimately presented in court.

In *People v. Siaton*,[28] the Court said that:

Jurisprudence has been instructive in illustrating the links in the chain that need to be established, *to wit*:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

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[25] *Id*. at 378-379.

[26] *People v. Jefferson Del Mundo y Abac, et al.*, *supra*.

[27] *Id*.

[28] 789 Phil. 87 (2016).

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.[29] (Citation omitted)

I. Seizure and Marking (First Link)

Paragraph 1 of Section 21 of the original Republic Act No. 9165 (2002) provides the requirements for ensuring the integrity and evidentiary value of the seized item:

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

This is reiterated in paragraph 1 of Section 21 of the amended[30] Republic Act No. 9165 (2013):

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media, who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity

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[29] *Id*. at 98-99.

[30] Amended by Republic Act No. 10640.

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.

Records show that it was the civilian asset who acted as the poseur buyer. The buy-bust team, who was inside a tinted van, saw the civilian asset handling to Bermejo the four (4) marked ₱100.00 bills in exchange for two (2) sachets of white crystalline substance suspected to be "*shabu*." When the transaction was consummated, the civilian asset made the pre-arranged signal by removing the white towel from his head and it was then that PO3 Rodillo and PO2 Martinez went out of the van and arrested petitioner. From the testimony of the civilian asset, after buying the two sachets from petitioner, he crossed the street, went to the van of the police officers, and then gave the two (2) plastic sachets to PO3 Rodillo who was inside the van.[31] While on the way to the police station, PO3 Rodillo gave the two (2) sachets to SPO3 Eleazar. However, it was at the police station where SPO3 Eleazar marked the two (2) sachets with his initials "SBE-1" and "SBE-2."

In *People v. Saragena*,[32] the Court held that:

> [I]n a warrantless search as in this case, the marking of the drug must be done in the presence of the accused and at the earliest possible opportunity. The earliest possible opportunity to mark the evidence is immediately at the place where it was seized, if practicable, to avoid the risk that the seized item might be altered while in transit. In *People v. Sabdula*:
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> x x x x x x x x x
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> Marking after seizure is the starting point in the custodial link; hence, it is vital that *the seized contraband be immediately marked* because succeeding handlers of the specimens will use the markings as reference. 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

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[31] TSN, April 16, 2008, pp. 8, 11-12.

[32] G.R. No. 210677, August 23, 2017.

> proceedings, thus preventing switching, "planting," or contamination of evidence.[33] (Citation omitted and italics in the original)

PO3 Rodillo and SPO3 Eleazar failed to explain why they had to wait to arrive at the police station before marking the seized sachets. Likewise, there is no showing that the seized sachets were marked in the presence of Bermejo. What the prosecution established was that Bermejo refused to sign the inventory receipt.[34] However, they failed to prove the presence of Bermejo at the time of marking. The presence of the accused is necessary at the time the marking is done in order to assure that the identity and integrity of the drugs were properly preserved. "Failure to comply with this requirement is fatal to the prosecution's case."[35]

Further, although it appears that the *Inventory of Seized/ Confiscated Items* (Exhibit "B")[36] was signed by the representatives from the DOJ, media and a *barangay kagawad*, PO3 Rodillo and SPO3 Eleazar failed to declare that said receipt had been signed in the presence of Bermejo or of his representative. In fact, SPO3 Eleazar testified that the representatives from the DOJ, media and a *barangay kagawad* signed the receipt the day after the arrest or on February 13, 2003, indicating the absence of Bermejo at the time they signed the same.[37]

The police officers likewise failed to take photographs of the seized drugs. Moreover, they failed to offer any explanation for its noncompliance.

The last paragraph of Section 21(a) contains a saving *proviso* to the effect that "noncompliance with these requirements under

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[33] *Id*.

[34] TSN, May 30, 2003, p. 13.

[35] *People v. Ismael*, 806 Phil. 21, 37 (2017).

[36] RTC records, p. 274.

[37] TSN, October 8, 2007, p. 13.

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." But in order for the saving *proviso* to apply, the prosecution must first recognize and explain the lapse or lapses in procedure committed by the arresting lawmen. That did not happen in this case because the prosecution neither recognized nor explained the lapses.[38]

II. Turn Over to Investigating Officer (Second Link)

It appears that SPO3 Eleazar was the investigating officer to whom PO3 Rodillo turned over the two (2) sachets of *shabu*. It was likewise SPO3 Eleazar who submitted the sachets to the crime laboratory for laboratory examination.

III. Turnover for Laboratory Examination (Third Link)

The obvious evidentiary gaps in the chain of custody happened in the third link.

SPO3 Eleazar testified that he, together with PSI Enriquez, brought the two (2) sachets (specimen) to Camp Vicente Lim in Calamba, Laguna.[39] The Request for Laboratory Examination (Exhibit "D")[40] was dated February 13, 2003. It was received by the Regional Crime Lab Office 4 on February 17, 2003 at 2:20 p.m. by a certain "PO2 Buyuccammo."[41] It is important to note that the person who received the Request with the specimen was not the chemist who conducted the examination. The prosecution failed to give details as to how the specimen was handled while under the custody of PO2 Buyucammo and how the same was turned over to Police Inspector Rhea Fe B. Dela Cruz, the Forensic Chemist. What further baffles this Court is

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[38] *People v. Zakaria*, *supra* note 24, at 382.

[39] TSN, October 8, 2007, p.7.

[40] RTC records, p. 276.

[41] *Id*.

the fact that the laboratory examination was conducted in Camp E Navarro, Calapan City (Mindoro Oriental) as shown in the Chemistry Report (Exhibit "E"),[42] when, according to SPO3 Eleazar, they submitted the specimen to the crime laboratory in Laguna. The prosecution did not endeavor to explain how the specimen was transferred from Camp Vicente Lim in Calamba, Laguna to Camp E Navarro in Calapan City, Oriental Mindoro.

More so, it is quite evident from the Chemistry Report (Exhibit "E") that the weight of the specimen is different from that stated in Request. While it was stated in the Request that the two (2) sachets weigh more or less 0.2 gram, in the Chemistry Report, on the other hand, the sachets each weigh 0.3 gram or a total of 0.6 gram.[43]

The chain of custody should have been clearly established by the prosecution considering the testimony of SPO3 Eleazar that they did not only bring the specimen subject matter of this case but other items which were purchased or recovered from the suspects of other cases. Thus, the possibility of mix up with other specimens is not far from happening. SPO3 Eleazar testified, *viz*:

ATTY. AGUILAR:

Q: So when was it finally handed over the chemist?
A: I think, sir, it was a month ago after the operation. Because during that time we were going to Laguna, so we brought that item including the other items which were purchased or recovered from the suspects of other cases.

COURT:

Q: So there were many shabu and marijuana that were brought by you to Laguna?
A: Yes, Your Honor. But I think, Your Honor, they were all shabu, Your Honor, during that time, no marijuana.

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[42] *Id*. at 277.

[43] *Id*. (Exh. "E")

Q: All shabu?
A: Yes, Your Honor.

Q: Different suspects?
A: Yes, Your Honor.[44]

In the course of the trial, a re-examination was conducted on the specimen upon manifestation of the prosecution.[45] Per Order dated May 25, 2005, Police Senior Inspector Mary Jane Cordero (PSI Cordero) was directed by the trial court to conduct another laboratory examination on the specimen which was previously examined by Police Inspector Rhea Fe B. Dela Cruz.[46] However, it was only on March 20, 2006 that a laboratory examination was conducted by PSI Cordero as shown in the Chemistry Report (Exhibit "F").[47] PSI Cordero testified that their office received a copy of the May 25, 2005 Order on March 20, 2006 which prompted her to actually conduct an examination of the substance on that day.[48]

PSI Cordero testified that the specimen was turned over by the crime laboratory of Calapan City to the provincial crime laboratory in Tiniguiban, Puerto Princesa City and received by their evidence custodian. Regrettably, no specific details were given as to who turned over the specimen, who is the evidence custodian in Tiniguiban, Puerto Princesa City who received the same, and how the specimen was handled while in the custody of these persons. Clearly, these are glaring gaps in the chain of custody that seriously taints the integrity of the *corpus delicti*.

IV. Submission to the Court (Fourth Link)

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[44] TSN, October 8, 2007, p. 7.

[45] RTC Records, p. 111.

[46] *See* Order dated March 20, 2006, *id.* at 151. Police Inspector Rhea Fe B. Dela Cruz, the chemist who originally examined the specimen, "cannot come to Palawan due to financial constraints."

[47] *Id.* at 278.

[48] TSN, July 10, 2006, pp. 16-17.

Considering the substantial gaps that happened in the third link, there is no certainty that the two (2) sachets of white crystalline substance presented in court as evidence were the same sachets seized from Bermejo. While it was PSI Cordero, the forensic chemist, who brought the specimen to the Court, given the obvious evidentiary gaps in the chain of custody as shown above, the Court concludes that the integrity and the evidentiary value of the seized items were not preserved.

Conclusion

In sum, the Court finds that the prosecution failed to: (1) prove the *corpus delicti* of the crime; (2) establish an unbroken chain of custody of the seized drugs; and (3) offer any explanation why the provisions of Section 21, RA 9165 were not complied with. Consequently, the Court is constrained to acquit Bermejo for failure of the prosecution to prove his guilt beyond reasonable doubt.

WHEREFORE, premises considered, the instant petition treated as appeal is **GRANTED**. The assailed Decision dated February 8, 2011 and Resolution dated June 2, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 03997 are **REVERSED** and **SET ASIDE**.

ACCORDINGLY, ALLAN BERMEJO *y* DE GUZMAN is hereby **ACQUITTED** on reasonable doubt.

The Director of the Bureau of Corrections is directed to cause the immediate release of Allan Bermejo *y* De Guzman, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five (5) days from notice.

SO ORDERED.

Bersamin, C.J. (Chairperson), del Castillo, and *Gesmundo, JJ.*, concur.

Jardeleza, J., on official leave.

SECOND DIVISION

[G.R. No. 205604. June 26, 2019]

MAKATI WATER, INC., *petitioner, vs.* **AGUA VIDA SYSTEMS, INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; INTERPRETATION OF CONTRACTS; IF THE TERMS OF A CONTRACT ARE CLEAR AND LEAVE NO DOUBT UPON THE INTENTION OF THE CONTRACTING PARTIES, THE LITERAL MEANING OF ITS STIPULATIONS SHALL CONTROL; CASE AT BAR. —** Upon close reading of the Franchise Agreements as a whole, the Court finds petitioner MWI's interpretation of the term *termination* without merit; ***Termination*** **under Section IV-5 of the Franchise Agreements includes the expiration of the said agreements.** According to Article 1370 of the Civil Code, if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. As previously held by the Court, pursuant to the aforesaid Civil Code provision, "the first and fundamental duty of the courts is the application of the contract according to its express terms, interpretation being resorted to only when such literal application is impossible." The literal, express, and plain meaning of the word *termination* is end of existence or conclusion. The expiration of an agreement leads to the end of its existence and effectivity; an agreement has reached its conclusion upon expiration. Upon close reading of the Franchise Agreements, **there is no provision therein which expressly limits, restricts, or confines the term *termination* to the cancellation of the agreements by the acts of the parties prior to their expiry date**. There is no provision in the Franchise Agreements which shows the parties' alleged intent to exclude the expiration of the agreements from the coverage of the word *termination*.

2. **ID.; ID.; ID.; CONTRACTS CANNOT BE CONSTRUED BY PARTS, BUT CLAUSES MUST BE INTERPRETED IN RELATION TO ONE ANOTHER TO GIVE EFFECT TO THE WHOLE; CASE AT BAR. —** Under Article 1374 of the

Civil Code, the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. The Court has previously held that in construing an instrument with several provisions, a construction must be adopted as will give effect to all. Under Article 1374 of the Civil Code, contracts cannot be construed by parts, but clauses must be interpreted in relation to one another to give effect to the whole. The legal effect of a contract is not determined alone by any particular provision disconnected from all others, but from the whole read together. Applying the foregoing in the instant case, it is the position of petitioner MWI that the term *termination* should be interpreted as excluding expiration if the other provisions of the Franchise Agreements are considered. x x x Under the interpretation of petitioner MWI, the aforesaid provisions of Section IV of the Franchise Agreements supposedly reveal that *termination* only has three grounds (which do not include expiration of the agreements), namely: (1) violation of the terms and conditions of the agreements; (2) conduct seriously prejudicial to the interest of respondent AVSI; and (3) cessation of operations, insolvency, bankruptcy, and receivership on the part of petitioner MWI. The Court does not agree with such an interpretation. There is no provision under the Franchise Agreements which expressly limits, restricts, or confines the grounds of termination to the three abovementioned grounds. Section IV of the Franchise Agreements does not state that these three grounds are the only grounds for termination, to the exclusion of expiration. In fact, upon a close reading of Section I of the Franchise Agreements, it would reveal that these three grounds enumerated under Section IV-1, IV-2, and IV-3 of the Franchise Agreements refer, not to termination *per se*, but to *early termination*. Under Section I-1 of the Franchise Agreements, in reference to the grounds enumerated under Section IV, the Franchise Agreements refer to these grounds *apropos* situations wherein the parties have "**earlier terminated**" the agreements. Referring to the grounds identified in Section IV of the Franchise Agreements, Section I-1 of the agreements qualifies termination with the adverb *earlier*. This was confirmed by the testimony of the credit and collection manager of respondent AVSI, Cayanan, who testified under oath that the three grounds enumerated under Sections IV-1, IV-2, and IV-3 of the Franchise Agreements refer to earlier termination or pre-termination, and not to termination *per se*.

The Court is further convinced that the term *termination* includes the expiration of the period of effectivity of the Franchise Agreements upon reading Section I-2 of the Franchise Agreements. The said provision deals with the extension or renewal of the agreements when the Franchise Agreements expire upon the lapse of the agreed term or duration of the agreements. Section I-2 states that "[a]ny extension or renewal of this Agreement upon its **termination** shall be subject to another negotiation between parties and shall not automatically entitle the Franchisee to the same terms and conditions." Hence, in using the term *termination* in referring to the extension or renewal of the Franchise Agreements upon their expiration, it is made painstakingly clear that it was the intention of the parties to include expiration within the coverage of termination. Furthermore, the Civil Code states that the stipulations of a contract shall also be understood "as bearing that import which is most adequate to render it effectual" and that "which is most in keeping with the nature and object of the contract."

3. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; RELIEFS GRANTED A LITIGANT ARE LIMITED TO THOSE SPECIFICALLY PRAYED FOR IN THE COMPLAINT; CASE AT BAR. — Nevertheless, there is merit in petitioner MWI's contention that there is a glaring infirmity in the dispositive portion of RTC, Branch 67's Decision, which ordered the indefinite "closure of the water refilling stations located at Pasay Road Extension, Makati City (AV-Arnaiz) and No. 8788 Doña Aguirre Avenue cor. Daisy Road, Pilar Villas, Las Piñas (AV-Pilar) operated by [petitioner MWI]." without any qualifications. x x x In its Complaint, respondent AVSI did not pray for an indefinite closure of petitioner MWI's water refilling stations, but instead merely prayed that petitioner MWI follow the prohibitive period spanning two years counted from the dates of expiration of the Franchise Agreements, in line with Section IV-5 of the Franchise Agreements. Petitioner MWI was correct in citing the Court's previous ruling in *Philippine Charter Insurance Corp. v. PNCC*, wherein the Court held that "[t]he fundamental rule is that reliefs granted a litigant are limited to those specifically prayed for in the complaint." Therefore, the RTC, Branch 67 was in error when it ordered the indefinite and unqualified closure of the water refilling stations of petitioner MWI, considering that the two-year prohibitive period under Section IV-5 of the Franchise Agreements being invoked by

respondent AVSI had already lapsed in 2003. The first part of the dispositive portion of RTC, Branch 67's Decision must perforce be deleted.

4. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTION OF FACT; ISSUES ON THE AWARD OF DAMAGES WHICH CALL FOR A RE-EVALUATION OF THE EVIDENCE BEFORE THE TRIAL COURT IS A QUESTION OF FACT WHICH CANNOT BE REVIEWED BY THE COURT; CASE AT BAR. — With respect to petitioner MWI's position that the CA erred in affirming with modifications the RTC, Branch 67's award of damages in favor of respondent AVSI, the Court finds the same unmeritorious. Petitioner MWI believes that the award of damages in favor of respondent AVSI lacks any evidentiary basis. Jurisprudence has held that "[t]he issues on the award of damages [which] call for a re-evaluation of the evidence before the trial court, which is obviously a question of fact."

5. CIVIL LAW; DAMAGES; MODIFICATION OF THE AWARD OF DAMAGES; PROPER IN CASE AT BAR. — [T]he Court finds the CA's affirmation with modification of the award of damages laden with sufficient basis. With respect to compensatory damages, as noted by the CA, the amount awarded by the RTC, Branch 67 was substantiated and based on actual performance/sales data testified under oath by respondent AVSI's witness, Ms. Cayanan, computing the compensatory damages on the basis of the actual sales performance of AV-Pilar and AV-Arnaiz covering a period of two years. With respect to the exemplary damages awarded by the RTC, Branch 67, the Court previously held that the courts may impose exemplary damages as an accompaniment to compensatory damages when "the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner." In the instant case, as found by both the RTC, Branch 67 and CA, "[petitioner] MWI's continued refusal to abide by the provisions of the Franchise Agreements despite [respondent] AVSI's demand and reminder for it to refrain from operating the two (2) water refilling stations tantamounts to bad faith which justifies the award of exemplary damages."

6. ID.; ID.; ATTORNEY'S FEES AND COSTS OF LITIGATION; CAN BE AWARDED BY THE COURT IN ANY OTHER CASE WHERE THE COURT DEEMS IT JUST AND

EQUITABLE THAT ATTORNEY'S FEE AND EXPENSES OF LITIGATION SHOULD BE RECOVERED; AWARD THEREOF, PROPER IN CASE AT BAR. — [W]ith respect to the amount of attorney's fees and costs of litigation, which the CA reduced from 25% to 10% of the total amount due, according to Article 2208 of the Civil Code, attorney's fees and expenses of litigation can be awarded by the court in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In the instant case, considering petitioner MWI's stubborn refusal to adhere to the clear and unequivocal dictates of the Franchise Agreements on the two-year prohibition period found under Section IV-5 thereof despite the repeated reminders of respondent AVSI, which the RTC, Branch 67 and CA assessed to be wanton and reckless, the award of attorney's fees and costs of litigation is with sufficient basis.

APPEARANCES OF COUNSEL

Espina & Yumul-Espina for petitioner.
Escaño Sarmiento & Partners 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 Makati Water, Inc. (MWI) against respondent Agua Vida Systems, Inc. (AVSI), assailing the Decision[2] dated October 29, 2012 (assailed Decision) and Resolution[3] dated January 25, 2013 (assailed Resolution) rendered by the Court of Appeals (CA) in CA-G.R. CV No. 97538.

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[1] *Rollo*, pp. 4-45.

[2] *Id*. at 47-73. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Normandie B. Pizarro and Manuel M. Barrios, concurring.

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

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 November 11, 1996 and December 23[,] 1996, [**respondent AVSI**] and [**petitioner MWI**] entered into **two (2) separate Franchise Agreements**.[4] The Franchise Agreements had an initial term of **five (5) years from the dates of their execution**. Under these agreements, [petitioner] MWI shall operate two (2) Agua Vida (AV) water refilling stations [under the franchise of respondent AVSI] located at 8788 Doña Aguirre Avenue cor. Daisy Road, Pilar Village, Las Piñas City, Metro Manila (**AV-Pilar**) and Pasay Road Extension, Makati City (**AV-Arnaiz**), respectively.

In compliance with the terms and conditions of the said Franchise Agreements, [petitioner] MWI operated [the] AV-Pilar and AV-Arnaiz water refilling stations and remitted all payments due to [respondent] AVSI.

[**With t**]**he Franchise Agreement for AV-Pilar [expiring] on November 1[1], 2001[,] while that of AV-Arnaiz [expiring] on December 2[3], 2001** x x x Ms. Ruby Estaniel, President of [petitioner] MWI[,] wrote to [respondent] AVSI requesting that the terms and conditions of the Franchise Agreements over AV-Pilar and AV-Arnaiz be extended until December 31, 2001.

On December 3, 2001, [respondent] AVSI [expressed that it was amenable] to the extension of the Franchise Agreements with a reminder that in the event [petitioner] MWI fail[ed] to renew the same, [respondent] AVSI would enforce **Section IV-4 and IV-5 of both Franchise Agreements.** [The aforesaid Sections read:

> **IV.4. In case of Termination for any reason, AGUA VIDA shall have the right to repurchase all the equipment previously supplied by AGUA VIDA to FRANCHISEE and still serviceable at the time of termination. Should AGUA VIDA repurchase within the first year of the FRANCHISEE, the price will be 70% of the original net selling price to the FRANCHISEE; within the first 2 years - 50%; within 3 years - 30%; within 4 years - 10%;**

[4] *Id.* at 90-99.

> **IV.5. In the event of Termination, the FRANCHISEE agrees that he shall not in any way operate a water vending business within 2kms. of the terminated site for a period of two (2) years from termination**.][5]

[However, t]he Franchise Agreements were no longer renewed by the parties. [Hence, **the Franchise Agreement covering the AV-Pilar expired on November 11, 2001, while the Franchise Agreement covering the AV-Arnaiz expired on December 23, 2001.**] [Petitioner] MWI ceased to operate both water refilling stations under the name of [respondent] AVSI. **However, it operated said water refilling stations under its own name**. On January 23, 2002 and June 11, 2002, [respondent] AVSI wrote to [petitioner] MWI[,] reminding the latter of the termination of the Franchise Agreements and demanded that it be allowed to repurchase the equipment and for it to cease and desist from operating the water refilling stations, but [petitioner] MWI failed to heed the demand.

On November 5, 2002, [respondent] AVSI filed two (2) separate complaints[6] for Specific Performance and Damages with Prayer for Writ of Preliminary Attachment against [petitioner] MWI. The cases were docketed as Civil Case No. 69191 raffled to the [Regional Trial Court of Pasig City (RTC), Branch 160] and Civil Case No. 69192 which was raffled to Branch 161 of the same court.

Except for the location and dates of execution of the Franchise Agreements, both complaints have common allegations and prayers [,] seeking among others: a) **The closure of both water refilling stations after the lapse of two (2) years from pre-termination of the Franchise Agreements or until x x x November 11, 2003 and December 23, 2003, respectively**; b) **The payment of compensatory damages for the continued operation of the water refilling stations from the termination of the [F]ranchise [A]greements until actual closure of the aforesaid stations** in the estimated amount of ₱330.50 per day; and c) **The issuance of an Order for [petitioner] MWI to allow [respondent] AVSI to exercise its right to repurchase the**

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[5] *Id*. at 93; emphasis supplied. In the Franchise Agreement for AV-Arnaiz "the price will be 60% of the original net selling price to the FRANCHISEE, within the first 2 years - 40%; within 3 years - 20%; within 4 years - 10%," *id*. at 98.

[6] *Id*. at 100-115.

water purification system model PFMC 800 at the rate of ten percent (10%) of the acquisition cost.

On February 12, 2003, [petitioner] MWI filed a Motion to Dismiss Civil Case No. 69191, seeking its dismissal on the ground of lack of cause of action to which [respondent] AVSI filed its Opposition. However, prior to the resolution of the said motion, [petitioner] MWI filed an Omnibus Motion (for Consolidation of Cases and to Defer Resolution on the Pending Motion to Dismiss before the [RTC], Branch 161.

On August 12, 2003, [RTC,] Branch 160 issued an Order approving the consolidation of Civil Case No. 69192, filed with [RTC], Branch 161, with Civil Case No. 69191, pending before it.

On December 5, 2003, [RTC,] Branch 160 denied [petitioner] MWI's Motion to Dismiss for lack of merit. [Petitioner] MWI moved for its reconsideration, however, the same was denied in an Order dated June 28, 2004.

On September 6, 2004, [petitioner] MWI filed its Answer with Compulsory Counterclaim in the consolidated complaints, raising the defense among others, [respondent] AVSI's lack of cause of action against it.

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Meanwhile, [RTC,] Branch 160 sitting in Pasig City was transferred to San Juan, Metro Manila. As such, the complaints were endorsed to the Office of the Clerk of Court of Pasig City for re-raffling. On March 5, 2007, the complaints were re-raffled to [RTC,] Branch 67 x x x.

x x x x x x x x x

After the parties have submitted their respective memorandum, **the** [**RTC, Branch 67**] **rendered the assailed** [**D**]**ecision**[7] [**dated February 28, 2011**.] x x x

[With respect to Sections IV-4 of both Franchise Agreements, the RTC, Branch 67 denied respondent AVSI's prayer that it be allowed to repurchase the equipment previously supplied to petitioner MWI for the reason that under the said provisions of the Franchise Agreements, the right to repurchase may only be exercised up to the

[7] *Id*. at 77-89. Penned by Presiding Judge Amorfina Cerrado-Cezar.

fourth year from the execution of the Franchise Agreements. Hence, since more than four years have already elapsed since the Franchise Agreements were executed in 1996, respondent AVSI cannot invoke anymore the right to repurchase under Sections IV-4 of the Franchise Agreements.

However, with respect to Sections IV-5 of the Franchise Agreements, the RTC, Branch 67 held that, in the event of termination of the Franchise Agreements, the said provisions imposed an obligation upon petitioner MWI to not operate water vending businesses within 2 kilometers from the terminated franchise sites for a period of two years from the time of termination. The RTC, Branch 67 found that the aforesaid provisions found on both Franchise Agreements are not limited to situations wherein there is premature cancellation of the Franchise Agreements; the clauses should also apply in cases wherein the Franchise Agreements have expired, which was exactly what occurred in the instant case. The RTC, Branch 67 explicitly found that the two-year prohibitory period shall be counted from the expiration of the Franchise Agreements, *i.e.*, two years from the expiration of the AV-Pilar Franchise Agreement on November 11, 2001, or until November 11, 2003; and two years from the expiration of the AV-Arnaiz Franchise Agreement on December 23, 2001, or until December 23, 2003.

Hence, the dispositive portion of the RTC, Branch 67's Decision reads:

> **WHEREFORE**, in view of all the foregoing, the Court resolved to render judgment as follows:
>
> 1. Order the closure of the water refilling stations located at Pasay Road Extension, Makati City (AV-Arnaiz) and No. 8788 Doña Aguirre Avenue cor. Daisy Road, Pilar Villas, Las Piñas (AV-Pilar) operated by defendant Makati Water, Inc.;
>
> 2. Order the defendant to pay the plaintiff compensatory damages in the amount of ₱351,911.10 for Civil Case No. 6919[2] and ₱233,979.60 for Civil Case No. 6919[1];
>
> 3. Order the defendant to pay exemplary damages amounting to One Hundred Thousand (Php 100,000.00) Pesos;
>
> 4. Order defendant to pay 25% of the total amount due for the two (2) cases as and for attorney's fees;
>
> 5. Costs of suit.

> As to the prayer of the defendant for compulsory counterclaim, the Court finds that no sufficient injury was caused to the defendant by the filing of the Complaint, hence, no sufficient basis to grant it.
>
> SO ORDERED.[8]

It must be noted that respondent AVSI did not file any motion for reconsideration of the RTC, Branch 67's Decision, which denied its prayer that petitioner MWI be compelled to allow respondent AVSI to exercise its right to repurchase under Sections IV-4 of the Franchise Agreements.

On the other hand, petitioner MWI filed a Motion for Reconsideration[9] dated April 12, 2011, which was denied by the RTC, Branch 67 in its Order[10] dated June 30, 2011. Hence, petitioner MWI filed its Notice of Appeal[11] dated July 21, 2011, which was given due course by the RTC, Branch 67 in its Order[12] dated August 8, 2011.][13]

The Ruling of the CA

In the assailed Decision, aside from reducing the amount of attorney's fees to ten percent (10%) of the total amount due, the CA affirmed the RTC, Branch 67's Decision and denied petitioner MWI's appeal for lack of merit.

The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, premises considered, the assailed [D]ecision dated February 28, 2011 of the RTC, Pasig City, Branch 67, in Civil [Case] Nos. 69191-92 is hereby **AFFIRMED with MODIFICATION** that the award for attorney's fees be reduced to 10% of the total amount due for the two (2) cases.
>
> **SO ORDERED.**[14]

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[8] *Id*. at 88-89.

[9] *Id*. at 394-420.

[10] *Id*. at 421.

[11] *Id*. at 422-423.

[12] *Id*. at 425.

[13] *Id*. at 48-56; emphasis supplied.

[14] *Id*. at 72-73.

The CA held that the RTC, Branch 67 did not err in ordering petitioner MWI to pay respondent AVSI compensatory damages in the amount of ₱351,911.10 for Civil Case No. 69192 and ₱233,979.60 for Civil Case No. 69191 because the said amounts were based on the actual sales performance of AV-Pilar and AV-Arnaiz, respectively, covering a period of two (2) years, as testified under oath by respondent AVSI's witness, Ms. Pamela Cayanan (Cayanan).[15]

Petitioner MWI filed its Motion for Reconsideration[16] dated November 23, 2012, which was denied by the CA in its assailed Resolution.

Hence, the instant appeal before the Court.

On May 23, 2013, respondent AVSI filed its Comment,[17] to which petitioner MWI responded by filing its Reply[18] on June 27, 2013.

Issues

In the instant Petition, petitioner MWI raised two main issues for the Court's consideration: (1) whether the CA erred in affirming the RTC's Decision in so far as it ordered the closure of petitioner MWI's two water refilling stations based on Section IV-5 of the Franchise Agreements; and (2) whether the CA erred in affirming the RTC's Decision in so far as it awarded compensatory damages, exemplary damages, attorney's fees, and costs of suit in favor of respondent AVSI due to the supposed violation by petitioner MWI of Section IV-5 of the Franchise Agreements.

Stripped to its core, the instant case centers on **the interpretation of contracts**. The resolution of the aforesaid issues hinges on the interpretation of the term *termination* found on Section IV-5 of the Franchise Agreements. Does the term

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[15] *Id.* at 70-71.

[16] *Id*. at 484-509.

[17] *Id*. at 592-619.

[18] *Id*. at 627-638.

termination under Section IV-5 of the Franchise Agreements include the expiration of the Franchise Agreements? Otherwise stated, when the Franchise Agreements state that the two-year prohibition clause apply "in the event of Termination," is it likewise applicable "in the event of Expiration?"

The Court's Ruling

It is not disputed that the Franchise Agreements were **not cancelled** by the parties; they **merely lapsed and expired** based on the period agreed upon by the parties, *i.e.*, five years from the execution of the Franchise Agreements. The Franchise Agreements covering the AV-Pilar and AV-Arnaiz lapsed into non-effectivity on November 11, 2001 and December 23, 2001, respectively.

The instant Petition is centered on Section IV-5 of the Franchise Agreements:

> **IV.5. In the event of Termination, the FRANCHISEE agrees that he shall not in any way operate a water vending business within 2 kms. of the terminated site for a period of two (2) years from termination;**[19]

On one hand, it is the position of respondent AVSI, as concurred by the RTC, Branch 67 and CA, that since petitioner MWI continued the operations of the AV-Pilar and AV-Arnaiz outlets (albeit under a different brand name) within the two-year period from the expiration of the Franchise Agreements on November 11, 2001 and December 23, 2001, respectively, it violated the aforementioned provision. On the other hand, petitioner MWI posits the view that Section IV-5 only applies to situations wherein the Franchise Agreement has been cancelled for reasons other than the mere expiration of the agreement.

Upon close reading of the Franchise Agreements as a whole, the Court finds petitioner MWI's interpretation of the term *termination* without merit; ***Termination*** **under Section IV-5 of the Franchise Agreements includes the expiration of the said agreements.**

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[19] *Id*. at 93 and 98; emphasis and underscoring supplied.

According to Article 1370 of the Civil Code, if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

As previously held by the Court, pursuant to the aforesaid Civil Code provision, "the first and fundamental duty of the courts is the application of the contract according to its express terms, interpretation being resorted to only when such literal application is impossible."[20]

The literal, express, and plain meaning of the word *termination* is end of existence or conclusion.[21] The expiration of an agreement leads to the end of its existence and effectivity; an agreement has reached its conclusion upon expiration. Upon close reading of the Franchise Agreements, **there is no provision therein which expressly limits, restricts, or confines the term *termination* to the cancellation of the agreements by the acts of the parties prior to their expiry date**. There is no provision in the Franchise Agreements which shows the parties' alleged intent to exclude the expiration of the agreements from the coverage of the word *termination*.

Under Article 1374 of the Civil Code, the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.

The Court has previously held that in construing an instrument with several provisions, a construction must be adopted as will give effect to all. Under Article 1374 of the Civil Code, contracts cannot be construed by parts, but clauses must be interpreted in relation to one another to give effect to the whole. The legal effect of a contract is not determined alone by any particular provision disconnected from all others, but from the whole read together.[22]

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[20] *Pichel v. Alonzo*, 197 Phil. 316, 325 (1982).

[21] *Merriam Webster Online Dictionary*, accessed at <https://www.merriam-webster.com/dictionary/termination>.

[22] *Rivera v. Hon. Espiritu*, 425 Phil. 169, 184 (2002).

Applying the foregoing in the instant case, it is the position of petitioner MWI that the term *termination* should be interpreted as excluding expiration if the other provisions of the Franchise Agreements are considered. Petitioner MWI focuses its sights on select provisions of Section IV of the Franchise Agreements, which state that: (1) any violation by either party of the terms and conditions of the agreements shall give the other party the right to immediately terminate the same by giving a written notice of termination thirty (30) days before the effectivity of the termination (Section IV-1); (2) the agreements may also be terminated by respondent AVSI if petitioner MWI is not operating its franchise to the benefit of the former and is performing any conduct seriously prejudicial to the interest of respondent AVSI (Section IV-2); and the agreements shall be automatically terminated in case petitioner MWI ceases operations and/or becomes insolvent, bankrupt, or undergoes receivership (Section IV-3).[23]

Under the interpretation of petitioner MWI, the aforesaid provisions of Section IV of the Franchise Agreements supposedly reveal that *termination* only has three grounds (which do not include expiration of the agreements), namely: (1) violation of the terms and conditions of the agreements; (2) conduct seriously prejudicial to the interest of respondent AVSI; and (3) cessation of operations, insolvency, bankruptcy, and receivership on the part of petitioner MWI.

The Court does not agree with such an interpretation. There is no provision under the Franchise Agreements which expressly limits, restricts, or confines the grounds of termination to the three abovementioned grounds. Section IV of the Franchise Agreements does not state that these three grounds are the only grounds for termination, to the exclusion of expiration.

In fact, upon a close reading of Section I of the Franchise Agreements, it would reveal that these three grounds enumerated under Section IV-1, IV-2, and IV-3 of the Franchise Agreements refer, not to termination *per se*, but to *early termination*. Under

[23] *Rollo*, pp. 93 and 98.

Section I-1 of the Franchise Agreements, in reference to the grounds enumerated under Section IV, the Franchise Agreements refer to these grounds *apropos* situations wherein the parties have "**earlier terminated**"[24] the agreements. Referring to the grounds identified in Section IV of the Franchise Agreements, Section I-1 of the agreements qualifies termination with the adverb *earlier*.

This was confirmed by the testimony of the credit and collection manager of respondent AVSI, Cayanan, who testified under oath that the three grounds enumerated under Sections IV-1, IV-2, and IV-3 of the Franchise Agreements refer to earlier termination or pre-termination, and not to termination *per se*.[25]

The Court is further convinced that the term *termination* includes the expiration of the period of effectivity of the Franchise Agreements upon reading Section I-2 of the Franchise Agreements. The said provision deals with the extension or renewal of the agreements when the Franchise Agreements expire upon the lapse of the agreed term or duration of the agreements.

Section I-2 states that "[a]ny extension or renewal of this Agreement upon its **termination** shall be subject to another negotiation between parties and shall not automatically entitle the Franchisee to the same terms and conditions."[26]

Hence, in using the term *termination* in referring to the extension or renewal of the Franchise Agreements upon their expiration, it is made painstakingly clear that it was the intention of the parties to include expiration within the coverage of termination.

Furthermore, the Civil Code states that the stipulations of a contract shall also be understood "as bearing that import which is most adequate to render it effectual"[27] and that "which is most in keeping with the nature and object of the contract."[28]

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[24] *Id*. at 90 and 95; emphasis and underscoring supplied.

[25] *Id*. at 64.

[26] *Id*. at 90 and 95; emphasis and underscoring supplied.

[27] CIVIL CODE, Art. 1373.

[28] CIVIL CODE, Art. 1375.

As found by the CA, the evidence on record reveal that Section IV-5 of the Franchise Agreements was:

> x x x placed by [respondent] AVSI primarily to protect its interests, name and goodwill which it has developed through the years. The Termination provisions were designed to prevent unauthorized parties from taking advantage of [respondent] AVSI's reputation and image. This provision does not apply until the termination or expiration of the franchise agreement but even after the same has long expired. This is to prevent the former franchisee to take a free ride and take advantage of the name and goodwill of [respondent] AVSI.[29]

Hence, if the intent of Section IV-5 is to protect the interests, name, and goodwill of respondent AVSI's brand, then it would not make sense to restrict the two-year prohibition clause found therein only to cases wherein the parties cancelled or pre-terminated the agreements. With respect to the protection of respondent AVSI's brand name, there is no substantial difference whatsoever between the agreements being pre-terminated or expiring/lapsing into non-effectivity. Hence, petitioner MWI's interpretation of *termination* under Section IV-5 of the Franchise Agreements is not in keeping with the intent and objective of the aforesaid provisions.

Nevertheless, there is merit in petitioner MWI's contention that there is a glaring infirmity in the dispositive portion of RTC, Branch 67's Decision, which ordered the indefinite "closure of the water refilling stations located at Pasay Road Extension, Makati City (AV-Arnaiz) and No. 8788 Doña Aguirre Avenue cor. Daisy Road, Pilar Villas, Las Piñas (AV-Pilar) operated by [petitioner MWI]."[30] without any qualifications.

To emphasize, Section IV-5 of the Franchise Agreements calls for the prohibition on the part of petitioner MWI to put up a water vending business within the two-kilometer distance from the terminated franchise sites **only within two years from the date of expiration of the Franchise Agreements**. Otherwise

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[29] *Rollo*, pp. 67-68.

[30] *Id*. at 88.

stated, the two-year prohibition should only last from November 11, 2001 until November 11, 2003 with respect to AV-Pilar, and December 23, 2001 until December 23, 2003 with respect to AV-Arnaiz.

In its Complaint, respondent AVSI did not pray for an indefinite closure of petitioner MWI's water refilling stations, but instead merely prayed that petitioner MWI follow the prohibitive period spanning two years counted from the dates of expiration of the Franchise Agreements,[31] in line with Section IV-5 of the Franchise Agreements. Petitioner MWI was correct in citing the Court's previous ruling in *Philippine Charter Insurance Corp. v. PNCC*,[32] wherein the Court held that "[t]he fundamental rule is that reliefs granted a litigant are limited to those specifically prayed for in the complaint."[33]

Therefore, the RTC, Branch 67 was in error when it ordered the indefinite and unqualified closure of the water refilling stations of petitioner MWI, considering that the two-year prohibitive period under Section IV-5 of the Franchise Agreements being invoked by respondent AVSI had already lapsed in 2003. The first part of the dispositive portion of RTC, Branch 67's Decision must perforce be deleted.

With respect to petitioner MWI's position that the CA erred in affirming with modifications the RTC, Branch 67's award of damages in favor of respondent AVSI, the Court finds the same unmeritorious.

Petitioner MWI believes that the award of damages in favor of respondent AVSI lacks any evidentiary basis. Jurisprudence has held that "[t]he issues on the award of damages [which] call for a re-evaluation of the evidence before the trial court, which is obviously a question of fact."[34]

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[31] *Id*. at 113.

[32] 617 Phil. 940 (2009).

[33] *Id*. at 948.

[34] *Crisologo v. Globe Telecom, Inc.*, 514 Phil. 618, 626-627 (2005).

In any case, the Court finds the CA's affirmation with modification of the award of damages laden with sufficient basis. With respect to compensatory damages, as noted by the CA, the amount awarded by the RTC, Branch 67 was substantiated and based on actual performance/sales data testified under oath by respondent AVSI's witness, Ms. Cayanan, computing the compensatory damages on the basis of the actual sales performance of AV-Pilar and AV-Arnaiz covering a period of two years.[35]

With respect to the exemplary damages awarded by the RTC, Branch 67, the Court previously held that the courts may impose exemplary damages as an accompaniment to compensatory damages when "the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner."[36] In the instant case, as found by both the RTC, Branch 67 and CA, "[petitioner] MWI's continued refusal to abide by the provisions of the Franchise Agreements despite [respondent] AVSI's demand and reminder for it to refrain from operating the two (2) water refilling stations tantamounts to bad faith which justifies the award of exemplary damages."[37]

Lastly, with respect to the amount of attorney's fees and costs of litigation, which the CA reduced from 25% to 10% of the total amount due, according to Article 2208 of the Civil Code, attorney's fees and expenses of litigation can be awarded by the court in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In the instant case, considering petitioner MWI's stubborn refusal to adhere to the clear and unequivocal dictates of the Franchise Agreements on the two-year prohibition period found under Section IV-5 thereof despite the repeated reminders of respondent AVSI, which the RTC, Branch 67 and CA assessed to be wanton and reckless, the award of attorney's fees and costs of litigation is with sufficient basis.

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[35] *Rollo*, pp. 70-71.

[36] *Octot v. Ybañez*, 197 Phil. 76, 82 (1982).

[37] *Rollo*, p. 72.

WHEREFORE, the instant Petition is **PARTIALLY GRANTED**. The dispositive portion of the Decision dated February 28, 2011 rendered by the Regional Trial Court of Pasig City, Branch 67 is hereby **MODIFIED**, striking out the first paragraph of the said Decision which ordered the indefinite and unqualified closure of the water refilling stations of petitioner Makati Water, Inc. The said Decision is accordingly modified to read as follows:

WHEREFORE, in view of all the foregoing, the Court resolved to render judgment as follows:

1. Order the defendant to pay the plaintiff compensatory damages in the amount of ₱351,911.10 for Civil Case No. 69192 and ₱233,979.60 for Civil Case No. 69191;

2. Order the defendant to pay exemplary damages amounting to One Hundred Thousand (Php 100,000.00) Pesos;

3. Order defendant to pay 10% of the total amount due for the two (2) cases as and for attorney's fees;

4. Costs of suit.

The above-stated monetary awards shall earn 6% interest from finality of this Decision until full payment.

As to the prayer of the defendant for compulsory counterclaim, the Court finds that no sufficient injury was caused to the defendant by the filing of the Complaint, hence, no sufficient basis to grant it.

SO ORDERED.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 213482. June 26, 2019]

GEORGE M. TOQUERO, *petitioner, vs.* **CROSSWORLD MARINE SERVICES, INC., KAPAL CYPRUS, LTD., and ARNOLD U. MENDOZA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW SHOULD BE RAISED IN PETITIONS FOR REVIEW ON *CERTIORARI*, AS THE COURT IS NOT A TRIER OF FACTS AND A REVIEW OF APPEALS IS NOT A MATTER OF RIGHT; EXCEPTIONS; PRESENT. — Only questions of law should be raised in petitions for review on *certiorari* under Rule 45 of the Rules of Court. This Court is not a trier of facts and a review of appeals is not a matter of right. Nevertheless, this Court admits of exceptions subject to its sound judicial discretion. In *Medina v. Mayor Asistio, Jr.*, findings of fact by the Court of Appeals may be reviewed by this Court: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. For this Court to review the facts of the case, these exceptions must be alleged, substantiated, and proved by the parties. x x x. After a careful review of the Court of Appeals' ruling and petitioner's assignment of errors, this Court finds that the review should be granted.

2. LABOR AND SOCIAL LEGISLATION; SEAFARER; DISABILITY BENEFITS; ELEMENTS OF COMPENSABILITY; TO SUPPORT HIS CLAIM FOR SICKNESS ALLOWANCE AND DISABILITY BENEFITS, A SEAFARER HAS TO PROVE THAT HIS INJURY WAS LINKED TO HIS WORK AND WAS ACQUIRED DURING THE TERM OF EMPLOYMENT. — A disability is compensable under the POEA Standard Employment Contract if two (2) elements are present: (1) the injury or illness must be work-related; and (2) the injury or illness must have existed during the term of the seafarer's employment contract. Hence, a claimant must establish the causal connection between the work and the illness or injury sustained. The 2010 POEA Standard Employment Contract defines "work-related injury" as injury "arising out of and in the course of employment." Thus, a seafarer has to prove that his injury was linked to his work and was acquired during the term of employment to support his claim for sickness allowance and disability benefits. Unlike the 1996 POEA Standard Employment Contract, in which it was sufficient that the seafarer suffered injury or illness during his employment, the 2000 and 2010 POEA Standard Employment Contracts require that the disability must be the result of a work-related injury or illness.

3. ID.; ID.; ID.; ID.; PRINCIPLE OF "WORK-RELATION," EXPLAINED; FOR A DISABILITY TO BE COMPENSABLE, IT IS NOT REQUIRED THAT THE SEAFARER'S NATURE OF EMPLOYMENT WAS THE SINGULAR CAUSE OF THE DISABILITY HE OR SHE SUFFERED; IT IS SUFFICIENT THAT THERE IS A REASONABLE LINKAGE BETWEEN THE DISEASE OR INJURY SUFFERED BY THE SEAFARER AND HIS OR HER WORK TO CONCLUDE THAT THE WORK MAY HAVE CONTRIBUTED TO ESTABLISHMENT OR, AT LEAST, AGGRAVATE ANY PREEXISTING CONDITION THE SEAFARER MIGHT HAVE HAD. — To be deemed "work-related," there must be a reasonable linkage between the disease or injury suffered by the employee and his work. Thus, for a disability to be compensable, it is not required that the seafarer's nature of employment was the singular cause of the disability he or she suffered. It is sufficient that there is a reasonable linkage between the disease or injury suffered by the seafarer and his or her work to conclude that the work may have contributed to establishment or, at least, aggravate any preexisting condition the seafarer might have had. x x x. In

Jebsens Maritime, Inc. v. Babol, the 'principle of work-relation' was explained in this wise: Pursuant to the said contract, the injury or illness must be work-related and must have existed during the term of the seafarer's employment in order for compensability to arise. Work-relation must, therefore, be established. As a general rule, the principle of work-relation requires that the disease in question must be one of those listed as an occupational disease under Sec. 32-A of the POEA-SEC. Nevertheless, should it be not classified as occupational in nature, Section 20 (B) paragraph 4 of the POEA-SEC provides that such diseases are disputably presumed as work-related. x x x. Here, the two (2) elements of a work-related injury are present. Not only was petitioner's injury work-related, it was sustained during the term of his employment contract. His injury, therefore, is compensable.

4. ID.; ID; ID.; A SEAFARER'S DISABILITY CLAIM IS PRECLUDED WHEN THE INJURY IS DUE TO THE WILLFUL OR CRIMINAL ACT OR INTENTIONAL BREACH OF DUTIES DONE BY THE CLAIMANT, NOT BY THE ASSAILANT OR ANOTHER SEAFARER. — Once petitioner had established that the two (2) elements are present, he is deemed entitled to disability compensation under the POEA Standard Employment Contract. The labor tribunals and the Court of Appeals erroneously imposed a new prerequisite for the disability's compensability – that the injury must be caused by an accident. Respondents' argument that the claim is precluded because the injury is due to the willful acts of another seafarer is also untenable. The POEA Standard Employment Contract disqualifies claims caused by the willful or criminal act or intentional breach of duties done by the claimant, not by the assailant. It is highly unjust to preclude a seafarer's disability claim because of the assailant's willful or criminal act or intentional breach of duty. Between the ship owner/manager and the worker, the former is in a better position to ensure the discipline of its workers. Consequently, the law imposes liabilities on employers so that they are burdened with the costs of harm should they fail to take precautions. In economics, this is called internalization, which attributes the consequences and costs of an activity to the party who causes them. The law intervenes to achieve allocative efficiency between the employer and the seafarer. Allocative efficiency refers to the satisfaction of consumers in a market, which produces the goods that consumers

are willing to pay. In cases involving seafarers, the law is enacted to attain allocative efficiency where the occupational hazards are reflected and accounted for in the seafarer's contract and the Philippine Overseas Employment Administration regulations. Petitioner was able to prove that his injury was work-related and that it occurred during the term of his employment. With these two (2) elements established, this Court finds his injury compensable.

5. ID.; ID.; ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); PROCEDURE ON THE MEDICAL ASSESSMENT OF THE SEAFARER'S INJURY OR ILLNESS; FAILURE TO OBSERVE THE MANDATORY PROCEDURES LAID DOWN IN THE POEA-SEC AND THE COLLECTIVE BARGAINING AGREEMENT MEANS THAT THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN PREVAILS. — The POEA Standard Employment Contract provides a procedure on the medical assessment of the seafarer's injury or illness. Section 20(A)(3) states in part: 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. This Court has held that failure to observe the procedure under this Section means that the assessment of the company-designated physician prevails. In *Nonay v. Bahia Shipping Services, Inc.*: x x x. Indeed, for failure of Gepanaga to observe the procedures laid down in the POEA-SEC and the CBA, the Court is left without a choice but to uphold the certification issued by the company-designated physician that the respondent was "fit to go back to work."

6. ID.; ID.; ID.; ID.; WHEN THE SEAFARER FAILS TO EXPRESS HIS OR HER DISAGREEMENT BY ASKING FOR THE REFERRAL TO A THIRD DOCTOR, THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN IS GIVEN MORE CREDENCE AND IS FINAL AND BINDING ON THE PARTIES. — Referral to a third doctor is a mandatory procedure. Failure to comply with this rule, without any explanation, is a breach of contract that is tantamount to failure to uphold the law between the parties. Hence, when the seafarer fails to express his or her disagreement by asking for the referral to a third doctor, the findings of the company-designated physician is given more credence and is final and binding on the parties.

7. ID.; ID.; ID.; ID.; THE FINDINGS OF THE SEAFARER'S PERSONAL PHYSICIAN ARE GIVEN GREATER WEIGHT WHERE THE COMPANY-DESIGNATED PHYSICIAN'S ASSESSMENT IS NOT SUPPORTED BY MEDICAL RECORDS; TO BE CONCLUSIVE, A MEDICAL ASSESSMENT MUST BE COMPLETE AND DEFINITE TO REFLECT THE SEAFARER'S TRUE CONDITION AND GIVE THE CORRECT CORRESPONDING DISABILITY BENEFITS. — This Court has acknowledged that the company-designated physician's findings tend to be biased in the employer's favor. In instances where the company-designated physician's assessment is not supported by medical records, the courts may give greater weight to the findings of the seafarer's personal physician. Disability ratings should be adequately established in a conclusive medical assessment by a company-designated physician. To be conclusive, a medical assessment must be complete and definite to reflect the seafarer's true condition and give the correct corresponding disability benefits. As explained by this Court: A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered. On the contrary, tardy, doubtful, and incomplete medical assessments, even if issued by a company-designated physician, have been repeatedly set aside by this Court. Here, the medical assessment issued by the company-designated physician cannot be regarded as definite and conclusive. A review of the records shows that the company-designated

physician failed to conduct all the proper and recommended tests. x x x Contrary to her own recommendation, Dr. Bacungan failed to conduct a complete neurologic examination. There were no memory and cognitive assessment to conclusively declare petitioner's disability. There were no explanations from respondents as to why the recommended medical tests were not conducted. Hence, we cannot consider the company-designated physician's assessment conclusive.

8. ID.; ID.; ID.; IF DOUBTS EXIST BETWEEN THE EVIDENCE PRESENTED BY THE EMPLOYER AND THE EMPLOYEE, THE SCALES OF JUSTICE MUST BE TILTED IN FAVOR OF THE LATTER. — [T]his Court cannot consider the company-designated physician's finding of petitioner's fitness to work because it is deficient. Between the company-designated physician's assessment and the findings of the petitioner's chosen physician, we give more weight to the latter's assessment of permanent and total disability. As to the applicable Collective Bargaining Agreement and disability rating, we uphold the version submitted by petitioner. Respondents contend that a different Collective Bargaining Agreement and a lower disability allowance are applicable to petitioner. However, we reiterate that doubts shall be resolved in favor of labor in line with the policy enshrined in the Constitution, the Labor Code, and the Civil Code, to provide protection to labor and construe doubts in favor of labor. This Court has consistently held that "if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter." Therefore, in accordance with the Collective Bargaining Agreement submitted by petitioner, he is entitled to a total and permanent disability allowance of US$250,000.00.

9. ID.; ID.; ID.; ID.; SEAFARERS ARE ENTITLED TO RECEIVE SICKNESS ALLOWANCE IN THE AMOUNT EQUIVALENT TO THEIR BASIC WAGE COMPUTED FROM THE TIME THEY SIGNED OFF UNTIL THEY ARE DECLARED FIT TO WORK, OR ONCE THE DEGREE OF DISABILITY HAS BEEN ASSESSED BY THE COMPANY-DESIGNATED PHYSICIAN. — Section 20 of the POEA Standard Employment Contract provides that seafarers are entitled to receive sickness allowance in the amount equivalent to their basic wage computed from the time they signed off until they are declared fit to work, or once the degree of disability has been assessed by the

company-designated physician. This period shall not exceed 120 days. Here, petitioner is entitled to sickness allowance equivalent to his basic wage for 55 days. This is counted from the day he signed off of work on April 24, 2012 until he was declared fit to go back to work on June 18, 2012. Finally, the award of attorney's fees is granted under Article 2208 of the Civil Code, which allows the award in actions for indemnity under workers' compensation and employers' liability laws.

APPEARANCES OF COUNSEL

Eric P. Fuentes Law Office for petitioner.
Del Rosario and Del Rosario for respondents.

D E C I S I O N

LEONEN, *J.*:

Disability ratings should be adequately established in a conclusive medical assessment by a company-designated physician. To be conclusive, a medical assessment must be complete and definite to reflect the seafarer's true condition and give the correct corresponding disability benefits.[1]

This Court resolves a Petition for Review on *Certiorari*[2] assailing the April 16, 2014 Decision[3] and July 17, 2014 Resolution[4] of the Court of Appeals in CA-G.R. SP No. 132195. The Court of Appeals ruled that George M. Toquero's

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[1] *Magsaysay Mol Marine, Inc. v. Atraje*, G.R. No. 229192, July 23, 2018, <http://elibrary.judiciarygov.ph/thebookshelf/showdocs/1/64478> [Per *J.* Leonen, Third Division].

[2] *Rollo*, pp. 3-30. Filed under Rule 45 of the Rules of Court.

[3] *Id.* at 110-122. The Decision was penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang of the Fourteenth Division, Court of Appeals, Manila.

[4] *Id*. at 124-125. The Resolution was penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang of the Former Fourteenth Division, Court of Appeals, Manila.

(Toquero) injury is not compensable under the Collective Bargaining Agreement and the Philippine Overseas Employment Administration Standard Employment Contract (POEA Standard Employment Contract).

On January 16, 2012, Toquero was employed by Crossworld Marine Services, Inc. (Crossworld) on behalf of its principal, Kapal Cyprus, Ltd., as a fitter for vessel MV AS VICTORIA.[5] His employment had the following terms and conditions:

Duration of contract	: 07 Months (+/-1)
Position	: FITTER
Basic Monthly Salary	: USD 774.00
Hours of Work	: 40hrs/week
Guaranteed Overtime	: USD 576.00 in excess of 103 [hours] at USD 5.59
Leave Pay	: USD 206.00
Subsistence Allowance	: USD 152.00
Monthly Bonus	: USD 31.00
Total	: USD 1,739.00
Point of Hire	: MANILA, PHILIPPINES
CBA Reference No.	: IMEC-CBA[6]

On January 12, 2012, Toquero underwent a pre-employment medical examination and was declared fit for sea duty. He was deployed on January 23, 2012.[7]

On April 24, 2012, while on board the vessel, Toquero was assaulted by his fellow seafarer, Jamesy Fong (Fong).[8]

According to Toquero, he was instructed by the master of vessel to check and repair a generator. Fong, who was an oiler, was ordered to assist him[9]

While Fong was removing both the generator's cover lube oil pump and the flanges from the flexible rope, Toquero advised

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[5] *Id*. at 4.

[6] *Id*.

[7] *Id*.

[8] *Id*.

[9] *Id*. at 4 and 253.

him not to remove the flanges because the problem was in the generator.[10]

This irked Fong, who complained that Toquero had no right to give him orders. Fong recalled their prior altercation and challenged Toquero to a fistfight. Toquero ignored Fong and continued working.[11]

Suddenly, Fong hit the back of Toquero's head with a big and heavy metal spanner, knocking him unconscious. He was given first aid treatment at the ship clinic, where his vital signs were monitored. Meanwhile, Fong was jailed in the immigration office and was scheduled for repatriation.[12]

Toquero was later hospitalized in Lome, Togo, Africa, where he was evaluated by a neurosurgeon, Dr. Tchamba Bambou. The Medical Certificate "noted a large lacerated wound with a large depression on the left parietal area."[13] Toquero underwent urgent craniectomy, debridement, and evacuation of hematoma, which left a hole in his skull. He was discharged from the hospital on May 10, 2012.[14]

On May 14, 2012, Toquero was repatriated to the Philippines.[15] He was then referred to the company-designated physician, Dr. Fe A. Bacungan (Dr. Bacungan), who concluded that his frequent headaches and dizziness were due to the jarring of the brain.[16]

Dr. Bacungan, the vice president and medical director of S.M. Lazo Medical Clinic, Inc., Crossworld's healthcare provider, recommended an electroencephalography for Toquero. She wrote:

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[10] *Id*. at 4-5.

[11] *Id*. at 5.

[12] *Id*.

[13] *Id*. at 5 and 35.

[14] *Id*. at 5.

[15] *Id*.

[16] *Id*.

At the clinic, he was examined by one of our doctors and physical examination findings showed a scar and depression on the left parietal area.

Initial Impression: Status-Post Craniotomy, Left Parietal area, with residual Paresthesia of the C1-C4; Depressed Skull, Left Parietal

Last May 23, 2012, Eng. Fitter Tuquero was referred to our Neurologist, Dr. Epifania Collantes and was again examined. Diagnosis given: Status-Post Head Trauma Secondary to Mauling with Depressed Skull, Left Parietal Area.

. . . . . .

Recommendation:

1. To undergo EEG (Electro-Encephalogram).[17]

On June 11, 2012, Toquero underwent a routine electroencephalography conducted by Dr. Benilda C. Sanchez-Gan, an epileptologist.[18] The Medical Report indicated:

TECHNICAL DESCRIPTION:

. . . . . .

Photic stimulation and hyperventilation had no effect.
No focal abnormality or epileptiform activity was present.
Simultaneous single lead EKG showed irregular heart rate of 66-72/minute.

IMPRESSION:

This is a normal awake, drowsy and sleep EEG recording.[19]

Toquero requested that a metal plate be implanted in his skull to cover the hole in it, since only his scalp and hair protected his brain from further injury. The company-designated physician assured him that they would make the proper request, but to no avail.[20]

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[17] *Id*. at 126-127.

[18] *Id*. at 6 and 38.

[19] *Id*. at 38.

[20] *Id*. at 6.

Alarmed by his physical condition, Toquero consulted his chosen physicians, Dr. Leonardo R. Pascual (Dr. Pascual) and Dr. Renato P. Runas (Dr. Runas).[21]

Dr. Pascual assessed that Toquero's physical discomfort was due to trauma and skull defect. Dr. Runas declared Toquero "permanently unfit to return to work as a seaman in any capacity"[22] and diagnosed him with a total and permanent disability. Dr. Runas' Medical Evaluation Report read:

> Seaman Toquero became incapacitated because of the serious head injury that he incurred on board. He has frequent headache and dizziness as a result of severe jarring of the brain. The physiological state of the brain has been altered by the injury. Numbness of the face and scalp is also a permanent manifestation of the injury. **He has a large bone defect which may pose further damage to his brain.** Contusion of the brain tissue also occurred at the site of the **skull fracture**. Permanent physiological and functional damage may not be apparent initially but will gradually and progressively develop later. At this time, he is no longer allowed to engage in heavy physical activities. The ship's environment is also dangerous to him because of the unsteady state of the vessel when sailing at high seas. Dizziness may set anytime and may result to fall, which may cause further irreparable injury. Because of the impediment, **he is permanently unfit to return to work as a seaman in any capacity and considered for total permanent disability**.[23] (Emphasis in the original)

Toquero then asked Crossworld for his sickness allowance, but this was rejected.[24]

On June 18, 2012, Toquero was declared by the company-designated physician as fit to go back to work. However, he only learned about this much later, after he had filed on June 25, 2012 a Complaint against Crossworld for sickness allowance, money claims, moral and exemplary damages, and attorney's fees.[25]

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[21] *Id*.

[22] *Id*.

[23] *Id.*

[24] *Id*.

[25] *Id*. at 7 and 90.

After having learned during the conciliation conference that the company-designated physician had declared him fit for sea duty, he accordingly amended his Complaint to include a claim for total permanent disability benefits.[26]

As an officer with a rating of an above Able-Bodied Seaman, Toquero prayed for US$250,000.00 as total disability benefits under the Collective Bargaining Agreement covered by the Vereinte Dienstleistungsgewerkschaft (Ver Di Agreement).[27] Section 19 stated:

> A seafarer who suffers injury as a result of an incident from any cause whatsoever whiles in the employment of the Managers/Owners, including accidents occur[r]ing whilest travelling to or from the ship or as a result of marine or other similar peril, and whose ability to work is reduced as a result thereof, shall receive from the Managers/ Owners, in addition to his/her sick pay compensation as stated below:
> Compensation:
> a) Masters and Officers and ratings above AB – US$250,000
> b) All ratings AB and below- – US$125,000
>
> Loss of Profession caused by disability (accident) shall be secured by 100% of the compensation.[28]

On January 31, 2013, the Labor Arbiter rendered a Decision[29] dismissing the Complaint for lack of merit. However, since Toquero was injured while working on board, it ruled that Toquero was entitled to the award of US$5,000.00 in the interest of justice and equity and for humanitarian considerations.[30] The dispositive portion of the Decision read:

> WHEREFORE, premises considered, the complaint is hereby dismissed for lack of merit.

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[26] *Id*. at 7.

[27] *Id*.

[28] *Id*.

[29] *Id*. at 85-93. The Decision in NLRC-NCR 06-09574-12 OFW(M) was penned by Labor Arbiter Edgardo M. Madriaga of the National Labor Relations Commission, Quezon City.

[30] *Id*. at 92-93.

Respondents are held solidarily liable to pay complainant his monetary award as specified above.

SO ORDERED.[31]

On appeal, the National Labor Relations Commission, in its June 14, 2013 Decision,[32] modified the Labor Arbiter's Decision. It vacated and set aside the US$5,000.00 award, but ordered Crossworld to pay Toquero sickness allowance and attorney's fees equivalent to 10% of the judgment award.[33] The dispositive portion of its Decision read:

WHEREFORE, all of the foregoing premises considered, judgment is hereby rendered finding partial merit in the instant appeal; the appealed Decision is hereby MODIFIED in that Respondents are hereby ordered to pay Complainant sickness allowance, and attorney's fees equivalent to ten percent (10%) of the judgment award.

The award of US$ 5,000.00 is hereby VACATED or SET-ASIDE.

So Ordered.[34]

The National Labor Relations Commission found that Toquero's injury was work-related because the master of vessel directed Toquero and Fong to work together despite knowing their previous altercation. Despite this, it ruled that Toquero's injury was not compensable because it resulted from a criminal assault, which was not an accident. It also did not give weight to the findings of Toquero's chosen physicians as they were not supported by medical examinations.[35]

Toquero filed a Motion for Partial Reconsideration, but this was denied. Thus, he filed before the Court of Appeals a Petition for *Certiorari*.[36]

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[31] *Id*. at 93.

[32] *Id*. at 95-106. The *rollo* lacked some of the Decision's pages.

[33] *Id*. at 8.

[34] *Id*.

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

[36] *Id*. at 8.

In its April 16, 2014 Decision,[37] the Court of Appeals dismissed the Petition. It upheld the findings of the company-designated physician who regularly monitored and treated Toquero.[38] Akin to the National Labor Relations Commission, it found that while the injury suffered by Toquero was work-related, it cannot be classified as an accident because it resulted from his co-worker's criminal assault.[39] It ruled that Toquero should have expected the attack because of his previous quarrel with Fong.[40]

Nevertheless, the Court of Appeals reinstated the award of US$5,000.00 in the interest of justice and equity and for humanitarian considerations.[41] The dispositive portion of its Decision read:

> **WHEREFORE**, the instant Petition is hereby **DENIED**. The assailed June 14, 2013 Decision and July 31, 2013 Resolution of the National Labor Relations Commission (Second Division) in NLRC LAC No. 04-000343-13 (NLRC-OFW Case No. 06-09574-12) are **AFFIRMED** with the only **MODIFICATION** that We award the sum of US$5,000.00 in favor of Toquero for his further medical treatment. We, however, affirm in all other aspects.
>
> **SO ORDERED.**[42] (Emphasis in the original)

Toquero filed a Motion for Reconsideration, but this was denied in the Court of Appeals' July 17, 2014 Resolution.[43]

Hence, on August 8, 2014, Toquero filed this Petition for Review on *Certiorari*.[44]

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[37] *Id*. at 110-122.

[38] *Id*. at 119.

[39] *Id*. at 120.

[40] *Id*. at 121.

[41] *Id*.

[42] *Id*. at 121-122.

[43] *Id*. at 124-125.

[44] *Id*. at 3-30.

In its November 12, 2014 Resolution,[45] this Court required respondents to comment on the Petition and petitioner to submit the proof of service and verified statement of the material date of filing.

On January 13, 2015, respondents filed their Comment.[46] On January 26, 2015, petitioner submitted his Affidavit of Service. He subsequently filed an ex-parte Manifestation stating that he would no longer file a reply to the Comment.[47]

Petitioner argues that the Court of Appeals erred in upholding the findings of the company-designated physician, Dr. Bacungan, pointing out that her findings were unreliable and without basis. With doubts on these findings, he avers that he was not prohibited from seeking a second or third medical opinion. He claims that a company-designated physician's findings should not be given evidentiary weight as they tend to be self-serving and biased in favor of the company that pays for the physician's services.[48]

Petitioner further points out that the Medical Reports and letters, on which respondents relied in their Position Paper, were never presented as evidence. Supposedly, Dr. Bacungan wrote in a letter that a certain Dr. Epifania Collantes examined him and found his electroencephalography results normal. But these documents were never submitted.[49]

Meanwhile, in another Medical Report presented by respondents, a neurologist opined that "[a] complete neurologic examination includes memory and cognitive assessment and should be done before declaring the patient incapacitated."[50] Petitioner alleges these tests were never conducted.[51]

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[45] *Id*. at 134-135.

[46] *Id*. at 145-165.

[47] *Id*. at 165-168.

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

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

[50] *Id*. at 17.

[51] *Id*.

Petitioner asserts that these medical opinions highlight the company-designated physician's deficient examination before she declared petitioner fit to return to work as a seafarer. Dr. Bacungan allegedly failed to conduct the recommended complete neurologic examination, and only did a simple electroencephalography, the result of which was never presented as evidence. Hence, the supposed pieces of evidence are mere hearsay, which do not have evidentiary value.[52]

Contrary to the company-designated physician's findings, petitioner claims that he suffers from total and permanent disability and is unfit to work. He laments that his brain can easily be damaged due to the hole and fracture in his skull, posing an imminent danger to his life.[53] His unfitness to work, he points out, is even reflected in respondents' pleadings, which stated that petitioner "still experiences physical discomfort due to the head trauma with resultant skull defect. . . headache, dizziness, and discomfort[.]"[54]

Petitioner also questions the Court of Appeals' reliance on the letters submitted by respondents. It erroneously considered these letters as Medical Certificates, when they were mere correspondences issued by Dr. Bacungan. He further notes that Dr. Bacungan was not the physician who actually conducted the tests on him. As such, her opinions are hearsay and have no probative value.[55]

Conversely, petitioner claims that the findings of his chosen physicians, Dr. Runas and Dr. Pascual, are more credible and reliable because they are independent medical experts who evaluated and examined him in person.[56]

Petitioner also argues that his injury resulted from an accident, contrary to the Court of Appeals' conclusion. He reasoned

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[52] *Id*. at 18.

[53] *Id*. at 19.

[54] *Id*.

[55] *Id*. at 23-24.

[56] *Id*. at 26.

that he was unaware of Fong's intention to hurt him, believing that their previous squabble had already been resolved. He says that he could not have foreseen what had happened as it was impossible to anticipate what Fong intended to do.[57]

Finally, petitioner argues that while he raises questions of facts improper in a Rule 45 petition, these questions fall under the exceptions to the rule. He alleges that the Court of Appeals: (1) committed grave abuse of discretion; (2) premised its findings on a misapprehension of facts; and (3) based its conclusions on facts without citing specific evidence.[58]

On the other hand, respondents contend that the company-designated physician's assessment was correctly given more weight since it was a more extensive and thorough evaluation of petitioner's condition. They question petitioner's allegation that the company-designated physician's finding is erroneous, as the assessment was based on evaluative tests and procedures.[59]

Respondents further argue that contrary to petitioner's claim that he is unfit to work or is suffering from disability, his chosen physician's Medical Report only stated that he suffers from physical discomfort and is keen on reconstructive surgery.[60]

Respondents also claim that the company-designated physician's evaluation should be upheld since petitioner failed to comply with the mandatory rule of referring the matter to a third doctor.[61]

Moreover, respondents argue that because the Collective Bargaining Agreement precludes disability claims due to willful acts, it is not applicable to petitioner's case since his injury did not result from an accident. Hence, his claim should be denied.[62]

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[57] *Id*. at 27.

[58] *Id*. at 10.

[59] *Id*. at 156.

[60] *Id*.

[61] *Id*. at 156-158.

[62] *Id*. at 158-159.

Furthermore, respondents claim that the controlling Collective Bargaining Agreement, which provides maximum disability benefits at US$90,882.00, prevails over the Collective Bargaining Agreement that petitioner presented, which provides maximum disability benefits of US$250,000.00.[63]

Respondents also claim that the position of a fitter, which is not a licensed crew, has never been considered to fall under the category of an officer or an Able-Bodied Seaman. Hence, the maximum disability benefits do not apply to petitioner.[64]

Lastly, respondents argue that because petitioner's condition was not work-related, sickness allowance must not be granted. This is since it is only provided for work-related injury under the POEA Standard Employment Contract. Moreover, respondents assert that attorney's fees should be deleted since there is no bad faith on respondents' part, and the claim was denied on valid, legal, and factual grounds.[65]

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

First, whether or not petitioner George M. Toquero may raise questions of fact in a Rule 45 petition;

Second, whether or not petitioner's injury is compensable; and

Third, whether or not the company-designated physician's findings must be upheld. Subsumed under this issue are the issues of whether or not referral to a third doctor is mandatory, and whether or not the evidence presented by respondents Crossworld Marine Services, Inc., Kapal Cyprus Ltd., and Arnold U. Mendoza should be excluded for being hearsay; and

Finally, whether or not petitioner is entitled to sickness allowance and attorney's fees.

We grant the Petition.

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[63] *Id*. at 160.

[64] *Id*. at 160-161.

[65] *Id*. at 161.

I

Only questions of law should be raised in petitions for review on *certiorari* under Rule 45 of the Rules of Court. This Court is not a trier of facts and a review of appeals is not a matter of right.

Nevertheless, this Court admits of exceptions subject to its sound judicial discretion.[66] In *Medina v. Mayor Asistio, Jr.*,[67] findings of fact by the Court of Appeals may be reviewed by this Court:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[68] (Citations omitted)

For this Court to review the facts of the case, these exceptions must be alleged, substantiated, and proved by the parties.[69]

While petitioner concedes that his Petition raises questions of fact, he alleges that it falls under several exceptions. Petitioner alleges that: (1) the Court of Appeals committed grave abuse of discretion in the appreciation of facts; (2) its judgment is premised on a misapprehension of facts; and

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[66] *Pascual v. Burgos*, 776 Phil. 167 (2016) [Per *J.* Leonen, Second Division].

[67] 269 Phil. 225 (1990) [Per *J.* Bidin, Third Division].

[68] *Id.* at 232.

[69] *Pascual v. Burgos*, 776 Phil. 167 (2016) [Per *J.* Leonen, Second Division].

(3) the findings of fact are conclusions without citation of the specific evidence.

After a careful review of the Court of Appeals' ruling and petitioner's assignment of errors, this Court finds that the review should be granted.

II

A disability is compensable under the POEA Standard Employment Contract if two (2) elements are present: (1) the injury or illness must be work-related; and (2) the injury or illness must have existed during the term of the seafarer's employment contract. Hence, a claimant must establish the causal connection between the work and the illness or injury sustained.[70]

The 2010 POEA Standard Employment Contract[71] defines "work-related injury" as injury "arising out of and in the course of employment." Thus, a seafarer has to prove that his injury was linked to his work and was acquired during the term of employment to support his claim for sickness allowance and disability benefits.[72]

Unlike the 1996 POEA Standard Employment Contract, in which it was sufficient that the seafarer suffered injury or illness during his employment, the 2000 and 2010 POEA Standard Employment Contracts require that the disability must be the result of a work-related injury or illness.[73]

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[70] *Tagle v. Anglo-Eastern Crew Management, Philippines, Inc.*, 738 Phil. 871 (2014) [Per *J.* Mendoza, Third Division].

[71] POEA Memorandum Circular No. 010-10 (2010). Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, available at <http://poea.gov.ph/memorandumcirculars/2010/10.pdf> last accessed on June 26, 2019.

[72] *Ebuenga v. Southfield Agencies, Inc.*, G.R. No. 208396, March 14, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64089> [Per *J.* Leonen, Third Division].

[73] *NYK-Fil Ship Management, Inc. v. Talavera*, 591 Phil. 786 (2008) [Per *J.* Carpio Morales, Second Division].

To be deemed "work-related," there must be a reasonable linkage between the disease or injury suffered by the employee and his work.[74]

Thus, for a disability to be compensable, it is not required that the seafarer's nature of employment was the singular cause of the disability he or she suffered.[75] It is sufficient that there is a reasonable linkage between the disease or injury suffered by the seafarer and his or her work to conclude that the work may have contributed to establishment or, at least, aggravate any preexisting condition the seafarer might have had.[76]

In *Sy v. Philippine Transmarine Carriers, Inc.*,[77] the phrase "arising out of and in the course of employment" refers to the cause and character of the injury and the circumstances under which the injury or accident took place:

> . . . The two components of the coverage formula — "arising out of" and "in the course of employment" — are said to be separate tests which must be independently satisfied; however, it should not be forgotten that the basic concept of compensation coverage is unitary, not dual, and is best expressed in the word, "work-connection," because an uncompromising insistence on an independent application of each of the two portions of the test can, in certain cases, exclude clearly work-connected injuries. The words "arising out of" refer to the origin or cause of the accident, and are descriptive of its character, while the words "in the course of" refer to the time, place and circumstances under which the accident takes place.
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> *As a matter of general proposition, an injury or accident is said to arise "in the course of employment" when it takes place within the period of the employment, at a place where the employee*

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[74] *Id*.

[75] *Grieg Philippines, Inc. v. Gonzales*, 814 Phil. 965 (2017) [Per *J.* Leonen, Second Division].

[76] *Magsaysay Maritime Services v. Laurel*, 707 Phil. 210 (2013) [Per *J.* Mendoza, Third Division].

[77] 703 Phil. 190 (2013) [Per *J.* Peralta, Third Division].

reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto.[78] (Emphasis supplied)

In *Jebsens Maritime, Inc. v. Babol*,[79] the 'principle of work-relation' was explained in this wise:

> Pursuant to the said contract, the injury or illness must be work-related and must have existed during the term of the seafarer's employment in order for compensability to arise. Work-relation must, therefore, be established.
>
> As a general rule, the principle of work-relation requires that the disease in question must be one of those listed as an occupational disease under Sec. 32-A of the POEA-SEC. Nevertheless, should it be not classified as occupational in nature, Section 20 (B) paragraph 4 of the POEA-SEC provides that such diseases are disputably presumed as work-related.
>
> In this case, it is undisputed that NPC afflicted respondent while on board the petitioners' vessel. As a non-occupational disease, it has the disputable presumption of being work-related. This presumption obviously works in the seafarer's favor. Hence, unless contrary evidence is presented by the employers, the work-relatedness of the disease must be sustained.[80] (Citations omitted)

Here, the two (2) elements of a work-related injury are present. Not only was petitioner's injury work-related, it was sustained during the term of his employment contract. His injury, therefore, is compensable.

As with the lower courts, this Court finds that petitioner's injury was work-related. Moreover, the labor tribunals also found that respondents breached their contractual obligation by hiring another employee who was prone to committing felonious acts.[81] Under Section 1(A)(4) of the POEA Standard Employment Contract, respondents must "take all reasonable

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[78] *Id*. at 198-199 citing *Iloilo Dock & Engineering Co. v. Workmen's Compensation Commission*, 135 Phil. 95 (1968) [Per *J*. Castro, *En Banc*].

[79] 722 Phil. 828 (2013) [Per *J*. Mendoza, Third Division].

[80] *Id*. at 838-839.

[81] *Rollo*, pp. 241 and 254-255.

precautions to prevent accident and injury to the crew[.]"[82] The National Labor Relations Commission reasoned that the master of vessel instructed petitioner and his assailant to work together when prudence dictates that they should have been prevented from working together.[83]

Nevertheless, while the labor tribunals and the Court of Appeals ruled that petitioner's injury is work-related, they found that it is not compensable because it was not caused by an accident. They reason that the assault could have been foreseen from the previous altercation between petitioner and Fong. The Court of Appeals even noted that because the assailant's action was only based on human instinct, petitioner should have expected the attack. Since the incident resulted from Fong's criminal assault, it is an intentional felony, not an accident. Hence, it is no longer compensable.[84]

Law and jurisprudence do not support these findings.

Once petitioner had established that the two (2) elements are present, he is deemed entitled to disability compensation under the POEA Standard Employment Contract. The labor tribunals and the Court of Appeals erroneously imposed a new prerequisite for the disability's compensability — that the injury must be caused by an accident.

Respondents' argument that the claim is precluded because the injury is due to the willful acts of another seafarer is also untenable. The POEA Standard Employment Contract disqualifies claims caused by the willful or criminal act or intentional breach of duties done by the claimant, not by the assailant.[85] It is highly unjust to preclude a seafarer's disability

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[82] *Id*. at 254.

[83] *Id*. at 253.

[84] *Id*. at 269.

[85] Philippine Overseas Employment Administration-Standard Employment Contract (2010), Sec. 20(D) states:

D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his

claim because of the assailant's willful or criminal act or intentional breach of duty.

Between the ship owner/manager and the worker, the former is in a better position to ensure the discipline of its workers. Consequently, the law imposes liabilities on employers so that they are burdened with the costs of harm should they fail to take precautions. In economics, this is called internalization, which attributes the consequences and costs of an activity to the party who causes them.[86]

The law intervenes to achieve allocative efficiency between the employer and the seafarer. Allocative efficiency refers to the satisfaction of consumers in a market, which produces the goods that consumers are willing to pay.[87] In cases involving seafarers, the law is enacted to attain allocative efficiency where the occupational hazards are reflected and accounted for in the seafarer's contract and the Philippine Overseas Employment Administration regulations.[88]

Petitioner was able to prove that his injury was work-related and that it occurred during the term of his employment. With these two (2) elements established, this Court finds his injury compensable.

III

The POEA Standard Employment Contract provides a procedure on the medical assessment of the seafarer's injury or illness. Section 20(A)(3) states in part:

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

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willful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

[86] 1 ROBERT COOTER, *LAW AND ECONOMICS* 310 (4th ed., 2003).

[87] 5 ROBERT D. COOTER, *Economic Theories of Legal Liability*, THE JOURNAL OF ECONOMIC PERSPECTIVES, 11, 16 (1991).

[88] 1 ROBERT COOTER, *LAW AND ECONOMICS* 386 (4th ed., 2003).

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.

This Court has held that failure to observe the procedure under this Section means that the assessment of the company-designated physician prevails.[89] In *Nonay v. Bahia Shipping Services, Inc.*:[90]

> The POEA Standard Employment Contract and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. *If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.*
>
> Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail.

Indeed, for failure of Gepanaga to observe the procedures laid down in the POEA-SEC and the CBA, the Court is left without a

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[89] *Nonay v. Bahia Shipping Services, Inc.*, 781 Phil. 197 (2016) [Per *J.* Leonen, Second Division] citing *Veritas Maritime Corporation v. Gepanaga*, 753 Phil. 308 (2015) [Per *J.* Mendoza, Second Division].

[90] 781 Phil. 197 (2016) [Per *J.* Mendoza, Second Division].

choice but to uphold the certification issued by the company-designated physician that the respondent was "fit to go back to work."[91] (Emphasis supplied, citation omitted)

Referral to a third doctor is a mandatory procedure. Failure to comply with this rule, without any explanation, is a breach of contract that is tantamount to failure to uphold the law between the parties.[92] Hence, when the seafarer fails to express his or her disagreement by asking for the referral to a third doctor, the findings of the company-designated physician is given more credence and is final and binding on the parties.[93]

In *Transocean Ship Management (Philippines), Inc. v. Vedad*,[94] the rationale behind the third-doctor referral is expounded:

> In determining whether or not a given illness is work-related, it is understandable that a company-designated physician would be more positive and in favor of the company than, say, the physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician. And the law has anticipated the possibility of divergence in the medical findings and assessments by incorporating a mechanism for its resolution wherein a third doctor selected by both parties decides the dispute with finality, as provided by Sec. 20 (B) (3) of the POEA-SEC quoted above.[95]

Nevertheless, this is not a hard and fast rule. This Court has acknowledged that the company-designated physician's findings tend to be biased in the employer's favor. In instances where the company-designated physician's assessment is not

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[91] *Id.* at 226-227.

[92] *Philippine Hammonia Ship Agency, Inc. v. Dumadag*, 712 Phil. 507 (2013) [Per *J.* Brion, Second Division].

[93] *Manansala v. Marlow Navigation Philippines, Inc.*, G.R. No. 208314, August 23, 2017, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63536> [Per *J.* Leonen, Third Division].

[94] 707 Phil. 194 (2013) [Per *J.* Velasco, Jr., Third Division].

[95] *Id.* at 207.

supported by medical records, the courts may give greater weight to the findings of the seafarer's personal physician.[96]

Disability ratings should be adequately established in a conclusive medical assessment by a company-designated physician. To be conclusive, a medical assessment must be complete and definite to reflect the seafarer's true condition and give the correct corresponding disability benefits.[97] As explained by this Court:

> A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[98]

On the contrary, tardy, doubtful, and incomplete medical assessments, even if issued by a company-designated physician, have been repeatedly set aside by this Court.[99]

Here, the medical assessment issued by the company-designated physician cannot be regarded as definite and conclusive. A review of the records shows that the company-designated physician failed to conduct all the proper and recommended tests. Dr. Bacungan's letter[100] discloses that a complete neurologic examination was recommended to adequately assess petitioner's disability rating. It read:

> According to the attending Neurologist, an orthopedic surgeon cannot adequately assess the neurologic status of the patient. A complete

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[96] *Nonay v. Bahia Shipping Services, Inc.*, 781 Phil. 197 (2016) [Per *J.* Mendoza, Second Division].

[97] *Magsaysay Mol Marine, Inc. v. Atraje*, G.R. No. 229192, July 23, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64478> [Per *J.* Leonen, Third Division].

[98] *Id*. citing *Sunit v. OSM Maritime Services, Inc.*, G.R. No. 223035, February 27, 2017, 818 SCRA 663 [Per *J.* Velasco, Jr., Third Division].

[99] *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234 (2015) [Per *J.* Mendoza, Second Division].

[100] *Rollo*, pp. 130-131.

neurologic examination includes memory and cognitive assessment and should be done before declaring the patient incapacitated. This will show whether the patient has mild, moderate or severe brain dysfunctions. In addition, neurologic examination will evaluate the motor strength, gait, balance and other deficits of the patient.[101]

Despite the recommendation, Dr. Bacungan did not conduct all the proper tests to fully evaluate petitioner's condition. Respondents solely relied on an electroencephalography run by the company-designated physician. In their Comment, respondents only referred to this test in concluding that petitioner was not suffering from a total and permanent disability.[102] Nothing in the records shows that other tests were conducted.

Contrary to her own recommendation, Dr. Bacungan failed to conduct a complete neurologic examination. There were no memory and cognitive assessment to conclusively declare petitioner's disability. There were no explanations from respondents as to why the recommended medical tests were not conducted. Hence, we cannot consider the company-designated physician's assessment conclusive.

Similarly, this Court cannot consider the company-designated physician's finding of petitioner's fitness to work because it is deficient. Between the company-designated physician's assessment and the findings of the petitioner's chosen physician, we give more weight to the latter's assessment of permanent and total disability.

As to the applicable Collective Bargaining Agreement and disability rating, we uphold the version submitted by petitioner. Respondents contend that a different Collective Bargaining Agreement and a lower disability allowance are applicable to petitioner. However, we reiterate that doubts shall be resolved in favor of labor in line with the policy enshrined in the

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[101] *Id*. at 130.

[102] *Id*. at 150-152.

Constitution,[103] the Labor Code,[104] and the Civil Code,[105] to provide protection to labor and construe doubts in favor of labor. This Court has consistently held that "if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter."[106]

Therefore, in accordance with the Collective Bargaining Agreement submitted by petitioner, he is entitled to a total and permanent disability allowance of US$250,000.00.

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[103] 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.

[104] LABOR CODE, Art. 4 provides:

ARTICLE 4. *Construction in favor of labor*. — All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.

[105] CIVIL CODE, Art. 1702 provides:

ARTICLE 1702. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.

[106] *Malabunga, Jr. v. Cathay Pacific Steel Corporation*, 759 Phil. 458, 479 (2015) [Per *J.* Del Castillo, Second Division] citing *Asuncion v. National Labor Relations Commission*, 414 Phil. 329 (2001) [Per *J.* Kapunan, First Division].

IV

Section 20 of the POEA Standard Employment Contract provides that seafarers are entitled to receive sickness allowance in the amount equivalent to their basic wage computed from the time they signed off until they are declared fit to work, or once the degree of disability has been assessed by the company-designated physician. This period shall not exceed 120 days.[107]

Here, petitioner is entitled to sickness allowance equivalent to his basic wage for 55 days. This is counted from the day he signed off of work on April 24, 2012 until he was declared fit to go back to work on June 18, 2012.

Finally, the award of attorney's fees is granted under Article 2208[108] of the Civil Code, which allows the award in actions for indemnity under workers' compensation and employers' liability laws.

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[107] Philippine Overseas Employment Administration-Standard Employment Contract (2010), Sec. 20(A)(3) provides:

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

[108] CIVIL CODE, Art. 2208 provides:

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;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

WHEREFORE, the Petition is **GRANTED**. The April 16, 2014 Decision and July 17, 2014 Resolution of the Court of Appeals in CA-G.R. SP. No. 132195 are **REVERSED and SET ASIDE**. Respondents Crossworld Marine Services, Inc., Kapal Cyprus, Ltd., and Arnold U. Mendoza are solidarily liable to pay petitioner George M. Toquero the following:

1) total and permanent disability allowance in the amount of Two Hundred Fifty Thousand US Dollars (US$250,000.00) or its equivalent in Philippine Peso at the time of payment;

2) sickness allowance equivalent to 55 days of his basic wage; and

3) attorney's fees equivalent to 10% of the total monetary award.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until their full satisfaction.[109]

SO ORDERED.

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

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(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

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

SECOND DIVISION

[G.R. No. 217661. June 26, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FERDINAND BUNIAG *y* MERCADERA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; WHERE THE SALE WAS ABORTED, ACCUSED MAY BE HELD LIABLE ONLY FOR ATTEMPTED ILLEGAL SALE OF DANGEROUS DRUGS. — The CA is correct in ruling that Buniag should have been convicted of the offense of attempted illegal sale of dangerous drugs. Under the rule on variance, while Buniag cannot be convicted of the offense of illegal sale of dangerous drugs because the sale was never consummated, he may be convicted for the attempt to sell as it is necessarily included in the illegal sale of dangerous drugs. A crime is attempted when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution, which should produce the felony, by reason of some cause or accident other than his own spontaneous desistance. In the present case, Buniag attempted to sell *shabu* and commenced by overt acts the commission of the intended crime however, the sale was aborted when IO1 Alfaro, upon confirming that Buniag had with him the marijuana, made a "miss-call" to IO2 Pimentel, the pre-arranged signal, and the rest of the team rushed to the area and placed Buniag under arrest. Thus, the CA correctly ruled that the accused may only be held liable for attempted illegal sale of dangerous drugs.

2. ID.; ID.; ID.; AS THE ELEMENTS OF THE CRIME ARE ABSENT IN CASE AT BAR, ACCUSED MAY NOT BE CONVICTED OF ATTEMPTED ILLEGAL SALE OF DRUGS. — Buniag may still not be convicted of attempted illegal sale of dangerous drugs. At this juncture, it is important for the Court to point out that for a successful prosecution of the offense of illegal sale of dangerous drugs under RA 9165, which

necessarily includes attempted sale of illegal drugs, the following elements must be proven: (1) the transaction or sale took place; (2) **the *corpus delicti* or the illicit drug was presented as evidence**; and (3) the buyer and the seller were identified. 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 of prime importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with exactitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In this case, even if the Court were to believe as true the version of the prosecution, due to the failure of the police officers to strictly comply with the requirements laid down under Section 21 of RA 9165, the second element to convict Buniag of the crime charged is still absent since the prosecution failed to establish the *corpus delicti* beyond reasonable doubt.

3. ID.; ID.; ID.; THERE WAS BLATANT DISREGARD OF THE CHAIN OF CUSTODY RULE IN THE PRESENT CASE. — There was blatant disregard of the chain of custody rule as shown below: *First*, the police officers did not conduct the marking, photography, and inventory of the seized items at the place of arrest. Without having any valid excuse for the deferment of the conduct of the required procedure under Section 21 of RA 9165, they brought the seized items to the police station. x x x *Second*, although there was a media representative who signed the inventory report at the police office, such is not enough because the law requires that the mandatory witnesses should already be present during the actual inventory and not merely after the fact. Moreover, there was no representative from the Department of Justice (DOJ) or any elected official at the time of arrest of the accused and seizure of the illegal drugs, and inventory and photography of the seized items at the police station.

4. ID.; ID.; ID.; REQUIREMENTS OF THE CHAIN OF CUSTODY, EXPLAINED; WHERE THERE WAS NEITHER COMPLIANCE WITH THE PROCEDURE NOR VALID EXCUSE FOR NON-COMPLIANCE WAS OFFERED, THE INTEGRITY AND EVIDENTIARY VALUE OF THE DRUGS HAVE BEEN COMPROMISED

AND ACCUSED MUST BE ACQUITTED. — [T]he Court has repeatedly held that Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, **strictly 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 DOJ. Verily, the three required witnesses **should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation** — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. In addition, while the Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. The failure of the apprehending team to strictly comply with the procedure laid out in Section 21 does not *ipso facto* render the seizure and custody over the items void; and this has ***always*** been 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. However, in this case, it is obvious that the police officers did not have a valid excuse for their deviation from Section 21 of RA 9165. Their mere allegation that they feared that the people started coming out of the house is nothing but a frail excuse since there were seven (7) of them and they were even armed[.] x x x Thus, it is obvious that the buy-bust team manifestly disregarded the procedure laid down under Section 21 of RA 9165. Neither did they have any valid excuse to do so. The integrity and evidentiary value of the *corpus delicti* have thus been compromised and Buniag must accordingly be acquitted.

5. ID.; ID.; ID.; BUY-BUST OPERATION AS A FORM OF ENTRAPMENT, EXPLAINED; CIRCUMSTANCES IN CASE AT BAR INDICATE THAT THE BUY-BUST OPERATION WAS A SHAM. — A buy-bust operation is a form of entrapment, in which the violator is caught in *flagrante delicto* and the police officers conducting the operation are not only authorized, but duty-bound to apprehend the violator and to search him for anything that may have been part of or

used in the commission of the crime. However, where there was really no buy-bust operation conducted, it cannot be denied that the elements for attempted illegal sale of prohibited drugs, specifically the *corpus delicti* element, cannot be duly proved despite the presumption of regularity in the performance of official duty and the seeming straightforward testimony in court by the arresting police officers. Indubitably, the indictment for attempted illegal sale of prohibited drugs will not have a leg to stand on. In the case at bar, the following instances indicate that there was, contrary to the claim of the prosecution, really no buy-bust operation that was conducted by the police officers[.] x x x [T]he whole story of the police officers is doubtful, and the version of the defense that he was merely framed-up becomes more believable. Thus, taking into consideration the defense of denial and frame-up by Buniag, in light of the testimonies of the police officers, the Court cannot conclude that there was a buy-bust operation conducted by the arresting police officers as they attested to and testified on.

6. ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES CANNOT STAND IN VIEW OF THE POLICE OFFICERS' FAILURE TO COMPLY WITH THE CHAIN OF CUSTODY RULE; IT CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE. — The Court has repeatedly held that the fact that a 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. As applied in this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. In this connection, the presumption of regularity in the performance of official duty cannot overcome the stronger presumption of innocence in favor of the accused. The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right. Thus, it would be a patent violation of the Constitution to uphold the importance of the presumption of regularity in the performance of official duty over the presumption of innocence, especially in this case where there are more than enough reasons to disregard the former.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

This is an Appeal[1] under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated January 30, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01246, which affirmed the Judgment[3] dated December 23, 2013 rendered by the Regional Trial Court, Branch 40, Misamis Oriental, 10th Judicial Region (RTC) in Criminal Case No. 2008-498, finding accused-appellant Ferdinand Buniag *y* Mercadera (Buniag) 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

The Information[5] filed against Buniag for violation of Section 5, Article II of RA 9165 pertinently reads:

That on or about 7:30 P.M. of August 9, 2008, at Olape St., Zone 2 Bayabas, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, trade, administer, dispense, deliver,

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[1] See Notice of Appeal dated February 17, 2015, *rollo*, pp. 15-16.

[2] *Rollo*, pp. 3-14. Penned by Associate Justice Edgardo T. Lloren with Associate Justices Edward B. Contreras and Rafael Antonio M. Santos, concurring.

[3] CA *rollo*, pp. 34-41. Penned by Presiding Judge Ma. Corazon B. Gaite-Llanderal.

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

[5] Records, p. 1.

give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there wil[l]fully, unlawfully, criminally[,] and knowingly sell and/or offer for sale, and give away[,] and deliver to a poseur [-]buyer [o]ne (1) LG black and red travelling bag with marking "NVP" containing two (2) bundles of dried alleged marijuana fruiting tops with stalks both wrapped in a blue print paper with marking NVP-1 and NVP-2 respectively and one (1) bundle of dried marijuana fruiting tops with stalks wrapped in a GRAPHIC poster paper marking NVP-3 with the following corresponding net weights; A-1 (NVP-1) 154.7 grams, A-2 (NVP-2) 118.8 grams and A-3 [(]NVP-3) 36.5 grams respectively, accused knowing the same to be a dangerous drug.

Contrary to Section 5, Paragraph 1, in relation to Section 26, Article II of Republic Act No. 9165.[6]

Upon arraignment, Buniag pleaded not guilty to the charge.[7]

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

On August 9, 2008 at around 4 o'clock in the afternoon, PDEA Agent IO1 Rubylyn S. Alfaro (IO1 Alfaro), together with her confidential informant, met with the accused-appellant Buniag outside the vicinity of Bayabas High School, Cagayan de Oro City. It was agreed that IO1 Alfaro will purchase Php 5,000.00 worth of marijuana from Buniag and that the delivery will be made at around 7:00 to 7:30 in the evening of the same day along the street of Olape, Zone 2, Bayabas, Cagayan de Oro City.

IO1 Alfaro and the CI then went back to their office and relayed the aforesaid information to her fellow agents. At the office, a briefing was conducted wherein IO1 Alfaro was designated as the poseur[-]buyer while IO2 Neil Vincent Pimentel (IO2 Pimentel) was assigned as the back[-]up and arresting officer. After the meeting, the buy[-]bust team composing of IO2 Pimentel, IO1 Alfaro, PO2 Benjamin Reycites, SPO1 Amacanin, IO1 Pica, and the CI, went to the designated area on board their unmarked service vehicle.

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[6] *Id*.

[7] *Rollo*, p. 4.

The buy[-]bust team arrived at the target area at around 7:10 in the evening. IO1 Alfaro and the CI were dropped off along Olape Street while the rest of the team were inside the vehicle, which was parked from a distance of 5 to 7 meters away from IO1 Alfaro. The rest of the team were cautiously observing the area while IO1 Alfaro and the CI were waiting for Buniag.

Minutes later, Buniag came, carrying with him a black traveling bag. Buniag approached IO1 Alfaro and demanded for the payment of the marijuana but the latter insisted that she should see the narcotics first. Buniag acceded to the request and opened the black traveling bag. IO1 Alfaro and the CI inspected the bag and saw three (3) bundles of marijuana stalks and leaves inside. Wasting no time, IO1 Alfaro made the pre-arranged signal, by executing a "missed call" to IO2 Pimentel, and the rest of the team rushed to their location. IO2 Pimentel arrested the accused-appellant after apprising the latter of his constitutional rights and the nature of the crime he had just violated. IO2 Pimentel then got hold of the black traveling bag, together with three (3) bundles of marijuana inside. The team then brought Buniag to their station with IO2 Pimentel in possession of the traveling bag and the illegal narcotics in going thereto.

At the station, IO2 Pimentel marked the black traveling bag with his initials "NVP" while the three bundles of marijuana were successively marked with "NVP 1" to "NVP 3". IO2 Pimentel then prepared the Inventory of Seized Items while their Regional Director made the Letter Request for Laboratory Examination. Pictures were also taken of the accused-appellant and the seized items. IO2 Pimentel and IO1 Alfaro then brought Buniag and the seized items to the Regional Crime Laboratory Office which received the seized items at 9:10 in the evening of the same day. Upon a qualitative examination conducted by PSI Erma Condino Salvacion, the three bundles were found positive for marijuana, a dangerous drug. The result of the said examination was embodied in Chemistry Report No. D-154-2008.[8]

Version of the Defense

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

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

On August 8, 2008, Buniag, a resident of Wao, Lanao del Sur, went to Cagayan de Oro City pursuant to the request of his brother, who was in Manila, to check the latter's house in Bayabas, Cagayan de Oro City. On the evening of the next day, he went out of his brother's house to buy some food. Suddenly, a vehicle stopped in front of him and two persons, whom he later recognized as IO2 Pimentel and IO1 Alfaro, alighted therefrom and ran towards him. The two persons then handcuffed him and told him that he is a suspect because there are plenty of marijuana in Wao, to which he replied that such is not true.

After his arrest, Buniag was made to board a vehicle. While inside the vehicle, IO2 Pimentel asked for Php 20,000.00 so that he will be released. He replied that he has no money because his family is very poor. IO2 Pimentel continued to ask if he has a title to a lot or a house, to which he replied that he has none. At the PDEA Office, he was made to sit down on a chair and was asked to point to a black bag. He was then photographed while pointing to the said bag. He was then brought to the crime laboratory wherein he was given a plastic container and was told to urinate [i]n it. He said that during the course of his arrest and at the laboratory, he was made to sign documents without knowing the contents therein. Buniag vehemently denied that he owned the black traveling bag, as well as the three bundles of marijuana inside it. He claimed that he did not even know what marijuana is.[9]

Ruling of the RTC

In the assailed Judgment dated December 23, 2013, the RTC ruled that the prosecution sufficiently discharged the burden of proving the guilt of the accused beyond reasonable doubt for the crime of attempt to sell and/or delivery of a dangerous drug.[10] There was a mere attempt to sell, as the consideration for the marijuana had not yet been given when the arrest was made.[11] Buniag is likewise liable for delivery of a dangerous drug as he had in fact given and delivered to the poseur-buyer the bag containing marijuana fruiting tops and stalks.[12] Lastly,

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[9] *Id*. at 6.

[10] CA *rollo*, p. 39.

[11] *Id*.

[12] *Id*.

it ruled that the chain of custody of the seized drugs was adequately established in the instant case.[13]

The dispositive portion of the Judgment reads:

> WHEREFORE, all the foregoing premises considered, the court hereby finds accused **Ferdinand Buniag y Mercadera GUILTY** beyond reasonable doubt of having committed the offense charged in the information (violation of Section 5, Article II of R.A. 9165). He is hereby sentenced to suffer the penalty of ***life imprisonment*** and to pay a fine in the amount of FIVE HUNDRED THOUSAND PESOS (₱500.000.00), without subsidiary imprisonment in case of insolvency. The period of his preventive detention shall be credited in his favor. The bundles of marijuana are hereby ordered forfeited in favour of the government for proper disposal in accordance with the rules.
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> **SO ORDERED**.[14]

Aggrieved, Buniag appealed to the CA.

Ruling of the CA

In the assailed Decision dated January 30, 2015, the CA affirmed Buniag's conviction. The dispositive portion of the Decision reads:

> WHEREFORE, the appeal is DENIED. The Judgment dated June 14, 2013 of the Regional Trial Court of Misamis Oriental, 10th Judicial Region, Branch 40 in Criminal Case No. 2008-498 is hereby MODIFIED. Accused-appellant Ferdinand Buniag y Mercadera is found GUILTY beyond reasonable doubt for violating Section 26(b), Article II of R.A. No. 9165 and is sentenced to suffer a penalty of life imprisonment and to pay a fine of ₱500,000.00.
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> **SO ORDERED.**[15]

The CA ruled that a perusal of the Information filed against Buniag would show that he was charged with violation of

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[13] *Id*. at 40.

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

[15] *Rollo*, p. 13.

Section 5, paragraph 1, in relation to Section 26,[16] Article II of RA 9165.[17] Here, Buniag clearly intended to sell marijuana and commenced overt acts in relation to it, however, the sale was aborted when IO1 Alfaro, upon confirming that Buniag had with him the marijuana, made a "miss-call" to IO2 Pimentel, their pre-arranged signal, and the rest of the team rushed to the area and placed Buniag under arrest.[18] From the testimonies of the witnesses, the prosecution was able to establish that there was an attempt to sell marijuana.[19] Thus, the RTC should have convicted Buniag for violation of Section 26(b), Article II of RA 9165.[20]

It further ruled that the failure to conduct an inventory and to photograph the confiscated items in the manner prescribed under Section 21 of RA 9165 is not fatal to the prosecution's cause.[21] The marking of the seized items at the police station and in the presence of the accused is sufficient to show compliance with the rules on chain of custody.[22] It further ruled that when the police officers involved in the buy-bust operation have no motive to falsely testify against the accused, the courts shall uphold the presumption that they have performed their duties regularly.[23]

Hence, the instant appeal.

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[16] SEC. 26. *Attempt or Conspiracy*. — Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x x x x x x

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical[.]

[17] *Rollo*, p. 9.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 10.

[21] *Id*. at 11.

[22] *Id*. at 12.

[23] *Id*. at 13.

Issue

Whether the CA erred in finding the accused guilty beyond reasonable doubt of violating Section 26(b), Article II of RA 9165.

The Court's Ruling

The petition is meritorious. Buniag is accordingly acquitted.

The CA is correct in ruling that Buniag should have been convicted of the offense of attempted illegal sale of dangerous drugs. Under the rule on variance, while Buniag cannot be convicted of the offense of illegal sale of dangerous drugs because the sale was never consummated, he may be convicted for the attempt to sell as it is necessarily included in the illegal sale of dangerous drugs.[24]

A crime is attempted when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution, which should produce the felony, by reason of some cause or accident other than his own spontaneous desistance.[25]

In the present case, Buniag attempted to sell *shabu* and commenced by overt acts the commission of the intended crime however, the sale was aborted when IO1 Alfaro, upon confirming that Buniag had with him the marijuana, made a "miss-call" to IO2 Pimentel, the pre-arranged signal, and the rest of the team rushed to the area and placed Buniag under arrest. Thus, the CA correctly ruled that the accused may only be held liable for attempted illegal sale of dangerous drugs.

Nevertheless, Buniag may still not be convicted of attempted illegal sale of dangerous drugs. At this juncture, it is important for the Court to point out that for a successful prosecution of the offense of illegal sale of dangerous drugs under RA 9165, which necessarily includes attempted sale of illegal drugs, the following elements must be proven: (1) the transaction or sale

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[24] *People v. Tumulak*, 791 Phil. 148, 158 (2016).

[25] REVISED PENAL CODE, Art. 6.

took place; (2) **the *corpus delicti* or the illicit drug was presented as evidence**; and (3) the buyer and the seller were identified.[26]

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[27] and the fact of its existence is vital to sustain a judgment of conviction.[28] It is of prime importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with exactitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court.[29]

In this case, even if the Court were to believe as true the version of the prosecution, due to the failure of the police officers to strictly comply with the requirements laid down under Section 21[30] of RA 9165, the second element to convict Buniag of the

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[26] *People v. Bartolini*, 791 Phil. 626, 633-634 (2016).

[27] *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

[28] *Derilo v. People*, 784 Phil. 679, 686 (2016).

[29] *People v. Bartolini*, *supra* note 26, at 634, citing *People v. Gatlabyan*, 669 Phil. 240, 252 (2011).

[30] 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[.]

crime charged is still absent since the prosecution failed to establish the *corpus delicti* beyond reasonable doubt.

There was blatant disregard of the chain of custody rule as shown below:

First, the police officers did not conduct the marking, photography, and inventory of the seized items at the place of arrest. Without having any valid excuse for the deferment of the conduct of the required procedure under Section 21 of RA 9165, they brought the seized items to the police station. As testified by IO2 Pimentel:

> Q- You identified earlier the picture, am I correct also to say that the picture was only taken when you were already there in your office?
>
> A- Yes[,] Sir.
>
> Q- As well as the marking of the items were (*sic*) only made in your office?
>
> A- Yes[,] Sir.[31]

Second, although there was a media representative who signed the inventory report at the police office, such is not enough because the law requires that the mandatory witnesses should already be present during the actual inventory and not merely after the fact. Moreover, there was no representative from the Department of Justice (DOJ) or any elected official at the time of arrest of the accused and seizure of the illegal drugs, and inventory and photography of the seized items at the police station.[32] As testified by IO2 Pimentel:

> Q- There is Amor appeared in the inventory whose name is this? (*sic*)
>
> A- The representative from the media Gold Star Daily, Your Honor.

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[31] TSN, July 23, 2010, p. 20.

[32] *Rollo*, p. 6.

Q- What Gold Star Daily?

A- He is a media personnel, Your Honor, from the Gold Star Daily.

Q- Where was this inventory made and when was this made?

A- At our office on August 9, 2008 prior [to] 9:00 o'clock in the evening.

Q- Before going to the Crime Lab?

A- Yes, Your Honor.

Q- When did Amor appear in your office to sign?

A- Between that hours, Your Honor, after we arrived at the office more or less, Your Honor at around 8:00 o'clock, Your Honor. (*sic*)

Q- **She is the only witness during the making of the inventory?**

A- **Yes, Your Honor**.[33] (Emphasis supplied)

In this connection, the Court has repeatedly held that Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, **strictly 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 DOJ.[34]

Verily, the three required witnesses **should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation** — a requirement that

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[33] TSN, July 23, 2010, pp. 22-23.

[34] See RA 9165, Art. II, Sec. 21 (1) and (2); *Ramos v. People*, G.R. No. 233572, July 30, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64716>; *People v. Ilagan*, G.R. No. 227021, December 5, 2018, accessed at <http://elibrary.judiciary.gov.ph/ thebookshelf/showdocs/1/64800>; *People v. Mendoza*, G.R. No. 225061, October 10, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64646>.

can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.[35]

In addition, while the Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.[36] The failure of the apprehending team to strictly comply with the procedure laid out in Section 21 does not *ipso facto* render the seizure and custody over the items void; and this has ***always*** been 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.[37]

However, in this case, it is obvious that the police officers did not have a valid excuse for their deviation from Section 21 of RA 9165. Their mere allegation that they feared that the people started coming out of the house is nothing but a frail excuse since there were seven (7) of them and they were even armed:

[*IO1 Alfarol:*]

Q- That area is isolated?

A- At that time Your H[o]nor there are so many people.

Q- They gathered and you were afraid if they have companions?

A- Yes[,] Your Honor.

x x x x x x x x x

Q- How many of you were in that entrapment operation?

A- More or less seven sir.

Q- If there were seven of you and you were armed why are you afraid of the people in Olape?

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[35] *People v. Angeles*, G.R. No. 237355, November 21, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64869>.

[36] *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[37] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

A- Because it is already 9:00 p.m., there were many people watching us.

Q- You were not sure [i]f these people whether friendly or enemy? (*sic*)

A- Yes[,] sir.[38]

Thus, it is obvious that the buy-bust team manifestly disregarded the procedure laid down under Section 21 of RA 9165. Neither did they have any valid excuse to do so. The integrity and evidentiary value of the *corpus delicti* have thus been compromised and Buniag must accordingly be acquitted.

The buy-bust operation appears to have been a sham.

A buy-bust operation is a form of entrapment, in which the violator is caught in *flagrante delicto* and the police officers conducting the operation are not only authorized, but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.[39] However, where there was really no buy-bust operation conducted, it cannot be denied that the elements for attempted illegal sale of prohibited drugs, specifically the *corpus delicti* element, cannot be duly proved despite the presumption of regularity in the performance of official duty and the seeming straightforward testimony in court by the arresting police officers. Indubitably, the indictment for attempted illegal sale of prohibited drugs will not have a leg to stand on.[40]

In the case at bar, the following instances indicate that there was, contrary to the claim of the prosecution, really no buy-bust operation that was conducted by the police officers:

First, the police officers miserably failed to comply with the requirements under Section 21 of RA 9165. They did not

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[38] TSN, January 22, 2010, pp. 5-7.

[39] *People v. Mateo*, 582 Phil. 390, 410 (2008), citing *People v. Ong*, 476 Phil. 553, 571 (2004) and *People v. Juatan*, 329 Phil. 331, 337-338 (1996).

[40] *People v. Dela Cruz*, 666 Phil. 593, 605 (2011).

conduct any kind of marking, photography, or inventory of the seized items at the place of arrest. This puts in doubt their version of the events. Indeed, the total absence of any witness belies the claim that there was even a buy-bust operation.

Second, the police officers testified that even before the buy-bust operation, they purportedly already had a preliminary meeting with Buniag to discuss the drugs they were going to buy.[41] If this were true, then they could easily have done the proper preparation. It would have been easy to already contact the required witnesses to be present at the planned time of the buy-bust. That they still did not bring with them the required witnesses when they had all the time and opportunity to do so indicates, to a reasonable mind, that there was, in fact, no buy bust operation that had been planned. Indeed, the whole story of the police officers is doubtful, and the version of the defense that he was merely framed-up becomes more believable.

Thus, taking into consideration the defense of denial and frame-up by Buniag, in light of the testimonies of the police officers, the Court cannot conclude that there was a buy-bust operation conducted by the arresting police officers as they attested to and testified on.

The presumption of innocence of the accused is superior over the presumption of regularity in performance of official duties.

The CA held that the police officers enjoy the presumption of regularity in the performance of their official duties.[42] However, the Court finds that this presumption does not hold water in this case.

The Court has repeatedly held that the fact that a 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,

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[41] TSN, May 7, 2009, p. 3.

[42] *Rollo*, p. 13.

photographed and inventoried the seized items according to the procedures in their own operations manual.[43] As applied in this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165.

In this connection, the presumption of regularity in the performance of official duty cannot overcome the stronger presumption of innocence in favor of the accused.[44] The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[45] Thus, it would be a patent violation of the Constitution to uphold the importance of the presumption of regularity in the performance of official duty over the presumption of innocence, especially in this case where there are more than enough reasons to disregard the former.

All told, the prosecution failed to prove the *corpus delicti* of the crime charged due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug. In other words, the prosecution was not able to overcome the presumption of innocence of Buniag.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its Implementing Rules and Regulations, 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

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[43] *People v. Zheng Bai Hui*, 393 Phil. 68, 133 (2000).

[44] *People v. Mendoza*, 736 Phil. 749, 769-770 (2014).

[45] CONSTITUTION, Art. III, Sec. 14, par. (2): "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

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.[46]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated January 30, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01246, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **FERDINAND BUNIAG *y* MERCADERA** is **ACQUITTED** of the crime of violating Section 26(b), Article II of RA 9165 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 Penal Superintendent of the Davao Prison and Penal Farm, for immediate implementation. The said Penal Superintendent is **ORDERED** to **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 (Chairperson), Perlas-Bernabe, Reyes, J. Jr., and *Lazaro-Javier, JJ.,* concur.

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[46] See *People v. Jugo*, G.R. No. 231792, January 29, 2018.

SECOND DIVISION

[G.R. No. 217896. June 26, 2019]

THE HERITAGE HOTEL, MANILA, *petitioner, vs.* **LILIAN SIO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION; THE BASIC APPROACH IN A RULE 45 PETITION OF A RULE 65 DECISION OF THE COURT OF APPEALS (CA) THAT REVIEWED THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) DECISION IS TO EXAMINE THE SAID CA DECISION IN THE CONTEXT OF WHETHER IT CORRECTLY DETERMINED THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION IN THE NLRC DECISION. — In examining the present Rule 45 Petition, the Court is mindful of the nature of the petition resolved by the CA in its assailed rulings. The CA reviewed the decision of the NLRC through a special civil action for *certiorari* under Rule 65 of the Rules of Court — the sole mode of review of NLRC decisions, as the law and jurisprudence stand now. Being so, its jurisdiction was confined to errors of jurisdiction committed by the NLRC, whose decision might only be set aside if it committed grave abuse of discretion amounting to lack or excess of jurisdiction. Hence, it was incumbent upon Sio, the party who sought the review of the NLRC decision, to establish that the NLRC acted capriciously and whimsically in order that the extraordinary writ of *certiorari* would lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. These limitations in the CA's review powers greatly affect the scope of the Court's review in the present Rule 45 Petition. In *Montoya v. Transmed Manila Corp*., the Court laid down the basic approach in undertaking Rule 45 petitions of Rule 65 decisions of the CA and emphasized the need to examine the CA decision from the context of whether it correctly determined the presence or absence of grave abuse of discretion by the NLRC, as opposed to whether the NLRC decision was correct on the case's merits[.] x x x

These parameters of the review powers of the courts in decisions coming from the NLRC find more meaning when seen in the context of the authority of quasi-judicial bodies and the binding effect of their rulings. These bodies, like the NLRC, have acquired expertise in the specific matters entrusted to their jurisdiction. Thus, their findings of facts are accorded not only respect but even finality if they are supported by substantial evidence.

2. ID.; ID.; ID.; ID.; THE NLRC DID NOT ERR MUCH LESS COMMIT GRAVE ABUSE OF DISCRETION WHEN IT AFFIRMED THE FINDINGS OF THE LABOR ARBITER THAT RESPONDENT WAS VALIDLY AND LEGALLY SUSPENDED. — The LA and NLRC's findings were supported by substantial evidence on record. To put it differently, the NLRC did not err, much less commit grave abuse of its discretion, when it affirmed the findings of the LA that Sio was validly and legally suspended. The Court's own scrutiny of the decisions, pleadings and records of the case show no grave abuse of discretion on the part of the NLRC as its decision was based on substantial evidence and rooted in law. Perforce, the Court must grant Heritage's Petition.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER AND EMPLOYEE RELATIONSHIP; WHERE AN EMPLOYEE MADE IMPROPER UTTERANCES AGAINST A VALUED GUEST OF THE HOTEL-EMPLOYER, IT IS PREJUDICIAL TO THE LATTER'S INTEREST; EMPLOYER'S ACT OF IMPOSING UPON THE EMPLOYEE THE PENALTIES OF SUSPENSION WAS A VALID EXERCISE OF MANAGEMENT PREROGATIVE. — [O]n the findings of the CA that the statements of Sio "can hardly be considered words of arrogance, nor obscene, offensive, insulting or scandalous" and that Sio did not harm Heritage's image, interest or reputation, the Court agrees with Heritage that the CA, in so holding, seemingly focused merely on the words spoken and their literal sense without considering the manner in which these statements were made. The gravity of the statements made must not only be gauged against the words uttered but likewise on the relations between the parties involved and the circumstances of the case. As Heritage had explained, the persons who were on the receiving end of Sio's improper expressions were valued

guests and an employee of one of their largest clients — PAGCOR. The conduct of Sio did not just violate Heritage's Code of Conduct but was likewise inimical to its business relations with PAGCOR, and thus, prejudicial to the hotel's interest. It bears to emphasize that Sio was not dismissed. She was only suspended for a week for the first subject offense, and two (2) weeks for the second, after notice, hearing and an investigation. The Court finds that the penalties of suspension imposed upon Sio were not without valid bases and were reasonably proportionate to the infractions committed. In *Areno, Jr. v. Skycable PCC-Baguio*, the Court found proper the suspension imposed upon an employee who made malicious statements against a co-employee. The improper remarks hurled against valued guests and an employee of a valued client, in the present case, pose a greater threat to the interest of an employer and all the more merits a similar, if not graver, penalty. It is axiomatic that appropriate disciplinary sanction is within the purview of management imposition. What should not be overlooked is the prerogative of an employer company to prescribe reasonable rules and regulations necessary for the proper conduct of its business and to provide certain disciplinary measures in order to implement said rules to assure that the same would be complied with. An employer has a free reign and enjoys wide latitude of discretion to regulate all aspects of employment, including the prerogative to instill discipline in its employees and to impose penalties, including dismissal, upon erring employees. In sum, there is substantial evidence to show that Sio was guilty of the charges against her and was afforded procedural due process. Hence, the act of Heritage of imposing upon her the penalties of suspension was a valid exercise of an employer's management prerogative.

APPEARANCES OF COUNSEL

Pasamonte Pascua & Associates Law Offices for petitioner.

R E S O L U T I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision dated November 21, 2014 (Assailed Decision)[2] and Resolution dated April 16, 2015 (Assailed Resolution)[3] of the Court of Appeals (CA) Special Fifteenth Division and Former Special Fifteenth Division, respectively, in CA-G.R. SP No. 127460.

Facts

Petitioner The Heritage Hotel Manila (Heritage) employed Lilian Sio (Sio) as a Service Agent on September 1, 1995. She was last assigned at the hotel's restaurant, Le Café.[4] Her tasks included assisting in the serving of food and beverages to Heritage's guests.[5]

The case involves two separate penalties of suspension imposed upon Sio for incidents occurring on two different dates.

The first subject incident occurred on April 29, 2011, at around 11:00 in the evening. One of Heritage's guests, Erlinda Tiozon (Tiozon), ordered food and beverage using Heritage's Player Tracking System (PTS), a system where clients earn points while playing at the casino inside Heritage's premises, which points may be used to purchase food and beverages.[6] The parties dispute what happened thereafter.

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[1] *Rollo*, pp. 3-38.

[2] *Id*. at 276-288; Penned by Associate Justice Sesinando E. Villon, with Associate Justices Melchor Quirino C. Sadang and Pedro B. Corales concurring.

[3] *Id*. at 304-305.

[4] *Id*. at 164.

[5] *Id*. at 277.

[6] *Id*. at 328.

According to Sio, Tiozon was unable to present her PTS card which is needed to process orders. Sio sought the advice of Jeffrey Bumatay (Bumatay), the slot machine host in the casino, and asked for his approval. The latter, however, refused to act on the request without the PTS card. Sio relayed the matter to Tiozon, who became furious. To avoid confrontation, Sio went back to Bumatay and explained the situation. It was then that Bumatay allowed the transaction and processed the orders of Tiozon.[7]

On the other hand, Heritage avers that Tiozon was a VIP guest of Philippine Amusement and Gaming Corporation (PAGCOR), one of Heritage's biggest clients which draws several guests for Heritage because of the latter's casino operations inside the hotel. After an investigation, Heritage discovered that Tiozon requested Sio to get her PTS Card at the slot machines area so that the former could order food and beverage. Instead of answering Tiozon politely, Sio arrogantly and sarcastically said, "*[D]i ako pwede kumuha ng PTS card sa slot machine basement area*." The impolite response irked Tiozon. Realizing that Tiozon was already upset, Sio then took Tiozon's order and went to get her PTS card. She, thereafter, proceeded to Bumatay to obtain the latter's approval for the orders. Bumatay asked Sio if there were slot machine supervisors in Sio's area who could approve her orders, as per standard operating procedure. But the latter sarcastically answered, "*[P]upunta pa ba ako dito sa SM main area kung mayroong supervisor doon sa HBC?!*"[8]

After Tiozon complained of her encounter with Sio to Bumatay and because of his own experience, Bumatay submitted to Heritage a written report/complaint dated April 30, 2011.[9] On May 2, 2011, Heritage issued a memorandum requiring Sio to submit her written explanation on the following violations of Heritage's Code of Conduct:

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[7] *Id.* at 328-329.

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

[9] *Id.* at 11-13.

Major Offense #09

Show of discourtesy, disrespect or use offensive, obscene, or insulting language or arrogance either by acts or words towards Hotel guests, clients, suppliers, superiors or fellow employees.

Major offense #10

Creating or contributing to disturbance, or engaging in scandalous behavior, inside Hotel premises or committing any act which in any manner disturbs the peace and order within the company premises whether on or off duty.

Major Offense #11

Engaging another person into a (*sic*) heated or near violent arguments or discussions. This includes use of obscene, grave, profane and humiliating language against another person.[10]

On May 13, 2011, Sio submitted her written explanation[11] denying Bumatay's narration in his report/complaint. On May 26, 2011, an administrative hearing was conducted, wherein Bumatay and another witness who was an employee of Heritage, Jesse Barroga, affirmed the statements in the former's report.[12] Sio, instead of refuting the charges, apologized to Bumatay and signed the minutes of the administrative hearing.[13] After finding her guilty of the charges, Heritage imposed upon Sio the penalty of one-week suspension from June 7 to 14, 2011.[14] Sio served her suspension.

The second subject incident occurred on September 21, 2011. Another Heritage client, Mussa Mendoza (Mendoza), together with a companion, ordered a clubhouse sandwich from Sio. After some time, Mendoza's companion cancelled the order. Sio thereafter overheard Mendoza inquiring about her order,

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

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

[12] *Id*. at 47.

[13] *Id*.

[14] *Id*. at 48.

at which point Sio informed Mendoza that an unidentified female customer cancelled her orders. Sio then approached Mendoza's companion and, in a strong voice, remarked, "*Ikaw na magexplain sa kanya at baka maghanap pa siya*." Embarrassed and offended by Sio's arrogant remark as she felt "like she was a dog looking for a food to eat,"[15] Mendoza lodged a complaint against Sio on September 22, 2011 with Heritage's Human Resource (HR) Department. The HR director summoned Sio to the investigation room to explain. Therein, Sio apologized to Mendoza but the same was rejected by the latter.[16]

On October 5, 2011, Sio was issued a second memorandum[17] requiring her to explain in writing why no disciplinary action should be imposed on her for violating the same provisions of the company rules as those enumerated in the earlier May 2, 2011 memorandum and, additionally:

Major Offense #28

Issuing statements or committing acts inimical to Hotel's image, interest or reputation.[18]

Sio submitted her explanation dated October 7, 2011,[19] stating that Mendoza's allegations in her complaint were purely hearsay because Sio was not talking to Mendoza but to the latter's companion when she was quoted as saying, "*Ikaw na mag-explain sa kanya at baka maghanap pa siya*."[20]

Finding no merit in her explanation, Heritage issued a memorandum and a Report, both dated October 21, 2011, finding Sio guilty of the new charges and imposing upon her the penalty of suspension for two (2) weeks, beginning October 18 to

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[15] *Id*. at 49.

[16] *Id*. at 280-281.

[17] *Id*. at 50.

[18] *Id*. at 18.

[19] *Id*. at 51.

[20] *Id*.

November 2, 2011, with a warning that a similar offense in the future would merit dismissal.[21]

Aggrieved and averring that she was likewise an active union member, Sio filed a complaint for Unfair Labor Practice (ULP), illegal suspension and other monetary claims before the arbitration branch of the National Labor Relations Commission (NLRC).

In a Decision dated April 24, 2012,[22] the Labor Arbiter (LA) dismissed Sio's complaint for lack of merit. According to the LA, Sio failed to refute Heritage's allegations and even apologized to her complainants during the hearings. The LA concluded that Sio's suspension was based on valid and legitimate grounds and that such act of Heritage was not tantamount to illegal suspension, being a legitimate exercise of management prerogative.

Sio appealed to the NLRC, which rendered a Decision dated July 31, 2012,[23] denying the appeal and affirming the LA's findings. According to the NLRC, Sio failed to disprove Heritage's charges, thus, making the suspensions based on said charges legal. Additionally, the NLRC ruled that as the suspensions were legal, the charge of ULP must perforce fail. Sio filed a Motion for Reconsideration (MR) which was, however, denied in a Resolution dated September 18, 2012. Hence, Sio filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the CA.

In the Assailed Decision, the CA partially granted Sio's petition and annulled and set aside the NLRC's rulings. According to the CA, the complaining guests were not adduced by Heritage to corroborate the latter's charges.[24] The evidence presented

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[21] *Id*. at 53-54.

[22] *Id*. at 116-129. Penned by Labor Arbiter Daniel J. Cajilig.

[23] *Id*. at 163-173. Penned by Commissioner Nieves E. Vivar-de Castro, with the concurrence of Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra.

[24] *Id*. at 284.

by Heritage, specifically the report/complaint of Bumatay and the complaint of Mendoza were hearsay evidence, thus, bereft of any evidentiary value.[25] Finally, Sio's alleged statements could hardly be considered arrogant and as sufficient grounds for her suspension.[26] In sum, the CA found that the NLRC committed grave abuse of discretion in affirming the ruling of the LA[27] and found Heritage guilty of illegal suspension. As such, the CA awarded Sio backwages and other benefits as well as moral and exemplary damages, thus:

> **WHEREFORE**, in light of all the foregoing, the petition is **PARTIALLY GRANTED**. Accordingly, the decision dated July 31, 2012 and resolution dated September 18, 2012 of public respondent National Labor Relations Commission in NLRC LAC No. 06-001823-12 are **ANNULLED** and **SET ASIDE**.
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> Private respondent, The Heritage Hotel, is found liable for illegal suspension and is hereby **ORDERED** to pay petitioner Lilian S. Sio the amount of ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages. This case is thus **REMANDED** to the Labor Arbiter for the computation, within 30 days from receipt hereof, of the backwages, inclusive of allowances and other benefits due petitioner, computed from the time her compensation was withheld up to the time of her actual reinstatement, in addition to the aforesaid amounts.
>
> SO ORDERED.[28]

Heritage filed an MR but the same was denied in the Assailed Resolution. Hence, the present recourse.

In assailing the findings of the CA, Heritage avers that: 1) the CA erred in disturbing the factual findings of the LA, as affirmed by the NLRC,[29] which findings are supported by substantial

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[25] *Id*. at 285.

[26] *Id*. at 284-285.

[27] *Id*. at 287.

[28] *Id*.

[29] *Id*. at 22-23.

evidence;[30] 2) Bumatay's report is not hearsay as he himself was a complainant in the administrative case against Sio, having himself received disrespectful words from Sio; 3) Bumatay was not an employee of Heritage but that of PAGCOR, one of Heritage's biggest clients which operates a casino inside the hotel's premises. Heritage, on the other hand, offers food and beverages to the guests of PAGCOR in the latter's casino, under a contract between the two entities; 4) being a client of Heritage which draws in a significant number of guests to the hotel, it is of paramount importance to Heritage that it provides top-quality service to PAGCOR's guests and treats the latter's employees with respect;[31] 5) Sio was afforded every opportunity to deny all the charges against her but instead of doing so, she apologized to her complainants; 6) having proven the charges against Sio, and with Sio having failed to even deny such charges and confront her complainants during the administrative hearings, Heritage had no choice but to penalize her with suspension;[32] 7) pieces of evidence, other than the allegedly hearsay report/complaint, were presented by Heritage such as the minutes of the administrative hearing;[33] 8) the CA failed to appreciate the arrogant and offensive manner by which Sio's questioned statements were made and merely focused on their literal meaning;[34] and 9) as Sio's suspensions were valid, the award in her favor of backwages and other benefits as well as moral and exemplary damages was improper.[35]

Issue

Whether the CA erred in ruling that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when the latter affirmed the LA's decision and found that the suspensions of Sio were valid and legal.

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[30] *Id*. at 25.

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

[32] *Id*. at 29.

[33] *Id*. at 30.

[34] *Id*. at 31.

[35] *Id*. at 33-35.

Ruling

There is merit in the petition.

At the outset, the Court notes that the Petition raises mixed questions of law and fact. In a petition for review on *certiorari*, generally, only questions of law may be raised and questions of fact may not be inquired into.[36] However, as the findings of the labor tribunals, on the one hand, and the CA, on the other, are conflicting, the present case falls under jurisprudential exemptions to this general rule.[37] Hence, the Court may proceed to resolve the issues raised herein.

In examining the present Rule 45 Petition, the Court is mindful of the nature of the petition resolved by the CA in its assailed rulings. The CA reviewed the decision of the NLRC through a special civil action for *certiorari* under Rule 65 of the Rules of Court — the sole mode of review of NLRC decisions, as the law and jurisprudence stand now.[38] Being so, its jurisdiction was confined to errors of jurisdiction committed by the NLRC, whose decision might only be set

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[36] See *Naguit v. San Miguel Corporation*, 761 Phil. 184, 193 (2015).

[37] As enumerated in *Pascual v. Burgos*, 776 Phil. 167, 182 (2016), the exceptions are:

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

[38] See *St. Martin Funeral Home v. NLRC*, 356 Phil. 811-816 (1998).

aside if it committed grave abuse of discretion amounting to lack or excess of jurisdiction.[39]

Hence, it was incumbent upon Sio, the party who sought the review of the NLRC decision, to establish that the NLRC acted capriciously and whimsically in order that the extraordinary writ of *certiorari* would lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically.[40]

These limitations in the CA's review powers greatly affect the scope of the Court's review in the present Rule 45 Petition. In *Montoya v. Transmed Manila Corp.*,[41] the Court laid down the basic approach in undertaking Rule 45 petitions of Rule 65 decisions of the CA and emphasized the need to examine the CA decision from the context of whether it correctly determined the presence or absence of grave abuse of discretion by the NLRC, as opposed to whether the NLRC decision was correct on the case's merits, thus:

> x x x In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. **In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.** This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: **Did the CA**

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[39] See *Philippine National Bank v. Gregorio*, G.R. No. 194944, September 18, 2017, 840 SCRA 37, 50.

[40] See *Leonis Navigation Co., Inc. v. Villamater*, 628 Phil. 81, 92 (2010).

[41] 613 Phil. 696 (2009).

correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?[42] (Emphasis supplied)

These parameters of the review powers of the courts in decisions coming from the NLRC find more meaning when seen in the context of the authority of quasi-judicial bodies and the binding effect of their rulings. These bodies, like the NLRC, have acquired expertise in the specific matters entrusted to their jurisdiction. Thus, their findings of facts are accorded not only respect but even finality if they are supported by substantial evidence.[43]

With these guidelines on hand, the Court is tasked to determine whether the CA correctly ruled that the NLRC committed grave abuse of discretion in affirming the findings of the LA and holding that Sio's suspensions were valid and legal. Phrased differently, the Court shall examine if the decision of the NLRC was supported by substantial evidence; and if so, must therefor be accorded not only respect but finality.

The Court rules that it was.

Sio was involved in two separate incidents which led to the questioned suspensions. Both the LA and the NLRC found that, in both occasions, Sio committed the acts which justified her suspension. For the first incident, the labor tribunals found that she arrogantly talked to the VIP client, Tiozon and the PAGCOR employee, Bumatay. For the second incident, she made utterances which embarrassed another client, Mendoza. Moreover, the labor tribunals found that Sio was afforded procedural due process. In both instances, she submitted her explanations. During the administrative hearings, she failed to refute the allegations and to present evidence to controvert them. Instead, she even apologized to the complainants.

On appeal, the CA rejected these findings because, according to it, no direct statements coming from the complaining guests were adduced by Heritage. Bumatay's report/complaint as to

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[42] *Id*. at 707.

[43] *Supra* note 39 at 51-52.

the first incident and Mendoza's complaint on the second incident are, according to the CA, not based on their personal knowledge, and therefore covered by the rule excluding hearsay evidence.[44] Per the CA, Bumatay did not personally hear the exchange between Sio and Tiozon. Moreover, Mendoza, the complainant in the second incident, was not the person to whom Sio allegedly made the utterances complained of.

The Court cannot sustain the rulings of the CA.

First, Bumatay's report/complaint and Mendoza's complaint can hardly be considered hearsay evidence. Bumatay was himself a complainant in the first administrative case against Sio. A reading of the Complaint dated April 30, 2011[45] shows that it actually pertains to two separate occasions which both took place on April 30, 2011: 1) the exchange between Sio and Bumatay and 2) the exchange between Sio and Tiozon. The Complaint is signed by Bumatay and attested to by Tiozon. Anent the second incident occurring on September 21, 2011, the complaint of Mendoza clearly shows that she was referring to a personal offense when she heard Sio talking about her to her (Mendoza's) companion. The complaint states: "Thereafter, FA Sio approached the said unidentified female customer then allegedly remarked, '*Ikaw na mag explain sa kanya at baka maghanap pa siya*,' which prompted Ms. MENDOZA to get irk (sic) and embarrassed as she feels (sic) like she was a dog looking for food to eat."[46]

Second, even assuming that the aforementioned pieces of evidence were hearsay, the CA still erred in ruling that Sio was invalidly suspended on such basis. Administrative bodies like the NLRC are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law.[47] Rules of evidence are not strictly observed in proceedings before administrative bodies and the Court has allowed cases to be

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[44] *Rollo*, pp. 284-285.

[45] *Id*. at 43.

[46] *Id*. at 49. (Underscoring ours)

[47] *Samalio v. CA*, 494 Phil. 456, 464 (2005).

decided on the basis of position papers and other documents without necessarily resorting to technical rules of evidence as observed in the regular courts of justice.[48] The Labor Code itself mandates the labor tribunals to use all means reasonable to ascertain the facts of the case without regard to technicalities, in the interest of due process, thus:

> ARTICLE 227. [221] *Technical Rules Not Binding and Prior Resort to Amicable Settlement*. — In any proceeding before the Commission or any of the Labor Arbiters, **the rules of evidence prevailing in courts of law or equity shall not be controlling** and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall **use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process**. (Emphasis supplied)

Further, Sio's suspensions were imposed by Heritage not solely on the basis of Bumatay's report/complaint on the first incident or Mendoza's complaint on the second incident. Rather, Sio was allowed to explain in writing, and administrative hearings were conducted to afford her an opportunity to rebut the charges against her. Other witnesses attended the hearing as shown by the **minutes of the conference meeting**[49] attached to the Petition. The evidence likewise shows that Sio, instead of refuting the charges, apologized to the complainants. In other words, other pieces of evidence were presented by Heritage to prove the validity of Sio's suspension.

Third, on the findings of the CA that the statements of Sio "can hardly be considered words of arrogance, nor obscene, offensive, insulting or scandalous"[50] and that Sio did not harm Heritage's image, interest or reputation,[51] the Court agrees with Heritage that the CA, in so holding, seemingly focused merely on the words spoken and their literal sense without considering

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[48] See *Sevilla v. I.T. (International) Corp., et al.*, 408 Phil. 570, 580 (2001).

[49] *Rollo*, p. 47.

[50] *Id*. at 284-285.

[51] *Id*. at 285.

the manner in which these statements were made. The gravity of the statements made must not only be gauged against the words uttered but likewise on the relations between the parties involved and the circumstances of the case. As Heritage had explained, the persons who were on the receiving end of Sio's improper expressions were valued guests and an employee of one of their largest clients — PAGCOR. The conduct of Sio did not just violate Heritage's Code of Conduct but was likewise inimical to its business relations with PAGCOR, and thus, prejudicial to the hotel's interest.

It bears to emphasize that Sio was not dismissed. She was only suspended for a week for the first subject offense, and two (2) weeks for the second, after notice, hearing and an investigation. The Court finds that the penalties of suspension imposed upon Sio were not without valid bases and were reasonably proportionate to the infractions committed. In *Areno, Jr. v. Skycable PCC-Baguio*,[52] the Court found proper the suspension imposed upon an employee who made malicious statements against a co-employee. The improper remarks hurled against valued guests and an employee of a valued client, in the present case, pose a greater threat to the interest of an employer and all the more merits a similar, if not graver, penalty.

It is axiomatic that appropriate disciplinary sanction is within the purview of management imposition. What should not be overlooked is the prerogative of an employer company to prescribe reasonable rules and regulations necessary for the proper conduct of its business and to provide certain disciplinary measures in order to implement said rules to assure that the same would be complied with.[53] An employer has a free reign and enjoys wide latitude of discretion to regulate all aspects of employment, including the prerogative to instill discipline in its employees and to impose penalties, including dismissal, upon erring employees.[54]

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[52] 625 Phil. 561 (2010).

[53] *Id*. at 576-577.

[54] *Torreda v. Toshiba Information Equipment (Phils.), Inc.*, 544 Phil. 71, 94 (2007).

In sum, there is substantial evidence to show that Sio was guilty of the charges against her and was afforded procedural due process. Hence, the act of Heritage of imposing upon her the penalties of suspension was a valid exercise of an employer's management prerogative.

The LA and NLRC's findings were supported by substantial evidence on record. To put it differently, the NLRC did not err, much less commit grave abuse of its discretion, when it affirmed the findings of the LA that Sio was validly and legally suspended. The Court's own scrutiny of the decisions, pleadings and records of the case show no grave abuse of discretion on the part of the NLRC as its decision was based on substantial evidence and rooted in law. Perforce, the Court must grant Heritage's Petition.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed Decision dated November 21, 2014 and Resolution dated April 16, 2015 of the CA in CA-G.R. SP No. 127460 are **REVERSED**. The NLRC Decision dated July 31, 2012 is **REINSTATED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 219694. June 26, 2019]

EEG DEVELOPMENT CORPORATION and EDUARDO E. GONZALEZ, *petitioners, vs.* **HEIRS OF VICTOR C. DE CASTRO (DECEASED), FRANCIS C. DE CASTRO, DON EMIL C. DE CASTRO, EGINO C. DE CASTRO, and ANDRE C. DE CASTRO,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; BUYER IN GOOD FAITH, EXPLAINED; THE RULE THAT THE BUYER OF A REGISTERED LAND HAS NO OBLIGATION TO INQUIRE BEYOND THE FOUR CORNERS OF THE TITLE APPLIES ONLY UPON CONCURRENCE OF THE THREE CONDITIONS; CONDITIONS OBTAINED IN CASE AT BAR. — A person, to be considered a buyer in good faith, should buy the property of another without notice that another person has a right to, or interest in, such property, and should pay a full and fair price for the same at the time of such purchase, or before he has notice of the claim or interest of some other persons in the property. As to registered and titled land, the buyer has no obligation to inquire beyond the four corners of the title. To prove good faith, he must only show that he relied on the face of the title to the property; and such proof of good faith is sufficient. However, the rule applies only when the following conditions concur, namely: *one*, the seller is the registered owner of the land; *two*, the latter is in possession thereof; and, *three*, the buyer was not aware at the time of the sale of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his capacity to convey title to the property. Absent any of the foregoing conditions, the buyer has the duty to exercise a higher degree of diligence by scrutinizing the certificate of title and examining all factual circumstances in order to determine the seller's title and capacity to transfer any interest in the property. All the foregoing conditions obtained herein. x x x Worthy to stress is that the title (TCT No. N-161693) showed no defect of or restriction on De Castro, Sr.'s capacity to convey title. The only encumbrance then annotated thereon was the mortgage entered into in favor of IBank on July 19, 1996, but the mortgage was cancelled on July 21, 1998 following the payment by Gonzalez of De Castro, Sr.'s unpaid debt in pursuance of the former's purchase of the property. This transaction occurred prior to the annotation of the adverse claim of respondents on August 12, 1998. As such, petitioners had no duty to inquire beyond the four corners of the title.

2. ID.; ID.; LAND REGISTRATION ACT; TORRENS SYSTEM AS THE MOST EFFECTIVE MEASURE TO GUARANTEE THE INTEGRITY OF THE LAND TITLES AND TO

PROTECT THEIR INDEFEASIBILITY, EXPLAINED; PETITIONERS BEING INNOCENT PURCHASERS FOR VALUE MERITED THE FULL PROTECTION OF THE LAW. — The Torrens system was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership thereto was established and recognized. It was designed to avoid possible conflicts in the records of real property and to facilitate transactions relative to real property by giving the public the right to rely upon the face of the Torrens certificate of title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that should impel a reasonably cautious man to make such further inquiry. This rule, now enshrined in Section 55 of the Land Registration Act, puts an innocent purchaser for value under the protection of the Torrens system. An innocent purchaser for value has the right to rely on the correctness of the Torrens certificate of title without any obligation to go beyond the certificate to determine the condition of the property. The rights an innocent purchaser for value may acquire cannot be disregarded or cancelled by the court; otherwise, the evil sought to be prevented by the Torrens system would be impaired and public confidence in the Torrens certificate of title would be eroded because everyone dealing with property registered under the Torrens system would be required to inquire in every instance as to whether the title has been regularly or irregularly issued by the court. x x x Being innocent purchasers for value, petitioners merited the full protection of the law.

3. ID.; ID.; ID.; A FORGED OR FRAUDULENT DEED IS GENERALLY A NULLITY THAT CONVEYS NO TITLE; EXCEPTION THERETO, APPLIED. — Generally, a forged or fraudulent deed is a nullity that conveys no title. However, this generality is not cast in stone. The exception, to the effect that a fraudulent document may become the root of a valid title, exists where there is nothing in the certificate of title to indicate at the time of the transfer or sale any cloud or vice in the ownership of the property, or any encumbrance thereon. The exception was what happened herein. Even granting that De Castro, Sr. had registered the property under his name through fraud, and that he had no authority to sell it, the sale thereof by him in favor of petitioners nonetheless validly conveyed ownership to the latter because no defect, cloud, or vice that

could arouse any suspicion on their part had appeared on the title. Verily, any buyer or mortgagee of realty covered by a Torrens certificate of title, in the absence of any suspicion, is not obligated to look beyond the certificate to investigate the titles of the seller appearing on the face of the certificate; he is charged with notice only of such burdens and claims as are annotated on the title.

APPEARANCES OF COUNSEL

Reyno Tiu Domingo & Santos Law Offices for petitioners.
Raul A. Mora for respondents.

D E C I S I O N

BERSAMIN, *C.J.*:

This case concerns the purchase of a registered parcel of land which is being assailed as void for the lack of authority of the seller to sell, and the buyers putting forth the defense that they were innocent purchasers for value.

The Case

Petitioners appeal to reverse and set aside the adverse decision promulgated on April 28, 2015,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered by the Regional Trial Court (RTC), Branch 217, in Quezon City on February 11, 2011 annulling the sale between petitioners and Joseph L. De Castro, Sr. covering the registered parcel of land and its improvements on the ground of fraud.[2]

Antecedents

The disputed sale pertains to the parcel of land with an area of 480 square meters located at No. 19 Spencer St., Cubao,

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[1] *Rollo*, pp. 47-58; penned by Associate Justice Sesinando E. Villon, with Associate Justice Rodil V. Zalameda and Associate Justice Pedro B. Corales concurring.

[2] *Id.* at 99-112; penned by Judge Santiago M. Arenas.

Quezon City and covered by Transfer Certificate of Title (TCT) No. 67024 of the Register of Deeds of Quezon City registered under the name of Joseph De Castro, Sr. (De Castro, Sr.), married to Dionisia De Castro (Dionisia). De Castro, Sr. and Dionisia (spouses) had built their family home on the lot, and had been living therein with their 13 children, namely: Joseph, Jr., Olivia, Hubert, Dionisia, Daniel, Victor, Francis, Hiram, Don Emil, Egino, Andre, Alton, and Patricia. The original of the TCT, which was among the records destroyed in the fire that gutted the premises of the City Hall of Quezon City in 1987, was reconstituted, and TCT No. RT-54796 was then issued.[3]

A mortgage was constituted on the property in favor of the Development Bank of the Philippines (DBP) to secure the performance of the obligation of the spouses under the loan taken in April 1973. After they defaulted, DBP extrajudicially foreclosed the mortgage in January 1982. On October 25, 1990, Dionisia passed away. On December 14, 1990, or almost eight years from the lapse of the reglementary period within which to redeem the foreclosed subject property, the property was redeemed.[4]

In 1996, De Castro, Sr. obtained a new loan from the International Exchange Bank (IBank), and secured the performance thereof by constituting a real estate mortgage on the subject property.[5] De Castro, Sr. defaulted, and IBank extrajudicially foreclosed the mortgage. The property was sold at public auction in which IBank emerged as the highest bidder.

In July 1998, De Castro, Sr., together with his sons Alton and Hubert, fearing the loss of the property for a measly price and to a stranger, offered to petitioner Eduardo E. Gonzalez (Gonzalez) to buy the subject property by paying the redemption price to IBank. They agreed on the offer. On July 29, 1998, Gonzalez settled De Castro, Sr.'s debt with IBank in the amount

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[3] *Id*. at 48.

[4] Records, p. 501 (DBP Official Receipt No. 429179; Exhibit "D" and Exhibit "9-B").

[5] *Rollo*, p. 105 and Exhibit "2-A".

of ₱7,000,000.00. As proof of payment, IBank issued Official Receipt No. 075111 dated July 20, 1998.[6] IBank delivered to Gonzalez TCT No. N-161693 free from any encumbrance except for the mortgage in favor of IBank. On July 21, 1998, IBank issued the cancellation of the mortgage.[7]

On his part, De Castro, Sr. issued the acknowledgment receipt dated July 24, 1998 as proof of his receipt from Gonzalez of the full payment of the purchase price for the sale of the property. On the same date, De Castro, Sr. executed and delivered an irrevocable special power of attorney appointing Gonzalez as his true and lawful attorney-in-fact to pay and settle his unpaid obligation with IBank; to cause the release and cancellation of the encumbrance annotated at the back of TCT No. N-161693 of the Registry of Deeds for Quezon City; and to demand and receive on his behalf the original copy of the Owner's Duplicate Copy of TCT No. N-161693, and all other documents pertaining thereto.

Meanwhile, Gonzalez transferred the subject property to co-petitioner EEG Development Corporation (EEG) by the deed of sale also dated July 24, 1998. However, due to EEG's incorporation being then still pending approval by the Securities and Exchange Commission (SEC), the deed of sale was not immediately registered in the Registry of Deeds. Upon approval by the SEC of EEG's incorporation, De Castro, Sr. executed in favor of EEG another deed of absolute sale on August 14, 1998.[8] Thereafter, TCT No. N-161693, registered under the name of De Castro, Sr., was cancelled and a new title, TCT No. N-194773, was issued in the name of EEG.

On August 7, 1998, De Castro, Sr. and Alton, together with a few personnel from the Office of the City Engineer of Quezon City and some policemen, proceeded to the property to demolish the house constructed thereon, by virtue of the demolition permit

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[6] Exhibit "6".

[7] Exhibit "7" and Exhibit "2-B".

[8] Exhibit "K" and Exhibit "2".

dated July 10, 1998. This alarmed respondents, who sought the help of then Quezon City Mayor Ismael G. Mathay to try to prevent the demolition.

On August 8, 1998, respondents learned that the property had been sold to petitioners. Asserting that De Castro, Sr., their father, had no authority to sell the property by himself, respondents annotated their adverse claim on the title on August 12, 1998.[9] Thus, upon the release of TCT No. N-194773, petitioners were surprised to find thereon the annotation of the affidavit of adverse claim dated August 12, 1998 stating that affiant Don Emil was a co-owner by virtue of inheriting an aliquot part corresponding to his mother's share.

On April 7, 1999, five of De Castro, Sr.'s children, namely: respondents Victor, Francis, Don Emil, Egino, and Andre, commenced an action for quieting of title, nullity of documents, prohibition, and damages in the RTC in Quezon City, docketed as Civil Case No. Q99-37261 against petitioners.[10] Also impleaded were the Office of the City Engineer of Quezon City and the Secretary of Public Works and Highways in connection with the demolition of the house built on the property was concerned.

Respondents submitted that the subject property was conjugal because it had been acquired during the marriage of De Castro, Sr. and Dionisia; that the sale to petitioners was void because De Castro, Sr. had no authority to sell the property by himself and without their consent; that respondents had inherited Dionisia's share upon her demise, thereby making them co-owners of the property; that the extrajudicial settlement of the estate of Dionisia in favor of De Castro, Sr. did not confer any authority upon him to dispose of the property by himself because not all of his children had signed the settlement; and that petitioners were buyers in bad faith by virtue of their knowledge of respondents' adverse claim, and because the property was not in the exclusive possession of De Castro, Sr. at the time of sale.

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[9] Exhibit "C".

[10] Records, pp. 4-21.

In contrast, petitioners contended that they were buyers in good faith because the title was free from any liens and encumbrances at the time of purchase, and they had no knowledge of any adverse interest in the property; that the sale had been made prior to the annotation of respondents' adverse claim inasmuch as the cancellation of the mortgage, as proof of the sale, had been annotated prior to the same. They specifically represented that:

1. At the time of sale, De Castro, Sr.'s title, TCT No. N-161693, contained no annotation or encumbrances, save for the mortgage in favor of IBank.[11]
2. IBank issued Official Receipt No. 075111 dated July 20, 1998,[12] which proved Gonzalez's payment of the redemption price to IBank;
3. In view of Gonzalez's payment, IBank cancelled the mortgage as evidenced by the Cancellation of Mortgage dated July 22, 1998;[13]
4. De Castro, Sr. executed an Acknowledgment Receipt dated July 24, 1998, which proved that he had received full payment of the purchase price from Gonzalez; and
5. The Deed of Sale was likewise executed on July 29, 1998 in favor of EEG.

Judgment of the RTC

Through the judgment rendered on February 11, 2011,[14] the RTC ruled in favor of respondents, holding that De Castro, Sr. had no authority to sell the property without their consent; that as co-owners, they had a right in the property; that the sale between Gonzalez and De Castro, Sr. was void, and prejudiced respondents' interest in the property; and that petitioners were

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[11] Exhibit "10".

[12] Exhibit "6".

[13] Exhibit "10".

[14] *Supra*, note 2.

buyers in bad faith because at the time of the sale, they had been aware of the respondents' adverse claim.

The RTC disposed:

WHEREFORE, premises considered, judgment is hereby rendered ordering as follows:

1. Declaring null and void and of no force and effect:
   a) The extra-judicial settlement dated May 29, 1996 executed by Joseph de Castro, Sr.;
   b) The Transfer Certificate of Title No. 161693;
   c) The Deed of Absolute Sale executed on August 14, 1998 by and between Joseph De Castro, Sr. and EEG Development Corporation; and
   d) The Transfer Certificate of Title No. 194773;
2. Ordering the Register of Deeds, Quezon City, to cancel the above Transfer Certificate of Titles and fortwith issue a new Transfer Certificate of Title in the name of defendant Joseph de Castro, Sr. and all his thirteen (13) children as co-owners pro-indiviso of the subject property; and
3. Ordering the defendants Joseph de Castro, Sr., Alton de Castro, E.E.G. Development Corporation and Eduardo E. Gonzalez, jointly and severally, to pay to the plaintiffs the sum of Four Hundred Thousand (₱400,000.00) Pesos for moral damages; and the sum of Fifty Thousand (₱50,000.00) Pesos for attorney's fees and costs of suit.

SO ORDERED.[15]

Decision of the CA

As earlier mentioned,[16] the CA affirmed the judgment of the RTC on appeal, and declared that petitioners were buyers in bad faith for having failed to inquire into the condition of the property despite its being then in the possession of respondents and because of the adverse claim annotated on the title. The

[15] *Rollo*, pp. 111-112.

[16] *Supra*, note 1.

CA observed that "[t]he subsequent sale of [a] property covered by a certificate of title cannot prevail over an adverse claim, duly sworn to and annotated on the certificate of title previous to the sale."

However, the CA considered the amount of moral damages exorbitant, and reduced it from ₱400,000.00 to ₱100,000.00.[17]

Issue

Were petitioners buyers in good faith?

Ruling of the Court

The appeal is meritorious.

A person, to be considered a buyer in good faith, should buy the property of another without notice that another person has a right to, or interest in, such property, and should pay a full and fair price for the same at the time of such purchase, or before he has notice of the claim or interest of some other persons in the property.[18]

As to registered and titled land, the buyer has no obligation to inquire beyond the four corners of the title. To prove good faith, he must only show that he relied on the face of the title to the property; and such proof of good faith is sufficient. However, the rule applies only when the following conditions concur, namely: *one*, the seller is the registered owner of the land; *two*, the latter is in possession thereof; and, *three*, the buyer was not aware at the time of the sale of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his capacity to convey title to the property.[19] Absent any of the foregoing conditions, the buyer has the duty to exercise a higher degree of diligence by scrutinizing the certificate of title and examining all factual

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[17] *Id*.

[18] *Uy v. Fule*, G.R. No. 164961, June 30, 2014, 727 SCRA 456, 472-473.

[19] *Id*. at 475; see also *Bautista v. Silva*, G.R. No. 157434, September 19, 2006, 502 SCRA 334, 347.

circumstances in order to determine the seller's title and capacity to transfer any interest in the property.[20]

All the foregoing conditions obtained herein. To start with, the face of the title reveals that the seller, De Castro, Sr., was the registered owner.[21] Secondly, De Castro, Sr. was the person in actual possession of the property. Although the property was also under the possession of respondents, there was nothing extraordinary with this circumstance that could arouse any suspicion on the part of the buyer because De Castro, Sr. and his children were all expected to live therein. Petitioners were also aware that the property had always been in the possession of respondents and their parents. As a matter of fact, Don Emil testified that he and some of his siblings had lived therein even after their respective marriages.[22] Thirdly, contrary to the lower courts' findings that petitioners had actual knowledge of respondents' adverse claim, the records showed otherwise. The sale had been undoubtedly entered into prior to the annotation of respondents' adverse claim on August 12, 1998, as borne out by the cancellation of the mortgage in favor of IBank on July 27, 1998 by virtue of Gonzalez's paying the redemption price to IBank on July 20, 1998.

For sure, Don Emil's testimony indicated that respondents annotated their adverse claim only after learning of the sale between Gonzalez and De Castro. The following excerpts from the testimony attested thusly:[23]

Q: When for the first time did you know that your father mortgaged the property to [IBank]?
A: August 1998.

x x x x x x x x x

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[20] *Id.* at 475.

[21] Exhibit "C".

[22] TSN, April 19, 1999, p. 280.

[23] TSN, April 19, 1999, p. 284; TSN, January 20, 2000, p. 363; TSN, April 16, 1999, p. 221.

Q: How did you come to know that your father [mortgaged] the property to [IBank]?

A: **Because a certain [Gonzalez] came to me on August 8 and told me he bought the property and he said he owns the property which we objected to. We said no we could not recognize the sale. Immediately on August 10[,] my brother Francis went to the Registry of Deeds and saw it was mortgaged.**

Q: **It was only at that time when Mr. [Gonzalez] according to you that you learned that the property was [mortgaged] at [IBank] when he told you that your father sold the said property to him?**

A: **Yes.**[24]

x x x x x x x x x

Q: Do you know what happened to the loan?

A: Yes, it was not paid for and so they sold it to [Gonzalez].

x x x x x x x x x

Q: **When did you first come to know that the property was sold to [Gonzalez]?**

A: **August 8,** [Gonzalez] came to see me.

Q: **What transpired after [Gonzalez] came to see you?**

A: **He told me that he bought the property, that there is a Deed of Sale, and on Monday he will transfer the property in his name.**

x x x x x x x x x

Q: And when [Gonzalez] failed to show you a Deed of Sale, what steps did you take, if any?

A: Monday morning, immediately, my brother and I, Francis[,] went to the [Registry] of Deeds downstairs x x x to get a copy[.] [W]e still saw [the title] under the name of my father, [De Castro,] widower.

Q: And what did you do, if any?

A: Immediately, I placed an adverse claim annotated at the back of the title.[25]

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[24] TSN, April 19, 1999, pp. 284-285.

[25] TSN, April 16, 1999, pp. 248-250.

Worthy to stress is that the title (TCT No. N-161693) showed no defect of or restriction on De Castro, Sr.'s capacity to convey title. The only encumbrance then annotated thereon was the mortgage entered into in favor of IBank on July 19, 1996,[26] but the mortgage was cancelled on July 21, 1998 following the payment by Gonzalez of De Castro, Sr.'s unpaid debt in pursuance of the former's purchase of the property. This transaction occurred prior to the annotation of the adverse claim of respondents on August 12, 1998. As such, petitioners had no duty to inquire beyond the four corners of the title.

Yet, even assuming, *arguendo*, that De Castro, Sr. had no authority to sell the property, Gonzalez's reliance on the face of the certificate of title was warranted under the Torrens system.

The Torrens system was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership thereto was established and recognized.[27] It was designed to avoid possible conflicts in the records of real property and to facilitate transactions relative to real property by giving the public the right to rely upon the face of the Torrens certificate of title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that should impel a reasonably cautious man to make such further inquiry.[28] This rule, now enshrined in Section 55 of the Land Registration Act,[29] puts an innocent purchaser for value under

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[26] Exhibit "2-B".

[27] *Tenio-Obsequio v. Court of Appeals*, G.R. No. 107967, March 1, 1994, 230 SCRA 550, 557.

[28] *Capitol Subdivision, Inc. v. Province of Negros Occidental*, No. L-16257, January 31, 1963, 7 SCRA 60, 69-70.

[29] SECTION 55. No new certificate of title shall be entered, no memorandum shall be made upon any certificate of title by the clerk, or by any register of deeds, in pursuance of any deed or other voluntary instrument, unless the owner's duplicate certificate is presented for such indorsement, except in cases expressly provided for in this Act, or upon the order of the court, for cause shown; and whenever such order is made, a memorandum thereof shall be entered upon the new certificate of title and upon the owner's duplicate.

the protection of the Torrens system. An innocent purchaser for value has the right to rely on the correctness of the Torrens certificate of title without any obligation to go beyond the certificate to determine the condition of the property. The rights an innocent purchaser for value may acquire cannot be disregarded or cancelled by the court; otherwise, the evil sought to be prevented by the Torrens system would be impaired and public confidence in the Torrens certificate of title would be eroded because everyone dealing with property registered under the Torrens system would be required to inquire in every instance as to whether the title has been regularly or irregularly issued by the court.[30]

Generally, a forged or fraudulent deed is a nullity that conveys no title. However, this generality is not cast in stone. The exception, to the effect that a fraudulent document may become the root of a valid title,[31] exists where there is nothing in the certificate of title to indicate at the time of the transfer or sale any cloud or vice in the ownership of the property, or any encumbrance thereon.[32]

The production of the owner's duplicate certificate whenever any voluntary instrument is presented for registration shall be conclusive authority from the registered owner to the clerk or register of deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, **and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith**: *Provided, however*, That in all cases of registration procured by fraud the owner may pursue all his legal and equitable remedies against the parties to such fraud, without prejudice, however, to the rights of any innocent holder for value of a certificate of title: *And provided further*, That after the transcription of the decree of registration on the original application, any subsequent registration under this Act procured by the presentation of a forged duplicate certificate, or of a forged deed or other instrument, shall be null and void. In case of the loss or theft of an owner's duplicate certificate, notice shall be sent by the owner or by someone in his behalf to the register of deeds of the province in which the land, lies as soon as the loss or theft is discovered.

[30] *Uy v. Fule*, *supra*, note 18.

[31] *Fule v. De Legare*, No. L-17951, February 28, 1963, 7 SCRA 351, 358.

[32] *Id*. at 359.

The exception was what happened herein. Even granting that De Castro, Sr. had registered the property under his name through fraud, and that he had no authority to sell it, the sale thereof by him in favor of petitioners nonetheless validly conveyed ownership to the latter because no defect, cloud, or vice that could arouse any suspicion on their part had appeared on the title. Verily, any buyer or mortgagee of realty covered by a Torrens certificate of title, in the absence of any suspicion, is not obligated to look beyond the certificate to investigate the titles of the seller appearing on the face of the certificate; he is charged with notice only of such burdens and claims as are annotated on the title.[33]

Being innocent purchasers for value, petitioners merited the full protection of the law.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision and resolution promulgated by the Court of Appeals, respectively, on April 28, 2015 and July 22, 2015; **DECLARES VALID** and **SUBSISTING**: (a) the Deed of Sale executed on August 14, 1998 by and between Joseph De Castro, Sr., as seller, and petitioner EEG Development Corporation, as buyer; and (b) Transfer Certificate of Title No. 194773 of the Registry of Deeds of Quezon City in the name of respondent EEG Development Corporation; **DIRECTS** the Register of Deeds of Quezon City **TO REINSTATE** Transfer Certificate of Title No. 194773 registered under the name of EEG Development Corporation and **TO FORTHWITH CANCEL** the adverse claim annotated thereon in favor of the respondents; and **ORDERS** the respondents to pay the costs of suit.

SO ORDERED.

Del Castillo, Gesmundo, and *Carandang, JJ.*, concur.

Jardeleza, J., on official leave.

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[33] *Clemente v. Razo*, G.R. No. 151245, March 4, 2005, 452 SCRA 769, 777.

SECOND DIVISION

[G.R. No. 220486. June 26, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELINJER CORPUZ *y* DAGUIO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS. — Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) the killing is not parricide or infanticide.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN A TESTIMONY IS GIVEN IN A CANDID AND STRAIGHTFORWARD MANNER, THERE IS NO ROOM FOR DOUBT THAT THE WITNESS IS TELLING THE TRUTH. — The trial court found the testimonies of prosecution witnesses Ofelia and Jerick to be spontaneous, categorical and straightforward. They were able to clearly narrate the details of the fatal shooting of the victim and positively identified appellant as the perpetrator. When a testimony is given in a candid and straightforward manner, there is no room for doubt that the witness is telling the truth.

3. ID.; ID.; ID.; CLOSE RELATIONSHIP WITH THE VICTIM MAKES THE TESTIMONY OF THE WITNESSES MORE CREDIBLE FOR IT WOULD BE UNNATURAL FOR THEM WHO ARE INTERESTED IN VINDICATING THE CRIME CHARGE AND PROSECUTE JUST SOME FALL GUY OTHER THAN THE REAL CULPRIT. — In another vein, the fact that the prosecution witnesses here are the wife and son of the victim does not weaken their credibility. On the contrary, their close relationship with the victim makes their testimony more credible for it would be unnatural for them who are interested in vindicating the crime to charge and prosecute just some fall guy other than the real culprit. In any event, there is no showing that Ofelia and Jerick were impelled by any improper motive to falsely testify against appellant who himself is a nephew of the victim.

4. CRIMINAL LAW; MURDER; TREACHERY; PRESENT WHEN THE OFFENDER COMMITS ANY OF THE CRIMES AGAINST PERSONS, EMPLOYING MEANS, METHODS, OR FORMS IN THE EXECUTION OF THE CRIME THAT TEND DIRECTLY AND ESPECIALLY TO ENSURE ITS EXECUTION WITHOUT RISK TO HIMSELF ARISING FROM THE DEFENSE WHICH THE OFFENDED PARTY MIGHT MAKE; ESTABLISHED IN CASE AT BAR. — There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution of the crime that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make. Here, Jerry was wrestling with his nephew Porfirio after a heated verbal altercation which became physical. They both fell and Porfirio was able to pin his uncle down. Appellant suddenly came carrying a gun and shot Jerry twice. Appellant's act of shooting the victim while the latter was pinned down by another effectively denied the victim the chance to defend himself or to retaliate against his perpetrators. Further, the victim was shot twice, as if making sure he would be mortally injured or killed.

5. ID.; ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; ELEMENTS; ABSENT IN CASE AT BAR. — Evident premeditation requires the following elements: (1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution enough to allow the accused to reflect upon the consequences of his acts. To warrant a finding of evident premeditation, it must appear that the decision to commit the crime was a result of meditation, calculation, reflection or persistent attempt. The prosecution is tasked to show how or when appellant's plan to kill was hatched and how much time had elapsed before it was carried out. Here, both the trial court and the Court of Appeals found that the prosecution was not able to sufficiently establish evident premeditation. We agree. The victim's slaying was more spontaneous than planned. Eyewitnesses testified that when appellant saw the victim pinned on the ground by Porfirio, he walked to them and shot Jerry twice. Hence, there was no showing that the killing was plotted or that there was enough time for

appellant to reflect on the consequences of killing his victim before actually carrying it out.

6. ID.; ID.; MURDER; IN THE ABSENCE OF ANY AGGRAVATING CIRCUMSTANCE, THE CORRECT PENALTY IS *RECLUSION PERPETUA*. — The crime of Murder is penalized under Article 248 of the RPC, as amended by Republic Act No. 7659, with *reclusion perpetua* to death. In the absence of any aggravating circumstance, both the trial court and the Court of Appeals correctly meted the penalty of *reclusion perpetua*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision[1] dated February 18, 2015 of the Court of Appeals in CA-G.R. CR-H.C. No. 06274 affirming appellant's conviction for murder with modification of the monetary awards.

The Proceedings Before the Trial Court

The Charge

Appellant Elinjer Daguio Corpuz was charged with murder for the death of Jerry Corpuz, *viz*:

That on or about the 2nd day of September, 2011, at around 4:00 o'clock in the afternoon at Brgy. Padapada, Municipality of Sta. Ignacia, Province of Tarlac, Philippines, and within the jurisdiction

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[1] CA *rollo*, pp. 85-105, penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justice Fernanda Lampas Peralta and Associate Justice Ramon Paul L. Hernando (now a member of this Court).

of this Honorable Court, the said accused armed with a gun, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shot Jerry Corpuz on the head causing his instantaneous death.[2]

The case was raffled to Regional Trial Court, Branch 68, Camiling, Tarlac.

On arraignment, appellant pleaded "not guilty".[3] Trial thereafter followed. Ofelia Domingo Corpuz and Jerick Corpuz testified for the prosecution. On the other hand, appellant and Jomer Corpuz testified for the defense.

The Prosecution's Evidence

Prosecution witnesses testified that on September 2, 2011, about 4 o'clock in the afternoon, Jerry left their house and rode his motorcycle to buy feeds. Just after a few meters, he was flagged down by Porfirio Corpuz, Jr..[4] When Jerry stopped, Porfirio confronted him about a dog. Jerry's wife Ofelia saw the altercation and she got worried. Together with her son Jerick, she walked toward the direction where Jerry and Porfirio were arguing and pushing each other. She saw Jerry falling to the ground and Porfirio immediately going on top of him. While the two were fighting, Porfirio's brother, appellant appeared with a gun in hand. He walked up to Jerry and shot the latter twice.

Ofelia shouted for help and begged Porfirio to help bring Jerry to the hospital. But Jerry died even before they got to the hospital. Meanwhile, appellant, still holding his gun, walked away into the fields.

The Defense's Evidence

Appellant denied the charge and averred that on September 2, 2011, about 4 o'clock in the afternoon, he was cooking dinner

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[2] Record, p. 1.

[3] *Id.* at 19.

[4] "Porfirio Corpuz" in other parts of the *rollo*.

inside his house in Pada-Pada, Sta. Ignacia, Tarlac. He later stepped out to gather malunggay leaves for the dish he was cooking. He saw his brother Porfirio who was holding a "*pamalo and pamingwit ng palaka*".

On his way back to the house, he also saw Jerry's motorcycle parked by the roadside. When Jerry saw him, he blocked his path and angrily asked him, "*Hoy! Papanam?*" (Where are you going?). He replied "*Ni apay? Annia ti problema, uncle?*" (Why, what is the problem, uncle?). Jerry uttered, "*Maysa kamet a gago*." (You are also a fool.) Then, Jerry suddenly drew out his .38 caliber gun. Appellant was shocked and tried to grab the gun from Jerry. He was able to get hold of the gun, but Jerry pulled his shirt and whipped him with it. As a result, appellant accidentally pulled the trigger and fired the gun. But Jerry persisted in taking back the gun from him until they both slid and fell.

While Jerry was down on his knees, appellant noticed he was reaching for a knife from his back. He tried once again to wrestle the gun away from Jerry. Then another shot was fired, hitting Jerry in the chest. He was shocked when he saw him falling to the ground. Soon after, he heard people rushing toward them. He got scared and ran.

The Trial Court's Ruling

The trial court rendered a verdict of conviction. It gave full credence to the testimonies of the prosecution witnesses. It found treachery attended the killing for although appellant's brother had already pinned the victim to the ground, appellant just walked in and shot the hapless victim. Appellant's sudden, swift and unexpected attack effectively deprived the victim of the ability to defend himself, let alone, retaliate. The trial court thus ruled:

> WHEREFORE, premises considered, accused Elinjer Daguio Corpuz is found guilty beyond reasonable doubt of the offense of Murder punishable under Article 248 of the Revised Penal Code, as amended and hereby sentences him to a penalty of reclusion perpetua.
>
> He is also ordered to pay the heirs of the victim Jerry Corpuz the amount of Php75,000.00 as civil indemnity, Php50,000.00 as moral

damages, Php30,000.00 as exemplary damages, and Php100,000.00 as actual damages.[5]

SO ORDERED.

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty of murder despite the alleged inconsistencies and improbabilities in the testimonies of the prosecution witnesses; his defense that the shooting was an accident; and the supposed lack of evidence showing that treachery attended the killing.[6]

On the other hand, the Office of the Solicitor General (OSG) through Solicitor General Francis H. Jardeleza (now an Associate Justice of the Supreme Court), Assistant Solicitor General Ma. Antonia Edita C. Dizon and Associate Solicitor John Dominic S. Obias riposted that the trial court correctly relied on the direct and straightforward account of the eyewitnesses Ofelia and Jerick regarding the slaying and the presence of treachery.[7]

The OSG further invoked the rule that the trial court's factual findings will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case.[8]

The Court of Appeals' Ruling

In its assailed *Decision*[9] dated February 18, 2015, the Court of Appeals affirmed with modification as to the amount of damages. It concurred with the trial court's findings that treachery attended the killing of Jerry. It deleted the award of actual damages, and in lieu thereof, granted Php25,000.00 as temperate damages.

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[5] CA *rollo*, p. 53.

[6] *Id.* at 35-47.

[7] *Id.* at 62-77.

[8] *Id.* at 75.

[9] *Id.* at 85-105.

Its dispositive portion reads:

WHEREFORE, all the foregoing considered, the Decision of the Regional Trial Court of Camiling, Tarlac, Branch 68, is hereby **AFFIRMED with MODIFICATION**. Accused-appellant Elinjer Daguio Corpuz is found **GUILTY** beyond reasonable doubt of Murder as defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, qualified by treachery, and he is sentenced to suffer the penalty of *Reclusion Perpetua*. Accused-appellant is **ORDERED** to pay the heirs of Jerry Corpuz, the following sums: a) Php75,000.00 as and for civil indemnity; b) Php50,000.00 as and for moral damages; c) Php25,000.00 as and for temperate damages, as there was no evidence of burial and funeral expenses; and d) Php30,000.00 as and for exemplary damages as provided by the Civil Code in line with recent jurisprudence, with costs.

SO ORDERED.[10]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal.[11] In compliance with *Resolution*[12] dated November 23, 2015, both OSG and appellant manifested[13] that in lieu of supplemental briefs, they are adopting their respective briefs submitted before the Court of Appeals.

Issue

Did the Court of Appeals err in affirming appellant's conviction for murder?

Ruling

The appeal utterly lacks merit.

Murder is defined and penalized under Article 248 of the Revised Penal Code, *viz*:

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[10] *Id.* at 104-105.

[11] *Id.* at 92-94.

[12] *Rollo* at 28-29.

[13] *Id.* at 30-33; CA *rollo*, pp. 79-81.

Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;

x x x x x x x x x

Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) the killing is not parricide or infanticide.[14]

We focus on the second and third elements, the presence of which appellant vigorously disclaims.

Second Element: Appellant was positively identified as the assailant who fatally shot the victim

Ofelia Corpuz, the victim's wife, narrated in detail the circumstances attendant to the slaying of her husband, thus:

Q: Mr. (sic) Witness, do you recall where were you (sic) on September 2, 2011 at around 4:00 in the afternoon?
A: Yes, sir.

Q: Where were you then?
A: In our house, sir.

Q: How about this Jerry Corpuz, do you recall where was he at that time?
A: On that date and time, he is (sic) going to buy feeds, sir.

Q: What vehicle did he use if there is any?
A: A motorcycle, sir.

Q: What kind of motorcycle?
A: Honda TMX, sir.

[14] *People v. Gaborne*, 791 Phil. 581, 592 (2016); citing *People v. Dela Cruz*, 626 Phil. 631, 639 (2010).

Q: Were you able to see him going away from the house?
A: Yes, sir.

Q: As you said, you saw your husband going away from the house. Do you remember if there was anything that transpired?
A: None, sir. When my husband left our house he said he is going to buy feeds.

Q: While going to buy feeds, what happened if there was any?
A: It is about the flagging down, sir.

Q: Who stopped your husband?
A: Junior, sir.

Q: What is the full name of that Junior?
A: Porfirio Corpuz, Jr., sir.

x x x x x x x x x

PROS. GUARDIANO:

Q: At the distance, were you able to see what is happening when your husband was flagged down by Porfirio Corpuz, Jr.?
A: Yes, sir.

Q: What was that?
A: He confronted my husband about the dog, sir.

Q: You mean to say, Porfirio Corpuz confronted your husband about the dog. What happened next after Porfirio Corpuz Jr. confronted your husband about the dog?
A: They had a verbal altercation, sir.

Q: What did you do when you saw your husband and Porfirio Corpuz Jr. had an altercation?
A: I called my son, sir.

Q: Who is your son?
A: Jerick, sir.

Q: Did your son arrive when you called him?
A: Yes, sir.

Q: What did you do when your son arrived?
A: We went to the place where my husband and Porfirio Corpuz were.

x x x x x x x x x

Q: What did you see if there was any while you were going near the place?
A: When I ran towards my husband and Porfirio Corpuz, Jr., I saw them pushing each other and my husband fell down.

Q: What did you see when your husband fell down?
A: When my husband fell down and Porfirio Corpuz was on top of him, I saw Elinjer armed with a gun and approached my husband.

Q: What did Elinjer Corpuz do if there was any when he went near to (sic) your husband and Porfirio?
A: He shot my husband, sir.

Q: Just to clarify, are you saying that Porfirio Corpuz Jr. was on top of your husband when this Elinjer arrived and shot your husband?
A: Yes, sir.

x x x x x x x x x

Q: How many times did Elinjer Daguio Corpuz shot (sic) your husband?
A: Twice, sir.[15]

The victim's son Jerick Corpuz corroborated his mother Ofelia's testimony, *viz*:

Q: Mr. Witness, could you recall where were you on September 2, 2011 at around 4:00 o'clock in the afternoon?
A: Yes, sir.

Q: Where were you then at that time?
A: I was in our house, sir.

Q: While you were inside your house, do you remember if there was any unusual incident that transpired, if any?
A: yes, sir.

Q: What was that unusual incident?
A: My father was killed, sir.

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[15] CA *rollo* at 67-69.

Q: So while you were inside your house, what happened?
A: My mother called me, sir.

Q: What's the name of your mother?
A: Ofelia Corpuz, sir.[16]

x x x x x x x x x

Q: And while you went out of your house, what happened?
A: While I was on my way to the place, I heard gunshots, sir.

Q: How many gunshots did you hear?
A: Two, sir.

Q: How far from you from that place where you heard a gunshot?
A: About fifteen meters, sir.

Q: And in what manner are you proceeding to that place?
A: I was running, sir.

Q: So you were running in going to that place, you heard two shots?
A: Yes, sir.

x x x x x x x x x

Q: And when you reached that place, what did you see if there is any?
A: I saw Elinjer Corpuz, Porfirio Corpuz, Jr. and my father already dead.

Q: Okay. You saw three persons. So where is your father then in relation to these two persons Elinjer and Porfirio Corpuz, Jr.?
A: He was lying on the ground face down.

Q: Bloodied?
A: Yes, sir.

Q: And where is Elinjer at that time?
A: He was going away and holding a gun, sir.

Q: How far is that Elinjer with a gun who is then moving away from your father?
A: About ten meters.

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[16] TSN dated April 24, 2012, pp. 2-3.

Q: How about Porfirio Corpuz, Jr., where is he?
A: Also in the premises, sir.

Q: What was he doing?
A: He was just standing, sir.

Q: Now you came running and saw your father bloodied on the ground, Porfirio Corpuz, Jr. just near standing there while Elinjer is moving about ten meters away holding a gun, what did you do?
A: I attempted to chase them, sir.

Q: And were you able to catch them?
A: No, sir.

Q: This Elinjer, while holding his gun, to what direction is he taking?
A: Towards the fields, sir.[17]

The trial court found the testimonies of prosecution witnesses Ofelia and Jerick to be spontaneous, categorical and straightforward.[18] They were able to clearly narrate the details of the fatal shooting of the victim and positively identified appellant as the perpetrator. When a testimony is given in a candid and straightforward manner, there is no room for doubt that the witness is telling the truth.[19]

In another vein, the fact that the prosecution witnesses here are the wife and son of the victim does not weaken their credibility. On the contrary, their close relationship with the victim makes their testimony more credible for it would be unnatural for them who are interested in vindicating the crime to charge and prosecute just some fall guy other than the real culprit.[20] In any event, there is no showing that Ofelia and Jerick were impelled by any improper motive to falsely testify against appellant who himself is a nephew of the victim.

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[17] *Id.* at 2-5.

[18] *People v. Aquino*, 724 Phil. 739, 749 (2014).

[19] *People v. Dagsa*, G.R. No. 219889, January 29, 2018.

[20] *People v. Dayaday*, 803 Phil. 363, 371-372 (2017).

At any rate, appellant's claim that the killing was an accident must fail. In his version, he was caught in a middle of an altercation with Jerry who was then armed with a gun. In order to avoid getting shot, he attempted to wrestle for the gun but when he managed to hold on to it, Jerry used appellant's own shirt and whipped him, which caused the first shot to be accidentally discharged. As the fight continued, both men were holding on to the gun. In his attempt to free himself and the gun from Jerry's grasp, the second shot was discharged, accidentally hitting the victim's chest.[21]

We are not persuaded. The prosecution witnesses positively identified appellant as the person who walked toward the victim while the latter was pinned to the ground by appellant's brother. Then, without any warning, appellant suddenly, swiftly and unexpectedly shot the victim not once but twice. For sure, this is far from being an accident. What appellant did was a cold-blooded slaying of the hapless victim.

Third Element: Treachery attended the killing

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution of the crime that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make.[22]

Here, Jerry was wrestling with his nephew Porfirio after a heated verbal altercation which became physical. They both fell and Porfirio was able to pin his uncle down. Appellant suddenly came carrying a gun and shot Jerry twice.

Appellant's act of shooting the victim while the latter was pinned down by another effectively denied the victim the chance to defend himself or to retaliate against his perpetrators.[23] Further, the victim was shot twice, as if making sure he would be mortally injured or killed.

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[21] CA *rollo*, pp. 87-88.

[22] *Cicera v. People*, 139 Phil. 25, 44 (2014).

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

Evident premeditation did not attend the killing

Evident premeditation requires the following elements: (1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution enough to allow the accused to reflect upon the consequences of his acts.[24] To warrant a finding of evident premeditation, it must appear that the decision to commit the crime was a result of meditation, calculation, reflection or persistent attempt.[25] The prosecution is tasked to show how or when appellant's plan to kill was hatched and how much time had elapsed before it was carried out.

Here, both the trial court and the Court of Appeals found that the prosecution was not able to sufficiently establish evident premeditation.

We agree. The victim's slaying was more spontaneous than planned. Eyewitnesses testified that when appellant saw the victim pinned on the ground by Porfirio, he walked to them and shot Jerry twice. Hence, there was no showing that the killing was plotted or that there was enough time for appellant to reflect on the consequences of killing his victim before actually carrying it out.

Penalty

The crime of Murder is penalized under Article 248 of the RPC, as amended by Republic Act No. 7659, with *reclusion perpetua* to death. In the absence of any aggravating circumstance, both the trial court and the Court of Appeals correctly meted the penalty of *reclusion perpetua*.

As for the monetary awards, the Court sustains the grant of ₱75,000.00 as civil indemnity. But the grant of ₱50,000.00 as moral damages should be increased to ₱75,000.00; ₱30,000.00 as exemplary damages increased to ₱75,000.00; and ₱25,000.00

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[24] *People v. Kalipayan*, G.R. No. 229829, January 22, 2018.

[25] *People v. Davido*, 434 Phil. 684, 690 (2002).

as temperate damages increased to ₱50,000.00, in accordance with prevailing jurisprudence.[26] Finally, these amounts shall earn an interest of six percent per annum from the finality of judgment until fully paid.

WHEREFORE, the appeal is **DISMISSED** for lack of merit. The Decision dated February 18, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06274, is **AFFIRMED** with **MODIFICATION**.

Appellant Elinjer Corpuz *y* Daguio is found guilty of murder and sentenced to *reclusion perpetua*.

Appellant is ordered to pay ₱75,000.00 civil indemnity; ₱75,000.00 moral damages; ₱75,000.00 exemplary damages and ₱50,000.00 as temperate damages. These amounts shall earn six percent (6%) interest *per annum* from the finality of this decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 221436. June 26, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERIC DUMDUM,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBLE TESTIMONY OF MINOR-

[26] *People v. Jugueta*, 783 Phil. 806, 845 (2016).

VICTIM IS SUFFICIENT TO CONVICT APPELLANT. — The trial court keenly noted AAA's positive, straightforward, and categorical narration on how accused "dragged her to a dark place; threatened to kill her should she tell anyone; removed her t-shirt, city shorts, and panty despite her resistance; forcibly laid her on the grass; kissed her and sucked her breast; removed his brief, laid on top of her; inserted his penis in her vagina and made push and pull movements for about one minute." A victim of tender age would not have narrated such sordid details had she not experienced them. In a long line of cases, the Court has given full weight and credence to the testimony of child victims. For it is highly improbable that a girl of tender years would impute to any man a crime so serious as rape if what she claims is not true. Thus, AAA's testimony rings a bell of truth. Even standing alone, her credible testimony is sufficient to convict appellant given the intrinsic nature of the crime of rape where only two persons are usually involved.

2. **ID.; ID.; ID.; WHERE MEDICAL FINDINGS CORROBORATE VICTIM'S TESTIMONY, IT IS SUFFICIENT TO SUPPORT A VERDICT OF GUILT FOR RAPE. —** But this is not all. AAA's testimony firmly conformed with Dr. Asagra's medical report that she sustained contusions on her left breast, her vagina admitted one finger with ease, and the hymen was lacerated at 10 o'clock position most likely caused by a penetrating penis. These findings solidly supported AAA's testimony that appellant dragged her to a dark place, forced her to lie on the ground, kissed her, sucked her breast, and inserted his penis in her vagina. Indeed, when the forthright testimony of a rape victim is consistent with medical findings, it is sufficient to support a verdict of guilt for rape.

3. **CRIMINAL LAW; RAPE; MAY BE COMMITTED EVEN IN PLACES WHERE PEOPLE CONGREGATE. —** [R]apists are not discouraged from committing sexual abuse by the mere presence of people nearby. In other words, rape is committed not exclusively in seclusion. The Court has consistently recognized that rape may be committed even in places where people congregate, in parks, along roadside, within school premises, inside an occupied house, and even where other members of the family are sleeping. For lust is no respecter of time and place.

4. REMEDIAL LAW; EVIDENCE; DEFENSE OF ALIBI CANNOT PREVAIL OVER THE VICTIM'S POSITIVE AND UNWAVERING IDENTIFICATION OF APPELLANT AS THE PERPETRATOR. — [A]ppellant's alibi that he had already left the store and gone home around the same time AAA got raped must fail. In order that alibi may be accorded credibility, appellant must positively demonstrate his presence at another place at the time of the commission of the offense as well as the physical impossibility for him to be at the *locus criminis* around the same time. Here, appellant did not present any compelling evidence that it was not physically impossible for him to be at the crime scene on the date and time the crime was committed. In any event, alibi cannot prevail over the victim's positive and unwavering identification of appellant as the one who succeeded in having carnal knowledge of her through force and intimidation. So must it be.

5. CRIMINAL LAW; RAPE; THE COURT AFFIRMED APPELLANT'S CONVICTION FOR RAPE AND IMPOSED THE PENALTY OF *RECLUSION PERPETUA*; CIVIL LIABILITY, MODIFIED. — [T]he Court of Appeals did not err in affirming appellant's conviction for rape and the penalty of *reclusion perpetua* imposed on him. This is in accordance with Article 266-A, in relation to 266-B of the Revised Penal Code[.] x x x The Court, however, modifies the award of exemplary damages and moral damages. In accordance with prevailing jurisprudence the award of exemplary damages should be increased from ₱30,000.00 to ₱75,000.00 and moral damages from ₱50,000.00 to ₱75,000.00. On the other hand, the award of ₱75,000.00 as civil indemnity and the grant of six percent interest on these amounts from finality of decision until fully paid are affirmed.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision[1] dated May 27, 2015 of the Court of Appeals (CA) affirming the trial court's verdict of conviction[2] against appellant Eric Dumdum for rape.

The Information

Appellant Eric Dumdum was charged with rape, as follows:

"That on the 17th day of November,(sic) 1997, at about 9:00 o'clock in the evening, at [redacted], [redacted], Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge with AAA,* 14 years of age, against her will and consent.

CONTRARY TO LAW."[3]

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[1] Penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Jhosep Y. Lopez, CA *rollo*, pp. 4-19.

[2] Refers to Decision dated May 25, 2012 of the Regional Trial Court (RTC), Branch 29 of Toledo City, Cebu in Criminal Case No. TCS-2907, CA *rollo,* pp. 11-18.

* The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to R.A. No. 760, "An Act providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; R.A. No. 9262, "An Act Defining Violence Against Women and their Children Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11 SC known as the "Rule on Violence Against Women and their Children", effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

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

The case was raffled to the Regional Trial Court (RTC), Branch 29, Toledo City, Cebu.

The Proceedings before the Trial Court

On arraignment, appellant pleaded not guilty.[4] During the trial, AAA and Dr. Roderick Asagra testified for the prosecution. On the other hand, appellant Eric Dumdum and Lucille Ricaña testified for the defense.

Evidence of the Prosecution[5]

Fourteen year old AAA worked at a canteen at [redacted], [redacted], [redacted], Cebu. On November 17, 1997, around 9 o'clock in the evening, she left her workplace. She passed by the store of Ramos along the national road and in front of the [redacted] National Hospital. She bought food and ate at the store, thereafter, she headed home. She walked by the side of [redacted] National High School. As she was walking, she heard appellant call her name so she approached him. She knew appellant was one of the workers in Metaphil Corporation where she delivered food.

Appellant dragged her to a dark area near the corner of the road where there were no vehicles passing by. There were also no houses around. Appellant lifted her and laid her down on the grass. She tried resisting him but failed. He threatened to kill her and her parents. Appellant then removed her t-shirt and shorts, sucked her breast, and kissed her neck. He took off her panty and went on top of her. He, too, removed his briefs, spread her legs open, and inserted his penis in her vagina. She felt pain while appellant made push and pull movements for about a minute. He continued kissing her neck while she cried.

When appellant had finished ravishing her, he let her leave. She did not tell anyone about the rape because she was scared appellant would make good his threat to kill her and her parents. Two days later, her co-worker told her parents about the kiss

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[4] *Id*.

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

marks on her neck. Consequently, she was constrained to tell her parents what really happened to her. Together with her parents, she went to the municipal hall of [redacted] to have the incident blottered. She was also medically examined by Dr. Roderick Asagra.

Dr. Asagra's medical findings revealed hymenal lacerations and contusions on AAA's breast, viz "2.0 cm. x 1.5 cm. contusion on the left breast or a bruising due to hematoma about 1 to 3 days old because it was still bluish; the genitalia admitted one finger with ease and the hymen was lacerated at 10 o'clock position most likely caused by a penetrating penis."[6]

Evidence for the Defense[7]

Appellant claimed that on November 17, 1997, he and another companion were drinking with his cousin Owen Dumdum in front of the store where AAA bought and ate her snacks. They finished drinking around 9 o'clock in the evening and he arrived home by 9:30 in the evening. He admitted knowing AAA because he was a customer at the canteen where she worked. He denied having seen AAA approach the store that night. He quit his work at the Metaphil Corporation two days after the incident when he learned of the case filed against him. He left [redacted], [redacted] Cebu on November 21, 1997 or four days after the incident.

Lucille Ricaña testified she was the niece of the owner of the store which appellant frequented. On November 17, 1997, she tended the store from the time it opened until it closed by 10 o'clock in the evening. Appellant and his companions arrived around 5:30 in the afternoon and drank until 9 o'clock in the evening, after which, they all went home. She denied seeing AAA that night.

The Trial Court's Ruling

By Decision dated May 25, 2012, the trial court rendered a verdict of conviction, thus:

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[6] TSN dated December 7, 2007.

[7] *Rollo*, pp. 14-15.

WHEREFORE, in light of the foregoing, judgment is hereby rendered finding accused **ERIC DUMDUM** "***guilty***" beyond reasonable doubt of the crime of Rape and he is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA** together with all the accessory penalties provided for by law and to indemnify private complainant AAA the following amounts:

1. Fifty thousand Pesos (₱50,000) by way of civil indemnity; and
2. Fifty thousand Pesos (₱50,000) by way of moral damages.

The preventive imprisonment undergone by accused is fully credited in his favor.

With costs against accused.

SO ORDERED.[8]

The trial court gave full credence to AAA's detailed narration on how appellant succeeded in having sexual intercourse with her through force and intimidation. It also found that her testimony was corroborated by the physical evidence and Dr. Asagra's expert testimony. Finally, it rejected appellant's bare denial and alibi in light of AAA's positive testimony that it was he who sexually violated her.

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction despite alleged improbabilities[9] in AAA's testimony, viz: ***first***, the rape incident could not have happened in a place along a well-lighted highway surrounded by a cluster of houses[10] without exposing himself to the eyes and ears of the residents there; ***second***, although AAA claimed to have stopped by the store on her way home, store attendant Lucille Ricaña could not recall having seen her;[11] and ***third***, considering that after drinking with his friends in the same store, he left

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[8] *Supra* note 2, at 18.

[9] *Rollo*, pp. 8-9.

[10] CA *rollo*, p. 33.

[11] *Id*.

around 9 o'clock in the evening,[12] he could not have crossed paths with the victim.

On the other hand, the Office of the Solicitor General (OSG)[13] riposted that the elements of rape were sufficiently established through AAA's candid, spontaneous, and straightforward testimony that appellant had carnal knowledge of her through force and intimidation.[14]

By Decision dated May 27, 2015, the Court of Appeals affirmed with modification, viz:

> **WHEREFORE**, the Decision dated May 25, 2012, rendered by the Regional Trial Court, Branch 29, Toledo City in Crim. Case No. TCS-2907, finding the appellant, Eric Dumdum, guilty beyond reasonable doubt of the crime of Rape and sentencing him to suffer the penalty of *reclusion perpetua* together with all the accessory penalties provided by law is hereby **AFFIRMED** with the following **MODIFICATIONS** as to damages only:
>
> 1. The amount of civil indemnity is increased to ₱75,000.
> 2. The appellant is ordered to pay the victim the amount of ₱30,000 as exemplary damages.
> 3. The amount of ₱50,000 as moral damages is retained.
> 4. An interest of 6% per annum is imposed on all damages awarded from the date of finality of this judgment until fully paid.
>
> **SO ORDERED**.[15]

The Court of Appeals concurred with the trial court's factual findings. It rejected the alleged improbabilities appellant had raised. It noted that appellant left four days after the incident and he got arrested at [redacted], [redacted], Cebu after

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[12] *Id*. at 34.

[13] Through Former Solicitor General, now Associate Justice of the Supreme Court Hon. Francis H. Jardeleza, Assistant Solicitor General Rex Bernardo L. Pascual, and Senior State Solicitor Arturo C. Medina.

[14] *Id*. at 72-75.

[15] *Rollo*, pp. 18-19.

nine years of hiding.[16] It, thus, considered appellant's flight right after the incident as a *major indicium* of guilt.

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution dated June 6, 2016, both appellant and the OSG manifested that in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.[17]

Issue

Did the CA err in affirming appellant's conviction for rape?

Ruling

The appeal must fail.

Fourteen year old AAA recounted in detail how appellant sexually violated her in the evening of November 17, 1997, viz:

Q. On your way home, do you recall of any unusual incident that happened?

x x x x x x x x x

A. While I was walking towards home, somebody called my name, so I approached him.

x x x x x x x x x

Q. x x x Who was that person?

A. Eric Dumdum.

x x x x x x x x x

Q. After you approached Eric Dumdum, who called you, what happened next, if any?

A. He dragged me to the dark place and asked me how old am I.

Q. Aside from that question did he ask you any other question?

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[16] Record, p. 48.

[17] *Rollo*, pp. 26-27.

A. He asked me also if ever I have already my menstrual period and I told him, not yet.

x x x x x x x x x

Q. You said that Eric Dumdum dragged you. What did you do when he dragged you, if any?

A. I resisted but I was not able to be released because he held me tightly in my arm.

Q. When you arrived in that dark place, what happened next?

A. He also dragged me to a little bit far distance and he lifted me and made me lie down on the ground.

Q. x x x was there anything that happened that you can remember?

A. He embraced and kissed me.

Q. Which part of your body did he kiss?

A. In my neck.

Q. What did you do when he kissed you in the neck?

A. I got angry.

x x x x x x x x x

Q. You said that he also embraced you. What did you do when he embraced you?

A. I pushed him.

x x x x x x x x x

Q. How did you feel when he kissed you and embraced you?

A. I was afraid.

Q. Because you were afraid, did you say anything to him?

A. I did not say anything because of fear.

Q. What about Eric Dumdum, if you can still remember, did he say anything to you while he was kissing and embracing you?

A. He told me that if I will tell my parents he will kill us.

x x x x x x x x x

Q. You said that Eric Dumdum succeeded in making you lie down on the ground. What happened after that Miss witness, if any?

A. His body was placed on top of me.

Q. What else did he do aside from that?

A. He took off my underwear.

x x x x x x x x x

Q. What did you do while he was taking off your city shorts?

A. I tried to pull up my city shorts while he tried also to pull it down.

Q. Did he succeed in taking off your city shorts?

A. Yes ma'am.

Q. You said that you tried to pull up your city shorts while he tried to pull it down. How was he able to do it and take it off from you when you were resisting him?

A. Because he took my hands off.

Q. After the city shorts (were) taken off, what happened next miss witness?

A. He kept on kissing me and sucked my breast then he kept on kissing my neck.

x x x x x x x x x

Q. After he was able to spread your legs apart, what happened next?

A. That was the time he was able to successfully insert his penis into my vagina.

Q. How did you know that his penis was already inserted into your vagina?

A. Because I felt it inside me.

Q. Aside from feeling his penis inside your vagina, what else did you feel if any?

A. I felt pain.

Q. When his penis was already inserted in your vagina, what did Eric Dumdum do, if any?

A. He made a push and pull movement.

Q. If you can still remember, how long did it take him, that push and pull movement before he finally stopped doing it?

A. One (1) minute.

Q. x x x do you remember him uttering you anything while his penis was inserted into your vagina and was doing the push and pull movement?

A. Yes Ma'am, he told me that if ever I will tell my parents, he will kill us.

Q. You said that Eric finally stopped executing the push and pull movement after more or less a minute. What happened after that?

A. He was caressing me continuously.

Q. Will you please describe to us how was this done?

A. He kissed my neck.

Q. What did you do at that time if any?

A. I did nothing but cried continuously.

Q. Why did you cry?

A. Because dof (sic) fear that he raped me.

Q. After that, what happened next, if any?

A. After he kissed me he made me go home.

Q. When you reached home, did you tell anyone about the incident considering the fact that he threatened to kill you?

A. No ma'am.

Q. Why?

A. Because I remember what he said that he will kill us if I will tell my parents.

Q. When did you finally tell people about what happened to you since this case was already filed?

A. After two (2) days of the incident.[18]

x x x x x x x x x

The trial court keenly noted AAA's positive, straightforward, and categorical narration on how accused "dragged her to a dark place; threatened to kill her should she tell anyone; removed her t-shirt, city shorts, and panty despite her resistance; forcibly laid her on the grass; kissed her and sucked her breast; removed his brief, laid on top of her; inserted his penis in her vagina and made push and pull movements for about one minute."[19]

A victim of tender age would not have narrated such sordid details had she not experienced them. In a long line of cases,[20] the Court has given full weight and credence to the testimony of child victims.[21] For it is highly improbable that a girl of tender years would impute to any man a crime so serious as rape if what she claims is not true.[22] Thus, AAA's testimony rings a bell of truth. Even standing alone, her credible testimony is sufficient to convict appellant[23] given the intrinsic nature of the crime of rape where only two persons are usually involved.

But this is not all. AAA's testimony firmly conformed with Dr. Asagra's medical report that she sustained contusions on her left breast, her vagina admitted one finger with ease, and the hymen was lacerated at 10 o'clock position most likely caused by a penetrating penis.[24] These findings solidly supported

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[18] TSN, AAA, July 5, 2007, pp. 4-13.

[19] *Rollo*, pp. 15-16.

[20] See *Pielago v. People*, 706 Phil. 460, 471(2013); *Campos v. People*, 569 Phil. 658, 671 (2008), citing *People v. Capareda*, 473 Phil. 301, 330 (2004); *People v. Galigao*, 443 Phil. 246, 260 (2003).

[21] See *People v. Oliva*, 616 Phil. 786, 792 (2009).

[22] See *People v. Closa*, 740 Phil. 777, 785 (2014), citing *People v. Pangilinan*, 547 Phil. 260, 285-286 (2007).

[23] See *Ricalde v. People*, 751 Phil. 793, 807 (2015); *Garingarao v. People*, 669 Phil. 512, 522 (2011); *People v. Tagaylo*, 398 Phil. 1123, 1131-1132 (2000).

[24] Record, Exhibit C.

AAA's testimony that appellant dragged her to a dark place, forced her to lie on the ground, kissed her, sucked her breast, and inserted his penis in her vagina. Indeed, when the forthright testimony of a rape victim is consistent with medical findings, it is sufficient to support a verdict of guilt for rape.[25]

Notably, appellant himself has not imputed any ulterior motive which could have impelled AAA to falsely accuse him of such heinous crime as rape. Her disclosure that she had been raped, coupled with her submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of assault against her dignity, cannot be easily dismissed as mere concoction.[26]

Appellant, nonetheless, undermines AAA's testimony for being allegedly improbable on three counts: ***first***, he refers to the improbability of allowing himself to be exposed to the eyes and ears of people living along a well-lighted national highway near the supposed *locus criminis*;[27] ***second***, the improbability that AAA stopped by a store to buy food, considering that the store attendant could not even recall having seen her;[28] and ***third***, the improbability that she crossed paths with complainant around 9 o'clock in the evening of November 17, 1997 considering that around that time, he had already left the same sari-sari store and boarded a tricycle to take him home.[29]

We are not persuaded.

For one, rapists are not discouraged from committing sexual abuse by the mere presence of people nearby. In other words, rape is committed not exclusively in seclusion.[30] The Court

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[25] See *People v. Sabal*, 734 Phil. 742,746 (2014), citing *People v. Perez,* 595 Phil. 1232, 1258 (2008).

[26] See *People v. Gabiana*, 393 Phil. 208, 216 (2000).

[27] *Rollo*, p. 8.

[28] *Id*.

[29] *Id*.

[30] See *People v. Barberan, et al.*, 788 Phil. 103, 110 (2016), citing *People v. Corial*, 451 Phil. 703,709-710 (2003).

has consistently recognized that rape may be committed even in places where people congregate, in parks, along roadside, within school premises, inside an occupied house, and even where other members of the family are sleeping.[31] For lust is no respecter of time and place.[32] At any rate, according to AAA, appellant dragged her to a grassy area where no vehicles were passing by and there were no houses around. ***For another***, whether the store attendant could recall or recognize the face of AAA as a customer on the night in question does not have any bearing on appellant's culpability. For AAA positively identified him as the one who sexually forced himself on her around 9 o'clock in the evening of November 17, 1997. ***Finally***, appellant's alibi that he had already left the store and gone home around the same time AAA got raped must fail. In order that alibi may be accorded credibility, appellant must positively demonstrate his presence at another place at the time of the commission of the offense as well as the physical impossibility for him to be at the *locus criminis* around the same time.[33] Here, appellant did not present any compelling evidence that it was not physically impossible for him to be at the crime scene on the date and time the crime was committed. In any event, alibi cannot prevail over the victim's positive and unwavering identification of appellant as the one who succeeded in having carnal knowledge of her through force and intimidation.[34] So must it be.

We agree with the Court of Appeals that appellant's abrupt disappearance which lasted for nine long years was indicative of guilt. Appellant disclosed that he abandoned his work two days after he was charged with rape. He also admitted that he left Balamban on November 21, 1997 or four days after the alleged crime was committed. It is well-settled that the flight of an accused may be taken as evidence to establish

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[31] See *People v. Lor*, 413 Phil. 725, 736 (2001).

[32] See *People v. Malones*, 469 Phil. 301, 326 (2004).

[33] See *People v. De Leon*, 428 Phil. 556, 575 (2000).

[34] See *People v. Vitero*, 708 Phil. 49, 63 (2013).

his guilt.[35] Indeed, the wicked fleeth when no men pursueth, but the innocent is as bold as a lion.[36]

All told, the Court of Appeals did not err in affirming appellant's conviction for rape and the penalty of *reclusion perpetua* imposed on him. This is in accordance with Article 266-A, in relation to 266-B of the Revised Penal Code, viz:

> Article 266-A. Rape: When And How Committed.— Rape is committed:
>
> 1) **By a man who shall have carnal knowledge of a woman** under any of the following circumstances:
>
> a) **Through force, threat, or intimidation;**
>
> x x x x x x x x x
>
> Article 266-B. penalty.— **Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.**
>
> x x x x x x x x x
>
> (Emphases supplied)

The Court, however, modifies the award of exemplary damages and moral damages. In accordance with prevailing jurisprudence[37] the award of exemplary damages should be increased from ₱30,000.00 to ₱75,000.00 and moral damages from ₱50,000.00 to ₱75,000.00. On the other hand, the award of ₱75,000.00 as civil indemnity and the grant of six percent interest on these amounts from finality of decision until fully paid are affirmed.

ACCORDINGLY, the appeal is **DISMISSED**, and the assailed Decision dated May 27, 2015 of the Court of Appeals, **AFFIRMED WITH MODIFICATION** as heretofore stated.

ERIC DUMDUM is found **GUILTY** of **Rape** and sentenced to ***Reclusion Perpetua***. He is required to pay AAA ₱75,000.00

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[35] See *People v. Lobrigas*, 442 Phil. 382, 392 (2002).

[36] See *People v. Mores*, 712 Phil. 480, 495 (2013).

[37] See *People v. Jugueta*, 783 Phil. 806, 849 (2016).

as civil indemnity, ₱75,000.00 as moral damages, and exemplary damages in the amount of ₱75,000.00.

These amounts shall earn six percent interest per annum from finality of this Decision until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 223082. June 26, 2019]

CMP FEDERAL SECURITY AGENCY, INC. and/or MS. CAROLINA MABANTA-PIAD, *petitioners, vs.* **NOEL T. REYES, SR.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; PROCEDURAL DUE PROCESS IN ILLEGAL DISMISSAL CASES DOES NOT REQUIRE FORMAL HEARING OR CONFERENCE. — Reyes bewailed that he was allegedly deprived of the opportunity to be heard because no hearing or conference was conducted by the petitioners regarding the disciplinary charges against him, in violation of Section 2(d), Rule I, Book VI of the Omnibus Rules Implementing the Labor Code[.] x x x The 2017 case of *Maula v. Ximex Delivery Express, Inc.*, citing the *En Banc* ruling in *Perez v. Phil. Telegraph and Telephone Company*, reiterated the hornbook doctrine that actual hearing or conference is not a condition *sine qua non* for procedural due process in labor cases because the provisions of the Labor Code prevail over its implementing rules. x x x As the Court *En Banc* explained in *Maula*: x x x The test for the fair procedure

guaranteed under Article 277(b) cannot be whether there has been a formal pre-termination confrontation between the employer and the employee. **The 'ample opportunity to be heard' standard is neither synonymous nor similar to a formal hearing.** To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. *The 'very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.'* x x x **Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed 'substantially,' not strictly. This is a recognition that *while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process.***

2. ID.; ID.; ID.; RESPONDENT WAS GIVEN AMPLE OPPORTUNITY TO BE HEARD. — [I]t becomes fairly obvious that the petitioners afforded Reyes with ample opportunity to be heard regarding the complaints leveled against him. A formal hearing or conference was not necessary since nowhere in any of his Written Explanations did Reyes request for one. Few facts were also disputed since his justifications were replete with admissions and apologies. Thus, without first going into the merits of the administrative complaints against Reyes, and his defenses, the Court finds that Reyes was not denied procedural due process of law. The CA therefore erred in ruling that the NLRC did not act with grave abuse of discretion when it reversed the Decision of the Labor Arbiter.

3. ID.; ID.; ID.; RESPONDENT'S INFRACTIONS DID NOT CONSTITUTE SERIOUS MISCONDUCT CONTEMPLATED UNDER THE LABOR CODE; THE FINDING THAT HE WAS GUILTY OF SERIOUS MISCONDUCT WAS INCOMPATIBLE WITH THE CHARGES FOR NEGLIGENCE. — [T]he Court agrees with the NLRC and the CA that Reyes' infractions did not constitute "serious misconduct" as contemplated under the first paragraph of Article 282 of the Labor Code. x x x In the case at bar, the explanations proffered by Reyes showed that he was not animated by any wrongful intent when he committed the infractions complained of. Moreover, the finding that he

was guilty of serious misconduct was incompatible with the charges for negligence which, by definition, requires lack of wrongful intent. The Court cannot also consider negligence as a valid ground for Reyes' dismissal. To be a valid ground for dismissal, the neglect of duty must be both gross and habitual. Gross negligence implies want of care in the performance of one's duties. Habitual neglect, on the other hand, implies repeated failure to perform one's duties for a period of time. Under the circumstances obtaining in the case, the Court finds that, although Reyes' negligence was habitual, they could in no way be considered gross in nature. It cannot be said that Reyes was wanting in care. For, based on his explanations, his infractions were the result of either simple negligence or errors in judgment.

4. ID.; ID.; ID.; REPEATED UNSATISFACTORY PERFORMANCE AMOUNTS TO GROSS INEFFICIENCY; PETITIONER HAD JUSTIFIABLE REASONS TO TERMINATE RESPONDENT TO ITS EMPLOY. — Nevertheless, the Court rules that there was still just cause for Reyes' termination — gross inefficiency. x x x As with any private corporation, CMP Federal had the prerogative to set standards, within legal bounds, to be observed by its employees. In the exercise of this right, CMP Federal promulgated a Table of Offenses, Administrative Charges and Penalties, which prescribed a norm of conduct at work. Based on the admissions of Reyes in his Written Explanations, he was repeatedly remiss in complying with the standards set therein. In view of his repeated unsatisfactory performance, CMP Federal had justifiable reasons to terminate Reyes from its employ. The CA thus erred in ruling that the NLRC did not act with grave abuse of discretion in invalidating Reyes' dismissal for lack of just cause. The NLRC and the CA should not have fixated itself with the designation of the offense as serious misconduct when it is clear from the complaints and Reply by Indorsement that Reyes was actually being made to answer for his violation of company policies and standards. Compounded with the earlier finding that the NLRC similarly gravely abused its discretion in finding that the procedural due process requirements were not complied with, the Court is constrained to reverse the ruling of the CA. The reinstatement of the Labor Arbiter's ruling is therefore in order.

APPEARANCES OF COUNSEL

Tantoco and Tantoco Law Offices for petitioners.
Public Attorney's Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review assails the August 28, 2015 Decision[1] and January 26, 2016 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 138291 finding no grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) in ruling that petitioner CMP Federal Security Agency, Inc. (CMP Federal) had illegally dismissed respondent Noel T. Reyes, Sr. (Reyes) from service.

Factual Antecedents

CMP Federal is a duly licensed security agency with petitioner Carolina Mabanta-Piad as its President and Chief Executive Officer (collectively, petitioners).

Sometime in August 2010, CMP Federal hired respondent Reyes as Security Guard and assigned him at the Mariveles Grain Terminal (MG Terminal) in Mariveles, Bataan. He was twice promoted, first as Shift-in-Charge, and then on September 15, 2015, as Detachment Commander.[3]

According to Reyes, petitioners were not in favor of his promotion as Detachment Commander because they wanted a certain Robert Sagun (Sagun) for the position, but they had to accede to the request of MG Terminal, one of CMP Federal's

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[1] *Rollo*, pp. 32-42; penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Carmelita Salandanan-Manahan and Ma. Luisa C. Quijano-Padilla.

[2] *Id.* at 44-45.

[3] *Id.* at 32-33.

valued clients.[4] Reyes himself was reluctant to accept the promotion because he was only a high school graduate with little knowledge about operating computers and thus believed that he was ill-equipped to accomplish the written reports that the new position entailed.[5] Thus, it was arranged that Sagun would assist Reyes in the preparation and submission of reports.[6]

Reyes claimed that, from then on, CMP Federal would treat him unaffably and that he would be rebuked incessantly by his superiors, who told him that he was not fit for the job. He would also be invariably snubbed by CMP Federal's Operations Manager, Arnel Maningat (Maningat), who would relay orders and instructions from the main office to Sagun, and not to him, for implementation.[7]

He also claimed that he received *via* e-mail various complaints from Maningat, as follows:

i. A complaint in February 2013 for non-observance of the rule on timely submission of the Daily Situation Reports;

ii. A complaint on April 11, 2013 for failure to comply with the client's instruction that led to the complaint of Mr. Albert G. Bautista, General Manager of MG Terminal;

iii. A complaint on April 16, 2013 regarding his direct transaction with Ed and Racquel Garments for the procurement of uniforms for the MG Terminal Detachment;

iv. Two (2) complaints on May 9, 2013 for the incomplete data of MG Terminal's Daily Situation Report for the month of April 2013, and for failure to report to Maningat the incident pertaining to two (2) CMP Federal security

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[4] *Id*. at 140.

[5] *Id*. at 141.

[6] *Id*. at 141.

[7] *Id*.

personnel who were confronted by the personnel of Personajes Trucking; and

v. A complaint on May 23, 2013 for failure to follow Maningat's instruction to designate Sagun as Shift-in-Charge.[8]

On June 1, 2013, Reyes formally received Offence Notices[9] pertaining to the complaints from CMP Federal and was ordered immediately suspended until July 20, 2013.[10] Upon the expiry of the suspension period, Reyes reported back to work, only to be confronted by additional complaints against him contained in the Reply by Indorsement dated July 20, 2013, which states:

You are hereby directed to explain in writing within FIVE (5) days upon receipt hereof why you should not be charged [with] the following:

1. **Insubordination:** For not: following the instruction of Mr. Arnel Maningat, Operations Manager[,] to designate SO Robert Sagun as Shift-in-Charge effective 01 May 2013, and designated him as ordinary guard instead;

2. **Negligence (4th Offense):** For failure to report to the Operations Manager the incident pertaining to the two (2) security personnel in the persons of SG Rommy Ramiterre and SG Jesus Sumalbag who were confronted by the Personajes Trucking Personnel, wherein as Detachment Commander, [you] are duty-bound to report to the latter all matters pertaining to the [o]perations;

3. **Violation of Section 1.B.c, Rule X of RA 5487:** For providing confidential information relative to the Cabcaben Vacant Lot takeover, wherein this office has received a reports [sic] that you allegedly leak [sic] the information to your subordinates on the drinking session last 02 December 2012 that eventually reached the knowledge of the [MG Terminal] General Manager.

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

[9] *Id.* at 62, 65, 72, and 75.

[10] *Id.* at 33.

Failure to comply within the prescribed period shall be construed as [a] waiver of your right to be heard.

For your strict compliance.[11]

On July 22, 2013, Reyes timely submitted his explanation,[12] controverting the accusations against him. Nevertheless, CMP Federal barred Reyes from reporting to work, and told him instead to await the decision of the management regarding the complaints.[13]

Reyes claimed that he kept on reporting for duty until July 30, 2013[14] when he was verbally informed of his termination. Indeed, on this very date (July 30, 2013), he received a Notice of Termination, that reads:[15]

After due investigation, you are hereby found liable for the following:

1. **Insubordination** — For failure to follow the instruction of the Operations Manager last 01 May 2013;

2. **Negligence (4th Offense)** — For failure to report to the Operations Manager the incident involving two (2) security personnel [who were] confronted by the personnel of Personajes Trucking; and

3. **Violation of Ethical Standard (Sec.1.B.c, Rule X of RA 5487)** — For revealing confidential information to unauthorized persons relative to takeover of Cabcaben Vacant Lot.

Such acts are punishable by dismissal under items No. 1.15, 3.24, and 1.2 of the Agency's Table of Offenses, Administrative Charges & Penalties.

In view of the foregoing, **YOU ARE HEREBY DISMISSED FROM CMP FEDERAL SECURITY AGENCY, INC. FOR SERIOUS MISCONDUCT**.[16]

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[11] *Id*. at 79. Emphasis in the original.

[12] *Id*. at 80.

[13] *Id*. at 33-34.

[14] *Id*. at 143.

[15] *Id*. at 34.

[16] *Id*. at 81. Emphasis and underscoring in the original.

Reyes thereafter lodged a complaint for illegal dismissal, non-payment of service incentive leave, separation pay, reimbursement of expenditures for supplies and cash bond, with a prayer for payment of moral and exemplary damages, as well as attorney's fees.[17]

Petitioners denied the complaint and averred that, starting January 2013, Reyes had been remiss in the discharge of his duties as Detachment Commander at MG Terminal;[18] that Reyes' dismissal was justified because Reyes was negligent in the performance of his duties as shown by his repeated disregard of company rules; that Reyes' position was one of trust and confidence, to which Reyes proved untrustworthy when he leaked confidential information. This breach, according to the petitioners, stymied CMP Federal's planned takeover of the vacant Cabcaben property.[19]

The petitioners likewise asserted that they observed procedural due process in dismissing Reyes from service; that through the e-mails and Reply by Indorsement that he received, Reyes was sufficiently apprised of the specific incidents that led to the charges against him and was provided ample opportunity to explain himself and controvert the charges; that an investigation was then conducted wherein, based on Reyes' own admission and from the statements obtained from his fellow security guards, Reyes was found guilty of the violations charged. Thus, the Notice of Termination dated July 30, 2013 was served upon him on even date.[20]

On the claim for service incentive leave pay, the petitioners denied liability for the same, contending that they were not remiss in paying this benefit. Anent Reyes's claim for damages, the petitioners argued that Reyes failed to present any clear

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[17] *Id*. at 34.

[18] *Id*. at 144.

[19] *Id*. at 146.

[20] *Id*. at 210.

and convincing evidence to show that the petitioners acted in bad faith.[21]

Ruling of the Labor Arbiter

On June 26, 2014, Labor Arbiter Fe S. Cellan rendered a Decision,[22] the dispositive portion of which reads:

> WHEREFORE, premises considered, respondent CMP Federal Security Agency, Inc. is hereby ordered to pay complainant the amount of ₱5,220.00 representing his service incentive leave pay.
>
> All other claims are denied.
>
> The complaint against individual respondent Ms. Carolina Mabanta-Piad is dismissed for lack of merit.
>
> SO ORDERED.[23]

In so ruling, the Labor Arbiter ratiocinated that the just cause for Reyes' dismissal was adequately substantiated by the petitioners who also proved that they complied with the due process requirements for termination of employment. The claim for illegal dismissal and separation pay, therefore, must necessarily fail, according to the Labor Arbiter. Nevertheless, the Labor Arbiter held that Reyes was entitled to service incentive leave pay for the years 2011 and 2012, in the aggregate amount of Php 5,220.00, since the petitioners failed to establish prior payment thereof.[24]

Ruling of the National Labor Relations Commission

Finding merit in the appeal, the NLRC, through its September 24, 2014 Decision,[25] reversed the Labor Arbiter's ruling in this wise:

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[21] *Id*. at 126.

[22] *Id*. at 122-130.

[23] *Id*. at 129-130.

[24] *Id*. at 128-129.

[25] *Id*. at 139-155; penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves E. Vivar-De Castro.

WHEREFORE, premises considered, the Appeal is GRANTED and the assailed Decision dated 26 June 2014 is REVERSED and SET ASIDE. Respondent CMP Federal Security Agency, Inc. is directed to:

a) Pay complainant separation pay in lieu of reinstatement in [an] amount equivalent to one (1) month pay for every year of service reckoned from his employment up to finality of this Decision;

b) Pay full backwages to complainant from the time he was illegally dismissed on 20 July 2013 up to finality of this Decision;

c) Pay the amount of Php 5,220.00 to complainant representing his service incentive pay;

d) Pay the amount of Php 8,900.00 to complainant representing reimbursement of expenditures for supplies;

e) Pay the amount of Php 3,400.00 to complainant for the cash bond; and

f) Pay the amount corresponding to 10% of the judgment award to complainant as and by way of attorney's fees.

SO ORDERED.[26]

Diametrically opposed to the Labor Arbiter's findings, the NLRC held that Reyes committed no serious misconduct that could have warranted his dismissal. Moreover, the NLRC held, that in dismissing Reyes,[27] the petitioners did not comply with the detailed steps of procedural due process, as laid down in *United Tourist Promotions v. Kemplin*.[28]

The NLRC elucidated that wrongful intent, an indispensable element of serious misconduct, was not duly established by the petitioners; and that on the contrary, Reyes' Written Explanation dated July 22, 2013 clearly showed that there was no deliberate intent on his part to violate CMP Federal's rules

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[26] *Id*. at 154.

[27] *Id*. at 151.

[28] 726 Phil. 337, 350-352 (2014).

and regulations.[29] Furthermore, the NLRC noted that a perusal of the Reply by Indorsement dated July 20, 2013 would show that no hearing or conference was scheduled and conducted by petitioners to give Reyes an opportunity to explain and clarify his defenses from the charges against him, to present evidence in support of his defenses, and to rebut the evidence presented against him.[30] Without the benefit of a hearing prior to his dismissal and absent just cause for his termination, Reyes's dismissal was struck down by the NLRC as illegal.[31]

Consequently, the NLRC awarded Reyes with full backwages and separation pay, in lieu of reinstatement, under the doctrine of strained relations. On the claims for non-payment of service incentive leave and reimbursement for expenditures of supplies and cash bond, the NLRC ruled that Reyes was entitled to the same because the petitioners had failed to overcome the burden, which rests on the employer, of proving payment of the said monetary claims. However, considering that no malice or bad faith could be attributed to the petitioners, the NLRC dismissed the claim for moral and exemplary damages. Finally, the NLRC awarded attorney's fees since Reyes was compelled to litigate to seek redress for his grievances.[32]

The petitioners moved for reconsideration but this motion was denied through the NLRC's October 20, 2014 Resolution.[33]

Ruling of the Court of Appeals

Ascribing grave abuse of discretion on the part of the NLRC for reversing the Labor Arbiter's finding, the petitioners filed with the CA a Petition for *Certiorari* with Prayer for Issuance of Temporary Restraining Order. Unfortunately for the petitioners, the CA, in its assailed Decision, upheld the NLRC's rulings thus:

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[29] *Rollo*, pp. 149-151.

[30] *Id*. at 151.

[31] *Id*.

[32] *Id*. at 152-154.

[33] *Id*. at 171-173.

WHEREFORE, the assailed Decision dated 24 September 2014 and the challenged Resolution dated 20 October 2014 of the National Labor Relations Commission in NLRC LAC NO. 08-001993-14 are AFFIRMED.

SO ORDERED.[34]

The CA sustained the NLRC's findings on the ground that the standards of due process were not strictly complied with; that, absent proof that an investigation was conducted by the petitioners or that Reyes was given an opportunity to be heard and present his countervailing evidence, it would be unfair for the CA to reverse the NLRC's Decision.[35] The appellate court also held that, even if the perceived procedural lapses were to be brushed aside, the petitioners' recourse would still have been dismissible for there was no sufficient cause to terminate Reyes on the ground of serious misconduct, because Reyes committed the alleged infractions without deliberate and wrongful intent to violate CMP Federal's rules and regulations.[36]

Petitioners moved for reconsideration, but the CA affirmed its August 28, 2015 Decision through its January 26, 2016 Resolution.[37]

Issue

Hence, this instant recourse, in support of which this sole error is assigned:

Whether or not THE HONORABLE COURT OF APPEALS ERRED in affirming the Decision of the NLRC, reversing the Decision of the Labor Arbiter Fe Cellan in finding that the Respondent Reyes was illegally dismissed.[38]

The Court's Ruling

The Petition is impressed with merit.

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[34] *Id*. at 41.

[35] *Id*. at 37.

[36] *Id*. at 39.

[37] *Id*. at 44-45.

[38] *Id*. at 8.

Procedural due process in illegal dismissal cases does not require formal hearing or conference

In determining whether an employee's dismissal has been legal, the inquiry focuses on whether the dismissal violated the employee's right to both substantial and procedural due process.[39] The sufficiency of the cause for the dismissal is covered by substantial due process, while procedural due process pertains to compliance with the procedural standards enshrined in the Labor Code before termination can be effected.

In this case, Reyes bewailed that he was allegedly deprived of the opportunity to be heard because no hearing or conference was conducted by the petitioners regarding the disciplinary charges against him, in violation of Section 2(d), Rule I, Book VI of the Omnibus Rules Implementing the Labor Code, which provides:

Section 2. *Security of Tenure*. x x x

x x x x x x x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just cases as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires, is given an opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. (Emphasis added)

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[39] *Brown Madonna Press, Inc. v. Casas*, 759 Phil. 479, 491 (2015).

Harping on the above-quoted rule, both the NLRC and the CA gave credence to Reyes' argument.

We cannot concur.

The 2017 case of *Maula v. Ximex Delivery Express, Inc.*,[40] citing the *En Banc* ruling in *Perez v. Phil. Telegraph and Telephone Company*,[41] reiterated the hornbook doctrine that actual hearing or conference is not a condition *sine qua non* for procedural due process in labor cases because the provisions of the Labor Code prevail over its implementing rules. Pertinently, Article 277(b) of the Labor Code states:

ART. 277. *Miscellaneous provisions*. x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter **ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires** in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. x x x[42] (Emphasis supplied)

As the Court *En Banc* explained in *Maula*:

x x x The test for the fair procedure guaranteed under Article 277(b) cannot be whether there has been a formal pre-termination confrontation between the employer and the employee. **The 'ample opportunity to be heard' standard is neither synonymous nor similar to a formal hearing.** To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. *The 'very nature of due process negates any concept of*

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[40] 804 Phil. 365 (2017).

[41] 602 Phil. 522, 537-542 (2009).

[42] LABOR CODE, Article 292 as renumbered.

inflexible procedures universally applicable to every imaginable situation.'

The standard for the hearing requirement, ample opportunity, is couched in general language revealing the legislative intent to give some degree of flexibility or adaptability to meet the peculiarities of a given situation. To confine it to a single rigid proceeding such as a formal hearing will defeat its spirit.

Significantly, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed 'substantially,' not strictly. This is a recognition that *while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process.*

An employee's right to be heard in termination cases under Article 277(b) as implemented by Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.

A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy. ***'To be heard' does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.*** Therefore, while the phrase 'ample opportunity to be heard' may in fact include an actual hearing, it is not limited to a formal hearing only. In other words, the existence of an actual, formal 'trial-type' hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard.

x x x x x x x x x

In sum, the following are the guiding principles in connection with the hearing requirement in dismissal cases:

(a) 'ample opportunity to be heard' means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.

(b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes

exist or a company rule or practice requires it, or when similar circumstances justify it.

(c) the "ample opportunity to be heard" standard in the Labor Code prevails over the 'hearing or conference' requirement in the implementing rules and regulations.[43]

Bearing in mind these guiding principles, the Court will now determine whether or not Reyes was denied procedural due process of law.

Reyes was afforded ample opportunity to be heard

To recall, Reyes received two sets of complaints in this case: the first set he received in various dates *via* e-mail, and the second he received on July 20, 2013 after his suspension had lapsed.

Anent the first set of complaints, the CA opined that they did not clearly specify the charges hurled against Reyes. It also made much of the purported delayed decision of the management and the uncertainty of whether Reyes actually received copies thereof.[44]

This Court finds otherwise.

The petitioners established that Reyes was not denied due process of law as he was in fact able to answer the charges against him. To clarify, the petitioners attached to its petition filed before this Court copies of Reyes' Written Explanations dated February 5, April 12, 15 and 17, and May 10 and 24, 2013[45] answering the first set of complaints.

In response to the complaint in February 2013 for non-observance of the rule on timely submission of the Daily Situation Report, Reyes stated in his February 5, 2013 Written Explanation

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[43] *Maula v. Ximex Delivery Express, Inc.*, *supra* note 40 at 383-385. Italics in the original. Emphasis added.

[44] *Rollo*, p. 38.

[45] *Id*. at 61, 64, 66, 71, 74 and 116.

that it was because the Detachment's computer was defective and, at that time, was turned over to CMP Federal's headquarters. Nonetheless, Reyes apologized and admitted his fault for not finding another way to comply with his obligation to submit the required report.[46]

Regarding the complaint dated April 11, 2013, for failure to comply with the client's instruction that led to the complaint of Mr. Albert G. Bautista, General Manager of MG Terminal, Reyes was able to raise a defense in his April 12, 2013 Written Explanation.[47]

In relation to the April 16, 2013 complaint for failure to coordinate with any member of the Operations Team of CMP Federal and in directly transacting with Ed and Racquel Garments for the procurement of uniforms for the MG Terminal Detachment, Reyes countered in his April 17, 2013 Written Explanation that this was the practice of the former detachment commander, and that it was moreover due to the prodding of subordinates who were unsatisfied by the fit of their uniform.[48]

Insofar as the May 8, 2013 complaints are concerned, for the incomplete data of MG Terminal's Daily Situation Report for the month of April 2013, Reyes admitted in his May 10, 2013 Written Explanation that he simply failed to recheck all the details in the Daily Situation Report that he submitted.[49] As for the confrontation between the two CMP Federal security guards and the personnel of Personajes Trucking, Reyes apologized for not contacting Maningat because he forgot the standard operating procedure to report such incidents to his superior. Instead, he merely reported the altercation to the *barangay* hall and asked the *barangay* chairman to resolve the conflict.[50]

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[46] *Id*. at 61.

[47] *Id*. at 64.

[48] *Id*. at 71.

[49] *Id*. at 74.

[50] *Id*. at 113.

Lastly, in his Written Explanation dated May 24, 2013 in response to the May 23, 2013 complaint, Reyes apologized for his failure to designate Sagun as Shift-in-Charge as instructed by the petitioners on May 18, 2013, a Saturday. According to Reyes, he was unable to comply with the instruction because Sagun was in Manila at that time and the latter needed to open an account with a bank on May 20, 2013. Thus, Sagun could have only taken the night shift for that day and could not immediately be designated as the Shift-in-Charge.[51]

Succinctly, a perusal of Reyes' Written Explanations would reveal that the allegations in the complaints were specific enough for Reyes to comprehend what the charges against him were, belying the CA's observation that they were allegedly lacking in particulars. On the contrary, Reyes was afforded more than enough chances to raise intelligent defenses, except that he mostly admitted his infractions and apologized for them in his Written Explanations.

It is because of these admissions that CMP Federal served Reyes with four Notices of Offense on June 1, 2013, informing him of the penalty imposed by his erstwhile employer for violating company rules and policies. CMP Federal imposed the following penalties on Reyes: a stern warning for Reyes' first negligent act of failing to comply with the rule on the submission of Daily Situation Reports;[52] a five-day suspension from June 1 to 5, 2013 for failure to follow a client's instruction;[53] a 15-day suspension from June 6 to 20, 2013 for failure to coordinate for the procurement of uniforms, Reyes' second act of negligence; and a 30-day suspension from June 21 to July 20, 2013 for incomplete data of daily status reports, his third infraction for negligence.[54]

When the period of suspension lapsed on July 20, 2013, Reyes returned to work only to be served by CMP Federal with the

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[51] *Id*. at 116.

[52] *Id*. at 62.

[53] *Id*. at 65.

[54] *Id*. at 75.

second set of complaints embodied in the Reply by Indorsement of even date.[55]

On July 22, 2013, Reyes submitted his Written Explanation,[56] wherein he reiterated his defenses in his May 10 and 24, 2013 answers regarding his failure to designate Sagun as Shift-in-Charge and for failure to report the incident with the Personajes Trucking personnel. Regarding the alleged violation of Section 1.B.c, Rule X of RA 5487, Reyes countered that it was Sagun who actually breached the rule on confidentiality, claiming that he instructed Sagun to list down 18 security guards for the new posts in the vacant Cabcaben lot; but that, despite his clear instruction to Sagun to keep the information confidential, the latter allegedly still divulged the plan to other security guards.

Upon evaluating the evidence adduced, including Reyes' written explanation and written statements from other security guards,[57] CMP Federal issued a Notice of Termination dated July 30, 2013, dismissing Reyes from his employment.[58]

At this point, it becomes fairly obvious that the petitioners afforded Reyes with ample opportunity to be heard regarding the complaints leveled against him. A formal hearing or conference was not necessary since nowhere in any of his Written Explanations did Reyes request for one. Few facts were also disputed since his justifications were replete with admissions and apologies. Thus, without first going into the merits of the administrative complaints against Reyes, and his defenses, the Court finds that Reyes was not denied procedural due process of law. The CA therefore erred in ruling that the NLRC did not act with grave abuse of discretion when it reversed the Decision of the Labor Arbiter.

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[55] *Id*. at 79.

[56] *Id*. at 80.

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

[58] *Id*. at 81.

Just cause for Reyes's termination

Article 297[59] of the Labor Code enumerates the just causes for the termination of employment, *viz.*:

Art. 297. 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. (Emphasis added)

Preliminarily, the Court agrees with the NLRC and the CA that Reyes' infractions did not constitute "serious misconduct" as contemplated under the first paragraph of Article 282 of the Labor Code. As held in *Imasen Philippine Manufacturing Corporation v. Alcon*:[60]

> Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To constitute a valid cause for the dismissal within the text and meaning of Article 282 of the Labor Code, the employee's misconduct **must be serious**, *i.e.*, **of such grave and aggravated character** and not merely trivial or unimportant.[61]

In the case at bar, the explanations proffered by Reyes showed that he was not animated by any wrongful intent when he committed the infractions complained of. Moreover, the finding

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[59] Formerly Article 282.

[60] 746 Phil. 172 (2014).

[61] *Id*. at 181. Emphasis in the original.

that he was guilty of serious misconduct was incompatible with the charges for negligence which, by definition, requires lack of wrongful intent.

The Court cannot also consider negligence as a valid ground for Reyes' dismissal. To be a valid ground for dismissal, the neglect of duty must be both gross and habitual. Gross negligence implies want of care in the performance of one's duties. Habitual neglect, on the other hand, implies repeated failure to perform one's duties for a period of time.[62]

Under the circumstances obtaining in the case, the Court finds that, although Reyes' negligence was habitual, they could in no way be considered gross in nature. It cannot be said that Reyes was wanting in care. For, based on his explanations, his infractions were the result of either simple negligence or errors in judgment.

Nevertheless, the Court rules that there was still just cause for Reyes' termination — gross inefficiency.

In the leading case of *Lim v. National Labor Relations Commission*,[63] the Court considered inefficiency as an analogous just cause for termination of employment under Article 282 of the Labor Code. The Court held:

> We cannot but agree with PEPSI that gross inefficiency falls within the purview of 'other causes analogous to the foregoing,' and constitutes, therefore, just cause to terminate an employee under Article 282 of the Labor Code. One is analogous to another if it is susceptible of comparison with the latter either in general or in some specific detail; or has a close relationship with the latter. 'Gross inefficiency' is closely related to 'gross neglect,' for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business. In *Buiser v. Leogardo*, this Court ruled that failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal.[64]

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[62] *Noblado v. Alfonso*, 773 Phil. 271, 283 (2015).

[63] 328 Phil. 843 (1996).

[64] *Id.* at 858.

This doctrine had been applied in *International School Manila v. International School Alliance of Educators*[65] when this Court held:

> What can be gathered from a thorough review of the records of this case is that the inadequacies of Santos as a teacher did not stem from a reckless disregard of the welfare of her students or of the issues raised by the School regarding her teaching. Far from being tainted with bad faith, Santos's failings appeared to have resulted from her lack of necessary skills, in-depth knowledge, and expertise to teach the Filipino language at the standards required of her by the School.
>
> Be that as it may, we find that the petitioners had sufficiently proved the charge of gross inefficiency, which warranted the dismissal of Santos from the School.
>
> The Court enunciated in *Peña v. National Labor Relations Commission* that 'it is the prerogative of the school to set high standards of efficiency for its teachers since quality education is a mandate of the Constitution. As long as the standards fixed are reasonable and not arbitrary, courts are not at liberty to set them aside.' x x x
>
> x x x x x x x x x
>
> Contrary to the ruling of the Labor Arbiter, it is not accurate to state that Santos was dismissed by the School for inefficiency on account of the fact that she was caught only once without a lesson plan. The documentary evidence submitted by petitioners, the contents of which we laid down in detail in our statement of facts, pointed to the numerous instances when Santos failed to observe the prescribed standards of performance set by the School in several areas of concern, not the least of which was her lack of adequate planning for her Filipino classes. Said evidence established that the School administrators informed Santos of her inadequacies as soon as they became apparent; that they provided constructive criticism of her planning process and teaching performance; and that regular conferences were held between Santos and the administrators in order to address the latter's concerns. In view of her slow progress, the School required her to undergo the remediation phase of the evaluation process through a Professional Growth Plan. Despite the efforts of the School administrators, Santos failed to show any substantial

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[65] 726 Phil. 147 (2014).

improvement in her planning process. Having failed to exit the remediation process successfully, the School was left with no choice but to terminate her employment.

The Court finds that, not only did the petitioners' documentary evidence sufficiently prove Santos's inefficient performance of duties, but the same also remained unrebutted by respondents' own evidence. On the contrary, Santos admits in her pleadings that her performance as a teacher of Filipino had not been satisfactory but she prays for leniency on account of her prior good record as a Spanish teacher at the School. Indeed, even the Labor Arbiter, the NLRC and the Court of Appeals agreed that Santos was not without fault but the lower tribunals deemed that termination was too harsh a penalty.[66]

The ruling in *International School Manila* is squarely applicable herein. As with any private corporation, CMP Federal had the prerogative to set standards, within legal bounds, to be observed by its employees. In the exercise of this right, CMP Federal promulgated a Table of Offenses, Administrative Charges and Penalties, which prescribed a norm of conduct at work.[67] Based on the admissions of Reyes in his Written Explanations, he was repeatedly remiss in complying with the standards set therein. In view of his repeated unsatisfactory performance, CMP Federal had justifiable reasons to terminate Reyes from its employ.

The CA thus erred in ruling that the NLRC did not act with grave abuse of discretion in invalidating Reyes' dismissal for lack of just cause. The NLRC and the CA should not have fixated itself with the designation of the offense as serious misconduct when it is clear from the complaints and Reply by Indorsement that Reyes was actually being made to answer for his violation of company policies and standards. Compounded with the earlier finding that the NLRC similarly gravely abused its discretion in finding that the procedural due process requirements were not complied with, the Court is constrained to reverse the ruling of the CA. The reinstatement of the Labor Arbiter's ruling is therefore in order.

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[66] *Id*. at 175-177.

[67] *Rollo*, pp. 76-78.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The August 28, 2015 Decision and January 26, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 138291 are hereby **REVERSED and SET ASIDE**. The June 26, 2014 Decision of Labor Arbiter Fe S. Cellan in NLRC Case No. NCR-08-11069-13 is **REINSTATED**.

SO ORDERED.

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

Jardeleza, J., on official leave.

SECOND DIVISION

[G.R. No. 223246. June 26, 2019]

JAN FREDERICK PINEDA DE VERA, *petitioner, vs.* **UNITED PHILIPPINE LINES, INC. and/or HOLLAND AMERICA LINE WESTOUR, INC., and DENNY RICARDO C. ESCOBAR,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARER; TOTAL AND PERMANENT DISABILITY BENEFITS; PETITIONER'S COMPLAINT FOR TOTAL AND PERMANENT DISABILITY BENEFITS WAS PREMATURE; A SEAFARER SEEKING COMPENSATION FOR HIS DISABILITY CANNOT FILE HIS CLAIM BEFORE SEEKING A SECOND OPINION FROM HIS PHYSICIAN OF CHOICE. — [I]t is clear that if the company-designated physician made an assessment declaring the seafarer fit to work within the applicable period as prescribed under the POEA-SEC and in relevant laws and jurisprudence, the seafarer may pursue his claim for disability benefits only after securing a contrary medical opinion from his physician of choice.

In other words, a seafarer seeking compensation for his disability cannot file his claim before seeking a second opinion. In this case, it is undisputed that the company-designated physicians were able to issue a medical certificate declaring De Vera fit to work on April 2, 2013, or after 48 days of continuous treatment counted from the date of the initial consultation on February 13, 2013, or after 58 days counted from De Vera's repatriation to the Philippines on February 3, 2013. Obviously, the fitness for sea duty declaration by the company-designated physicians was made within the 120-day period prescribed under the POEA-SEC. On the other hand, a plain reading of the records would reveal that De Vera filed the present complaint on April 18, 2013. Records also disclose that De Vera secured a contrary medical opinion from his physician of choice only on July 25, 2013, or 98 days after he filed his complaint. From these factual considerations, it is very clear that De Vera had no cause of action when he filed the present complaint on April 18, 2013. Thus, the NLRC and the CA did not commit any error when they ruled that De Vera is not entitled to total and permanent disability compensation. As a matter of fact, the Labor Arbiter should have dismissed De Vera's complaint for lack of cause of action at the first instance.

2. **ID.; ID.; ID.; WHERE RESPONDENT FAILED TO VALIDLY CHALLENGE THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN WITH THE MECHANISM PROVIDED UNDER THE POEA-SEC, THE LATTER'S ASSESSMENT PREVAILS OVER THAT OF THE SEAFARER'S DOCTOR. —** It is settled that the determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, subject to the periods prescribed by law. This is because it is the company-designated physician who has been granted by the POEA-SEC the first opportunity to examine the seafarer and to thereafter issue a certification as to the seafarer's medical status. However, this does not mean that the company-designated physician's assessment is automatically final, binding or conclusive on the claimant-seafarer as he can still dispute the assessment. In assailing the assessment, the seafarer must comply with the mechanism provided under Section 20(A)(3) of the POEA-SEC which is integrated in the employment contract between the seafarer and his employer and therefore operates as the law between them. Thus, the seafarer may dispute the company-designated

physician's assessment by seasonably exercising his prerogative to seek a second opinion and consult a doctor of his choice. In case the findings of the seafarer's physician of choice differ from that of the company-designated physician, the conflicting findings shall be submitted to a third-party doctor, as mutually agreed upon by the parties. The referral of the conflicting findings to an independent third doctor is important and crucial to the claim of the seafarer. If the seafarer fails to signify his intent to submit the disputed assessment to a third physician, then the company can insist on the disability rating issued by the company-designated physician, even against a contrary opinion by the seafarer's doctor. The duty to secure the opinion of a third doctor belongs to the employee, who must actively or expressly request for it. Failure to comply with the requirement of referral to a third-party physician is tantamount to violation of the terms under the 2010 POEA-SEC, and without a binding third-party opinion, the findings of the company-designated physician shall prevail over the assessment made by the seafarer's doctor. Thus, without the referral to a third doctor, there is no valid challenge to the findings of the company-designated physician. In the absence thereof, the medical pronouncement of the company-designated physician must be upheld.

3. ID.; ID.; ID.; SEAFARER'S INABILITY TO RESUME HIS WORK AFTER THE LAPSE OF 120 DAYS FROM HIS INJURY OR ILLNESS DOES NOT AUTOMATICALLY WARRANT THE GRANT OF DISABILITY BENEFITS IN HIS FAVOR; RESPONDENT IS NOT ENTITLED TO TOTAL AND PERMANENT DISABILITY BENEFITS. — De Vera's insistence that he should be considered as totally and permanently disabled as he is now unable to earn wages as a seafarer could not also be sustained. Jurisprudence holds that a seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor. It cannot be used as a cure-all formula for all maritime compensation cases. Additionally, it must be stressed that Section 20(A)(6) of the 2010 POEA-SEC now expressly provides that the "disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is

under treatment or the number of days in which sickness allowance is paid." x x x In sum, the Court holds that De Vera is not entitled to total and permanent disability benefits due to lack of cause of action and in view of his failure to refute the company-designated physicians' fit to work assessment. Thus, the CA and the NLRC did not commit any error in their respective decisions and resolutions.

4. ID.; ID.; ID.; AS THE DEED OF RELEASE AND QUITCLAIM WAS VALIDLY EXECUTED, RESPONDENT IS NOT ENTITLED TO ATTORNEY'S FEES. — [T]he Court opines that the subject Deed of Release and Quitclaim is valid. The fact that the respondents prepared the deed beforehand and merely awaited De Vera's signature does not automatically prove the commission of fraud. After all, there was no showing that he was unduly compelled or forced to affix his signature thereon. Further, the amount of ₱40,808.16 as consideration for the quitclaim is reasonable since he is not entitled to any disability benefit and further considering that he already received from the respondents the amounts of ₱26,537.20 and ₱21,614.96, or a total of ₱48,152.16, as sickness allowance and maintenance pay. Necessarily, the deed is not contrary to law, public order, public policy, morals or good customs. x x x [S]ince De Vera is not entitled to any of his claims, it goes without saying that he is also not entitled to attorney's fees.

APPEARANCES OF COUNSEL

Ayubo and Martin Law Offices for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

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

This is a Petition for Review on *Certiorari* seeking to reverse and set aside the August 20, 2015 Decision[1] and the February

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Florito S. Macalino and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 371-389.

5, 2016 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 135608, which affirmed the February 21, 2014 Decision[3] and the March 27, 2014 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 01-000050-14, which in turn reversed and set aside the November 28, 2013 Decision[5] of the Labor Arbiter in NLRC-Case No. (M)NCR-04-05863-13, a case for permanent and total disability benefits claim by a seafarer.

The Facts

On July 13, 2012, respondent United Philippine Lines, Inc. (UPLI), a local manning agency and domestic corporation engaged in the business of recruitment and placement of seafarers, employed petitioner Jan Frederick Pineda De Vera (De Vera) to work as a Bar Attendant on board the vessel "*M/S Statendam*" for a period of 10 months. UPLI engaged the services of De Vera for and on behalf of its foreign principal, the respondent Holland America Line Westour, Inc. The contract was verified and approved by the Philippine Overseas Employment Administration (POEA) on the same day.[6] De Vera joined his vessel sometime in July 2012.

On December 15, 2012 and while on board the vessel, De Vera complained of experiencing pain on his lower back. He was placed under medication for two weeks which only provided temporary relief.

On January 18, 2013, De Vera was brought to East Coast Orthopaedics in Pompano Beach, Florida, USA, where he underwent Magnetic Resonance Imaging (MRI) of his lumbar

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[2] *Id*. at 419-421.

[3] Penned by Presiding Commissioner Joseph Gerard E. Mabilog, with Commissioners Isabel G. Panganiban-Ortiguerra and Nieves E. Vivar-De Castro, concurring; *id*. at 289-300.

[4] *Id*. at 302-303.

[5] Penned by Labor Arbiter Virginia T. Luyas-Azarraga; *id*. at 201-209.

[6] *Id*. at 86.

spine. An MRI Final Report[7] was issued containing the following: "Impression: Moderate degenerative disc disease at L5-S1, with a 5 mm right paramedian disc protrusion causing mass effect on the descending S1 nerve root on the right."[8] On the same day, a physical therapy prescription[9] was issued by Dr. John P. Malloy, recommending De Vera to undergo the "McKenzie Program" for his back pains and to engage in "ROM/strengthening exercises, core strengthening, and lumbar stabilization."

On January 22, 2013, Holland issued a Crew Home Referral Request[10] stating that De Vera's early repatriation had been requested. Consequently, De Vera was medically repatriated to Manila on February 3, 2013. Upon his arrival, De Vera was referred by UPLI to the company-designated physicians at Shiphealth, Inc. in Ermita, Manila, for further evaluation and management of his condition. On February 13, 2013, De Vera had his initial consultation with the company-designated physicians, Dr. Abigael T. Agustin (Dr. Agustin) and Dr. Maria Gracia K. Gutay (Dr. Gutay).[11] After the initial consultation, the company-designated physicians referred De Vera for evaluation by an orthopedic spine surgeon.[12]

It would appear that De Vera was referred to Dr. Adrian Catbagan (Dr. Catbagan), an orthopedic spine surgeon at the Philippine General Hospital. On February 15, 2013, De Vera was examined by Dr. Catbagan, who did not note any neurologic deficit on the patient. Dr. Catbagan advised conservative management and rehabilitative treatment. He also prescribed medicines for the pain. Consequently, De Vera was referred to a physiatrist on February 18, 2013 for physical therapy.[13]

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

[8] *Id*. at 90.

[9] *Id*. at 88.

[10] *Id*. at 92.

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

[12] *Id.* at 162.

[13] *Id*. at 91, 163.

De Vera completed six sessions of physical therapy. His physical examination also showed improved range of motion of the back and absence of neurologic deficits. Nevertheless, another set of six physical therapy sessions was still recommended for further pain relief.[14] After completing the second set of physical therapy sessions, the company-designated physicians noted full range of motion of De Vera's back and trunk. They also noted that Dr. Catbagan and the physiatrist cleared De Vera. Thus, rehabilitative therapy was discontinued.[15]

On March 11, 2013, De Vera received the following amounts from UPLI: (1) ₱26,537.20 representing sickness allowance from February 1, 2013 to March 1, 2013;[16] (2) ₱2,500.00 representing reimbursement of travel expenses;[17] and (3) ₱2,500.00 representing reimbursement of medical expenses.[18]

On April 2, 2013, the company-designated physicians issued their 5th and Final Medical Summary Report[19] where it was stated that "*Physical Capacity Evaluation on March 23, 2013 showed physical examination findings that were normal, and material and nonmaterial handling tests that were completed without complaints of lumbar or back pain.* ***Overall recommendation revealed [that] patient was fit to work***."[20]

On April 18, 2013, apparently not convinced with the fit to work declaration, De Vera filed a complaint for total and permanent disability benefits, underpayment and non-payment of wages, non-payment of two months sick wages, moral and exemplary damages, and attorney's fees.[21]

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[14] *Id*. at 164.

[15] *Id*. at 165.

[16] *Id*. at 169.

[17] *Id*. at 171.

[18] *Id*. at 172.

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

[20] *Id*. at 167.

[21] *Id*. at 58-59.

However, on April 19, 2013, De Vera acknowledged receipt from UPLI of the amount of ₱21,614.96 representing the second and final payment of his sickness allowance and maintenance pay.[22] Further, on April 22, 2013, De Vera executed a Deed of Release and Quitclaim[23] wherein in consideration of the amount of ₱40,808.16, he released and discharged the respondents from any and all claims arising from his employment on board M/S Statendam.

On July 25, 2013, De Vera sought the medical opinion of Dr. Cesar H. Garcia (Dr. Garcia), an orthopedic surgeon. On the same day, after examining De Vera, Dr. Garcia concluded that the former is "unfit to work as a seaman in any capacity."[24]

The Labor Arbiter Ruling

In its Decision dated November 28, 2013, the Labor Arbiter ruled that De Vera has been rendered totally and permanently disabled to perform his duties as a seafarer. The Labor Arbiter adjudged the respondents to pay De Vera the full coverage of his disability benefits in the amount of US$60,000.00. It also awarded De Vera attorney's fees equivalent to 10% of the total monetary award. In ruling for De Vera, the Labor Arbiter ratiocinated that despite the company-designated physicians' declaration of fitness for sea duty, De Vera has never been gainfully employed by the respondents thereby impairing his earning capacity. The dispositive portion of the decision states:

> WHEREFORE, PREMISES CONSIDERED, judgment [is] rendered ordering respondents jointly and severally to pay complainant Sixty Thousand U.S. Dollars (US$60,000.00) or its peso equivalent at the time of payment, plus 10% of the total award as attorney's fees.
>
> SO ORDERED.[25]

Unconvinced, the respondents elevated an appeal to the NLRC.

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[22] *Id*. at 170.

[23] *Id*. at 173-174.

[24] *Id*. at 93-96.

[25] *Id*. at 209.

The NLRC Ruling

In its Decision dated February 21, 2014, the NLRC reversed and set aside the November 28, 2013 Labor Arbiter Decision. It stressed that the company-designated physicians examined and treated De Vera for 58 days before finally clearing him of his medical condition. On the other hand, Dr. Garcia made his declaration of unfitness for work after a single consultation. Thus, unlike the company-designated physicians, Dr. Garcia did not have the chance to closely monitor De Vera's illness. It also noted that Dr. Garcia made his conclusion on the basis of previous findings and examinations performed by the company-designated physicians, as well as on the statements supplied by De Vera. As such, his findings were unsupported by sufficient proof.

The NLRC also observed that De Vera voluntarily executed a Deed of Release and Quitclaim in the respondents' favor right after the issuance of the final medical assessment. The NLRC explained that in executing the said document, De Vera impliedly admitted the correctness of the assessment by the company-designated physicians. It also pointed out that merely four days after filing the complaint, De Vera executed a Deed of Release and Quitclaim in favor of the respondents, which the former neither challenged nor refuted. Thus, the NLRC ruled that De Vera's cause of action is without merit. The dispositive portion of the NLRC Decision reads:

> WHEREFORE, premises considered, the Decision dated November 28, 2013 is hereby REVERSED and SET ASIDE.
>
> SO ORDERED.[26]

De Vera moved for reconsideration, but the same was denied by the NLRC in its March 27, 2014 Resolution.

Aggrieved, De Vera filed a petition for *certiorari* before the CA.

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[26] *Id*. at 299.

The CA Ruling

In its assailed August 20, 2015 Decision, the CA denied De Vera's petition and affirmed the February 21, 2014 Decision and the March 27, 2014 Resolution of the NLRC.

The appellate court ratiocinated that De Vera failed to comply with Section 20(A)(3) of the POEA-Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on Board Ocean-Going Ships or the POEA-Standard Employment Contract (POEA-SEC). It explained that the parties should have sought the opinion of an independent third doctor in view of the contradictory findings of the company-designated physicians and the seafarer's physician. It further noted that the respondents were not aware of De Vera's disagreement with the "fit to work" assessment by the company-designated physicians at the time he filed his complaint. Because of this and considering the failure to obtain the opinion of a third doctor, the appellate court ruled that the medical findings by the company-designated physicians must be upheld.

The appellate court further opined that even on the assumption that the third doctor's opinion may be dispensed with, the findings by the company-designated physicians deserve more credence than that of De Vera's personal physician. It pointed out that Dr. Garcia examined De Vera only once and merely interpreted the medical findings by the company-designated physicians. In contrast, the company-designated physicians examined De Vera several times for a period of two months even issuing a separate medical report after each examination. Thus, the appellate court ruled that the assessment made by the company-designated physicians is more reliable.

Lastly, the appellate court concurred with the NLRC's observation that De Vera impliedly admitted the correctness of the medical assessment by the company-designated physicians when he executed a Deed of Release and Quitclaim releasing and discharging the respondents from all claims arising from his employment.

In sum, the CA dismissed the contention that the NLRC committed grave abuse of discretion when it reversed the Labor Arbiter's November 28, 2013 Decision. The *fallo* of the assailed decision states:

> WHEREFORE, premises considered, the instant petition is DENIED. The assailed Decision dated February 21, 2014 and Resolution dated March 27, 2014, both rendered by public respondent NLRC, are AFFIRMED.
>
> ORDERED.[27]

De Vera moved for reconsideration, but the same was denied by the CA in its assailed February 5, 2016 Resolution.

Hence, this petition.

The Issue

WHETHER THE CA ERRED WHEN IT AFFIRMED THE FEBRUARY 21, 2014 DECISION AND THE MARCH 27, 2014 RESOLUTION OF THE NLRC AND RULING THAT DE VERA IS NOT ENTITLED TO ANY DISABILITY COMPENSATION.

De Vera maintains that he is entitled to total and permanent disability compensation. He asserts that resorting to the opinion of an independent third doctor is merely directory and not mandatory. He also argues that the final medical report by the company-designated physicians which stated that the patient has "maximally medically improved" is not similar to a declaration of fit to work. He also claims that Dr. Garcia, as a medical expert, may base his opinion on the clinical history of his patient. Thus, Dr. Garcia's assessment that he is now unfit to work as a seaman in any capacity deserves great consideration. Further, he contends that the NLRC and the CA erred in affirming the validity of the Deed of Release and Quitclaim alleging that the respondents committed fraud when they prepared the said document. Finally, he claims that he is entitled to damages and attorney's fees insisting that the respondents committed bad faith.

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[27] *Id*. at 388.

The Court's Ruling

The petition is bereft of any merit.

De Vera's complaint for total and permanent disability benefits was premature.

Entitlement to disability benefits by seafarers is a matter governed, not only by the medical findings of the respective physicians of the parties, but, more importantly, by the applicable Philippine laws and by the contract between the parties. By law, the material statutory provisions are Articles 191 to 193 of the Labor Code. By contract, the seafarers and their employers are governed, not only by their mutual agreements, but also by the provisions of the POEA-SEC which are mandated to be integrated in every seafarer's contract.[28] Thus, the issue of whether a seafarer can legally demand and claim disability benefits from his employers for an illness suffered is best addressed by the provisions of the POEA-SEC.[29]

In this case, records disclose that De Vera's employment with the respondents is governed by the 2010 POEA-SEC. On a seafarer's compensation and benefits after suffering from a work-related injury or illness, the last paragraph of Section 20(A)(3) of the 2010 POEA-SEC provides:

SEC. 20. Compensation and Benefits.

A. Compensation and Benefits for Injury or Illness

x x x x x x x x x

3. x x x x x x x x x

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 supplied)

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[28] *Tradephil Shipping Agencies, Inc. v. Dela Cruz*, 806 Phil. 338, 354-355 (2017).

[29] *Andrada v. Agemar Manning Agency, Inc.*, 698 Phil. 170, 181 (2012).

In this regard, in *C.F. Sharp Crew Management, Inc. v. Taok*,[30] the Court enumerated the instances where a seafarer's cause of action for total and permanent disability benefits may arise, to wit:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course be declared fit to work at any time such declaration is justified by his medical condition.

Based on this Court's pronouncements in *Vergara*, it is easily discernible that the 120-day or 240-day period and the obligations the law imposed on the employer are determinative of when a seafarer's cause of action for total and permanent disability may be considered to have arisen. Thus, a seafarer may pursue an action for total and permanent disability benefits if: (a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; **(c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20- B(3) of the POEA-SEC are of a contrary opinion;** (d) the company-designated physician

[30] 691 Phil. 521 (2012).

acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.[31] (Citations omitted, emphasis and underscoring supplied)

Consistent with the aforesaid pronouncements in *C.F. Sharp Crew*, the Court, in *Calimlim v. Wallem Maritime Services, Inc.*,[32] stressed that a seafarer who consulted with his physician of choice after the filing of his complaint for disability does not have a cause of action to sustain his claim, thus:

The Court notes, however, that Calimlim sought consultation of Dr. Jacinto only on July 9, 2012, more than sixteen (16) months after he was declared fit to work and interestingly four (4) days *after* he had filed the complaint on July 5, 2012. Thus, as aptly ruled by the NLRC, at the time he filed his complaint, he had no cause of action for a disability claim as he did not have any sufficient basis to support the same. The Court also agrees with the CA that seeking a second opinion was a mere afterthought on his part in order to receive a higher compensation.[33]

From the foregoing, it is clear that if the company-designated physician made an assessment declaring the seafarer fit to work within the applicable period as prescribed under the POEA-SEC and in relevant laws and jurisprudence, the seafarer may

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[31] *Id*. at 538-539.

[32] 800 Phil. 830 (2016).

[33] *Id*. at 844.

pursue his claim for disability benefits only after securing a contrary medical opinion from his physician of choice. In other words, a seafarer seeking compensation for his disability cannot file his claim before seeking a second opinion.

In this case, it is undisputed that the company-designated physicians were able to issue a medical certificate declaring De Vera fit to work on April 2, 2013, or after 48 days of continuous treatment counted from the date of the initial consultation on February 13, 2013, or after 58 days counted from De Vera's repatriation to the Philippines on February 3, 2013. Obviously, the fitness for sea duty declaration by the company-designated physicians was made within the 120-day period prescribed under the POEA-SEC. On the other hand, a plain reading of the records would reveal that De Vera filed the present complaint on April 18, 2013. Records also disclose that De Vera secured a contrary medical opinion from his physician of choice only on July 25, 2013, or 98 days after he filed his complaint.

From these factual considerations, it is very clear that De Vera had no cause of action when he filed the present complaint on April 18, 2013. Thus, the NLRC and the CA did not commit any error when they ruled that De Vera is not entitled to total and permanent disability compensation. As a matter of fact, the Labor Arbiter should have dismissed De Vera's complaint for lack of cause of action at the first instance.

De Vera argues, however, that the company-designated physicians' recommendation in their final medical report that he has already "maximally medically improved" could not be considered as their "fit to work" assessment. He contends that the term "maximum medical improvement" refers to the stage wherein the injured person's condition could no longer be improved, or when a treatment plateau in a person's healing process has been reached. While the term could mean that the patient has fully recovered from the injury, it could also mean that the patient could no longer be healed, or his condition could no longer be expected to improve despite continuing medical treatment or rehabilitative programs. In effect, De Vera is

implying that the company-designated physicians failed to give a definite and effective assessment.

De Vera is grasping at straws. The Court observes that the contention against the term "maximally medically improved" in the company-designated physicians' final medical report is a new issue which has not been raised during the proceedings before. It must be highlighted that De Vera's position during the proceedings in the Labor Arbiter, the NLRC, and the CA was that he must be considered as totally and permanently disabled because of the impairment or loss of his earning capacity as he is unable to earn wages in the same kind of work which he was trained for or accustomed to perform. He never assailed the certainty and finality of the fit to work assessment he received from the company-designated physicians.

More importantly, a simple reading of the final medical report would belie De Vera's contention that the company-designated physicians' fit to work assessment was not definite. Indeed, the company-designated physicians recommended that De Vera has "maximally medically improved." However, they also stated that De Vera's condition has been resolved and recommended that he be discharged from medical coordination. Moreover, they expressly stated that De Vera was already fit to work. It must be repeated that in their Final Medical Summary Report, the company-designated physicians stated that "*Physical Capacity Evaluation on March 23, 2013 showed physical examination findings that were normal, and material and nonmaterial handling tests that were completed without complaints of lumbar or back pain.* ***Overall recommendation revealed [that] patient was fit to work***."

Thus, while "maximally medically improved" could mean either that the patient has fully recovered or that the patient's condition could no longer be improved, there is no doubt that when the company-designated physicians used the said term in their final medical report, they meant that De Vera has fully recovered and was already fit to work as a seafarer. Hence, the company-designated physicians were able to issue a final and definite medical assessment within the prescribed period.

De Vera failed to validly challenge the assessment by the company-designated physicians; Assessment by the company-designated physicians is more credible.

Even if the Court were to consider De Vera's late consultation with Dr. Garcia and give due course to the assessment he issued, there would still be no valid challenge to the company-designated physicians' assessment.

It is settled that the determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, subject to the periods prescribed by law.[34] This is because it is the company-designated physician who has been granted by the POEA-SEC the first opportunity to examine the seafarer and to thereafter issue a certification as to the seafarer's medical status.[35]

However, this does not mean that the company-designated physician's assessment is automatically final, binding or conclusive on the claimant-seafarer as he can still dispute the assessment.[36] In assailing the assessment, the seafarer must comply with the mechanism provided under Section 20(A)(3) of the POEA-SEC which is integrated in the employment contract between the seafarer and his employer and therefore operates as the law between them. Thus, the seafarer may dispute the company-designated physician's assessment by seasonably exercising his prerogative to seek a second opinion and consult a doctor of his choice.[37] In case the findings of the seafarer's physician of choice differ from that of the company-designated physician, the conflicting findings shall be submitted to a third-party doctor, as mutually agreed upon by the parties.[38]

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[34] *Carcedo v. Maine Marine Philippines, Inc*., 758 Phil. 166, 187 (2015).

[35] *Magsaysay Mitsui OSK Marine, Inc. v. Buenaventura*, G.R. No. 195878, January 10, 2018, 850 SCRA 256, 263-264.

[36] *Caranto v. Bergesen D.Y. Phils.*, 767 Phil. 750, 761 (2015).

[37] *Id*.

[38] *Magsaysay Mitsui OSK Marine, Inc. v. Buenaventura*, *supra* note 35, at 264.

The referral of the conflicting findings to an independent third doctor is important and crucial to the claim of the seafarer. If the seafarer fails to signify his intent to submit the disputed assessment to a third physician, then the company can insist on the disability rating issued by the company-designated physician, even against a contrary opinion by the seafarer's doctor. The duty to secure the opinion of a third doctor belongs to the employee, who must actively or expressly request for it.[39] Failure to comply with the requirement of referral to a third-party physician is tantamount to violation of the terms under the 2010 POEA-SEC, and without a binding third-party opinion, the findings of the company-designated physician shall prevail over the assessment made by the seafarer's doctor.[40] Thus, without the referral to a third doctor, there is no valid challenge to the findings of the company-designated physician. In the absence thereof, the medical pronouncement of the company-designated physician must be upheld.[41]

Indeed, it is settled that the rule that the company-designated physician's findings shall prevail in case of non-referral of the case to a third doctor is not a hard-and-fast rule as the inherent merits of the company-designated physician's medical findings should still be weighed and duly considered.[42] Nevertheless, it is equally true that in case of non-referral with a third doctor, the assessment of the seafarer's physician of choice may be upheld over that of the company-designated physician only if there is a clear showing that the latter was biased in favor of the employer. Clear bias on the part of the company-designated physician may be shown if there is no scientific relation between the diagnosis and the symptoms felt by the seafarer, or if the

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[39] *Hernandez v. Magsaysay Maritime Corp.*, G.R. No. 226103, January 24, 2018.

[40] *Dionio v. Trans-Global Maritime Agency, Inc.*, G.R. No. 217362, November 19, 2018.

[41] *Yialos Manning Services, Inc. v. Borja*, G.R. No. 227216, July 4, 2018.

[42] *Ilustricimo v. NYK-Fil Ship Management, Inc.*, G.R. No. 237487, June 27, 2018.

final assessment of the company-designated physician is not supported by the medical records of the seafarer.[43]

As already stated, De Vera failed to seek a second opinion prior to the filing of his complaint. His failure to seasonably exercise his option to seek a second opinion necessarily means that he also failed to observe the provisions of Section 20(A)(3) of the 2010 POEA-SEC regarding the appointment of an independent third doctor. De Vera clearly breached the provisions of the 2010 POEA-SEC by his repeated failure to comply with the conflict-resolution procedure laid down therein.

De Vera also failed to show any circumstance which could persuade the Court to disregard the company-designated physicians' findings. Aside from the failed attempt to show that the assessment by the company-designated physicians was not definite and could not be equated to a fit to work assessment, there is no proof, not even a suggestion, which would show that the company-designated physicians were biased in favor of the respondents.

On the contrary, the respondents were able to show that the medical findings and fit to work certification by the company-designated physicians were duly supported by medical records. For the whole duration of De Vera's treatment, the company-designated physicians issued a total of five medical reports stating in each of them the findings and the noted improvements on De Vera's medical condition. The company-designated physicians also referred him to an orthopedic spine surgeon with whom he also had several consultations. De Vera also completed two sets of six physical therapy sessions for a total of 12 sessions upon the recommendation of the orthopedic spine surgeon. After completing the physical therapy sessions and even after being cleared by the orthopedic surgeon, the company-designated physicians recommended that he undergo physical capacity evaluation, which De Vera completed without issue

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[43] *C.F. Sharp Crew Management, Inc. v. Castillo*, 809 Phil. 180, 194 (2017); *Magsaysay Mitsui Osk Marine, Inc. v. Buenaventura*, *supra* note 35, at 267; and *Nonay v. Bahia Shipping Services, Inc.*, 781 Phil. 197, 228 (2016).

yielding normal results. Clearly, the assessment by the company-designated physicians was duly supported by ample evidence. Therefore, there is no reason to disregard their assessment.

Further, even on the assumption that the third doctor's medical opinion may be dispensed with, the company-designated physicians' fit to work assessment would still prevail as the same is more credible than Dr. Garcia's assessment. Jurisprudence dictates that the assessment of the company-designated physician, such as Dr. Agustin and Dr. Gutay, which was arrived at after several months of treatment and medical evaluation, is more reliable than the assessment of the seafarer's physician, such as Dr. Garcia, who examined the seafarer only once.[44]

De Vera's insistence that he should be considered as totally and permanently disabled as he is now unable to earn wages as a seafarer could not also be sustained.

Jurisprudence holds that a seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor. It cannot be used as a cure-all formula for all maritime compensation cases.[45] Additionally, it must be stressed that Section 20(A)(6) of the 2010 POEA-SEC now expressly provides that the "disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid." This express mandate of Section 20(A)(6) of the POEA-SEC have been applied by the Court in the cases of *Splash Philippines, Inc. v. Ruizo*,[46] *Magsaysay Maritime Corporation v. Simbajon*,[47] and *Scanmar Maritime*

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[44] *Ace Navigation Co. v. Garcia,* 760 Phil. 924, 936 (2015); *Tradephil Shipping Agencies, Inc. v. Dela Cruz*, *supra* note 28, at 357.

[45] *Calimlim v. Wallem Maritime Services, Inc*., *supra* note 32, at 841.

[46] 730 Phil. 162 (2014).

[47] 738 Phil. 824 (2014).

Services, Inc. v. Conag.[48] In *Scanmar*, the Court clarified that the disability grading the seafarer received, whether from the company-designated physician or from the third independent physician, if the medical findings of the physician chosen by the seafarer conflicts with that of the company-designated doctor, should be the basis of the declaration of disability.[49]

In sum, the Court holds that De Vera is not entitled to total and permanent disability benefits due to lack of cause of action and in view of his failure to refute the company-designated physicians' fit to work assessment. Thus, the CA and the NLRC did not commit any error in their respective decisions and resolutions.

The Deed of Release and Quitclaim was validly executed; De Vera is not entitled to attorney's fees.

De Vera also asserts that the NLRC and the CA erred when they ruled that he already admitted the correctness of the company-designated physicians' medical assessment when he signed the Deed of Release and Quitclaim on April 22, 2013. He argues that the respondents committed fraud when they prepared the *pro forma* quitclaim.

The Court is not persuaded.

While De Vera is correct in stating that quitclaims are frowned upon for being contrary to public policy, the Court has, likewise, recognized legitimate waivers that represent a voluntary and reasonable settlement of a worker's claim which should be respected as the law between the parties. Where the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as being a valid and binding undertaking.[50] Thus, to be valid, a deed of release, waiver, and quitclaim must meet the following requirements: (1) that there was no fraud or deceit on the part of

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[48] 784 Phil. 203 (2016).

[49] *Id*. at 214.

[50] *Sarocam v. Interorient Maritime Ent., Inc*., 526 Phil. 448, 458 (2006).

any of the parties; (2) that the consideration for the quitclaim is sufficient and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.[51]

From the foregoing, the Court opines that the subject Deed of Release and Quitclaim is valid. The fact that the respondents prepared the deed beforehand and merely awaited De Vera's signature does not automatically prove the commission of fraud. After all, there was no showing that he was unduly compelled or forced to affix his signature thereon. Further, the amount of ₱40,808.16 as consideration for the quitclaim is reasonable since he is not entitled to any disability benefit and further considering that he already received from the respondents the amounts of ₱26,537.20 and ₱21,614.96, or a total of ₱48,152.16, as sickness allowance and maintenance pay. Necessarily, the deed is not contrary to law, public order, public policy, morals or good customs.

As the subject deed of release and quitclaim is valid, the NLRC and the CA are correct when they declared that De Vera, by executing the Deed of Release and Quitclaim, impliedly admitted the correctness of the assessment of the company-designated physicians and admitted that he could no longer claim for disability benefits.[52]

Finally, since De Vera is not entitled to any of his claims, it goes without saying that he is also not entitled to attorney's fees. There is no more need to belabour on this point.

WHEREFORE, the petition is **DENIED**. The August 20, 2015 Decision and the February 5, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 135608 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Caguioa, and *Lazaro-Javier, JJ.*, concur.

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[51] *De Andres v. Diamond H Marine Services & Shipping Agency, Inc*., G.R. No. 217345, July 12, 2017, 831 SCRA 129, 150.

[52] *Sarocam v. Interorient Maritime Ent., Inc., supra* note 50; *Andrada v. Agemar Manning Agency, Inc., supra* note 29, at 186.

SECOND DIVISION

[G.R. No. 225503. June 26, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JERRY DAGDAG *A.K.A.* "TISOY",** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. —** In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.

2. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. —** Illegal possession of dangerous drugs under Section 11, Article II of RA 9165 has the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.

3. **ID.; ID.; CHAIN OF CUSTODY; DEFINED AS 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. —** 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. 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.

4. **ID.; ID.; SECTION 21, ARTICLE II THEREOF, PROCEDURE THAT POLICE OPERATIVES MUST FOLLOW TO MAINTAIN THE INTEGRITY OF THE CONFISCATED DRUGS USED AS EVIDENCE; CASE AT BAR. —** Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crimes, 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." Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. The said inventory must be done in the presence of the aforementioned required witness, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made **immediately after, or at the place of apprehension**. It is only when the same is not practicable that the Implementing

Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses. Applying the foregoing in the instant case, ***no inventory and photographing, of the evidence were conducted whatsoever in the presence of the required witnesses either at the scene of the purported buy-bust operation or even when Dagdag was brought to the police station thereafter.*** Simply stated, the supposed buy-bust operation in the instant case was conducted in *complete and utter derogation* of Section 21 of RA 9165.

5. ID.; ID.; ID.; ID.; PRESENCE OF THE REQUIRED WITNESSES AT THE TIME OF INVENTORY IS MANDATORY TO PROTECT AGAINST THE POSSIBILITY OF PLANTING, CONTAMINATION, OR LOSS OF THE SEIZED DRUG; CASE AT BAR. — [T]he presence of the required witnesses at the time of the inventory is **mandatory**, and that the law imposes the said requirement because their presence serves an essential purpose. **Hence, the CA's assessment that the brazen and wholesale deviations of Section 21 of RA 9165 committed by the police in the instant case are mere "minor lapses" is unquestionably incorrect. Such an assessment by the CA is irresponsible and reprehensible.** In *People v. Tomawis*, 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*, without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure

and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

6. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; IN EVERY CRIMINAL PROSECUTION, THE ACCUSED HAS THE CONSTITUTIONAL RIGHT TO BE PRESUMED INNOCENT; PRESUMPTION OF INNOCENCE IS OVERTURNED ONLY WHEN THE PROSECUTION HAS DISCHARGED ITS BURDEN OF PROOF THAT IT HAS PROVEN THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT. —** Both the RTC and CA seriously overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent. And this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases that it has proven the guilt of the accused beyond reasonable doubt, with each and every element of the crime charged in the information proven to warrant a finding of guilt for that crime or for any other crime necessarily included therein. Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction. It is worth emphasizing that ***this burden of proof never shifts***. Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent.

7. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); NON-COMPLIANCE WITH THE PROCEDURE DOES NOT RENDER VOID AND INVALID THE SEIZURE AND CUSTODY OVER THE ITEMS AS LONG AS THE PROSECUTION SATISFACTORILY PROVED THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED AND THE PROSECUTION MUST HAVE RECOGNIZED ANY LAPSES ON THE PART OF THE POLICE OFFICERS AND BE ABLE TO JUSTIFY THE SAME. —** Section 21 of the IRR of RA 9165 provides that "noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary

value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items." For this provision to be effective, however, the prosecution must first (1) recognize any lapses on the part of the police officers and (2) be able to justify the same. **In this case, the prosecution neither recognized, much less tried to justify, its deviations from the procedure contained in Section 21, RA 9165.** 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 necessarily have been compromised.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an ordinary appeal[1] filed by the accused-appellant Jerry Dagdag *a.k.a.* "Tisoy" (Dagdag), assailing the Decision[2] dated December 1, 2014 (assailed Decision) of the Court of Appeals (CA)[3] in CA-G.R. CR-HC No. 05817, which affirmed the Judgment[4] dated October 16, 2012 rendered by the Regional Trial Court of Pasig City, Branch 164 (RTC) in Criminal Case Nos. 16032-D and 16033-D, entitled *People of the Philippines v. Jerry Dagdag a.k.a. "Tisoy"*, finding Dagdag guilty beyond reasonable doubt of violating Sections

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[1] See Notice of Appeal dated December 23, 2014, *rollo*, pp. 13-14.

[2] *Id.* at 2-12. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Rebecca De Guia Salvador and Leoncia Real-Dimagiba, concurring.

[3] Third Division.

[4] CA *rollo*, pp. 88-98. Penned by Presiding Judge Jennifer A. Pilar.

5 and 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts and Antecedent Proceedings

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 instant case are as follows:

[Dagdag] was charged for violation of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" upon separate Informations, the accusatory portions of each read as follows:

Criminal Case No. 16032-D

"On or about December 20, 2007, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to PO1 Christopher Millanes, a police poseur buyer, one (1) heat-sealed transparent plastic bag containing seven (7) centigrams (0.07 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law."

Criminal Case No. 16033-D

"On or about December 20, 2007, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control two (2) heat-sealed transparent plastic sachets containing seven (7) centigrams (0.07 gram) with a total weight of fourteen (14) decigrams (0.14 gram) of white crystalline substance, which were found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

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

Contrary to law."

Arraigned on both charges on 31 January 2008, [Dagdag], assisted by counsel *de oficio*, entered pleas of "not guilty." Pre-trial was terminated also on 31 January 2008, after which, trial ensued.

Based on the Brief submitted by the Office of the Solicitor General, the facts are as follows:

> "On December 20, 2007, a confidential informant went to the Pasig City Police Station Drug Enforcement Unit Anti-Illegal Drugs Special Operation Task Force to inform P/Insp. Dennis David that one alias "Tisoy," who was later identified as [accused-appellant] Jerry Dagdag, was rampantly selling illegal drugs along V. Pozon St., Barangay Bambang, Pasig City. In response to that information, P/Insp. David formed a buy bust team and prepared all the necessary documents in the conduct of the entrapment operation like the pre-marked money consisting of two (2) one hundred peso bills with Serial Numbers RM 940869 and RM940870, among others. Designated to act as the poseur-buyer was PO1 Christopher Millanes with PO2 Peter Joseph Villanueva as his back-up, while PO1 Millaness was tasked to give the pre-arranged signal by using his cellular phone to prompt that the transaction had already taken place.
>
> At around 10:30 o[']clock in the evening that same day, the team proceeded to the target area located at V. Pozon St., Barangay Bambang, Pasig City. When PO1 Christopher Millanes and the confidential informant were walking along the alley of V. Pozon St., they accidentally met [Dagdag]. The confidential informant told [Dagdag], "pare paeskor naman" and the latter asked, "magkano?" to which PO1 Millanes answered "dalawang daan." PO1 Millanes took out from his pocket the marked money and gave it to [Dagdag] who in turn handed to him the sachet containing the suspected shabu. Immediately thereafter, PO1 Millanes put inside his pocket the suspected shabu and dialed his cellular phone giving the pre-arranged signal to his back up PO2 Villanueva that the same was already consummated. At that point, PO1 Millanes grabbed the hand of [Dagdag] and introduced himself as Police Officer. [Dagdag] tried to resist the arrest but failed because of the timely response of PO2 Joseph Villanueva. [Dagdag] was bodily searched by PO1 Millanes who recovered the marked money and another two (2) plastic sachets of suspected shabu from his pocket. The evidence seized from [Dagdag] were

immediately marked at the crime scene by PO1 Millanes with the markings: A Tisoy/CM 12/20/07 for the sachet subject of the sale and B and C, respectively, for the other two (2) sachets of shabu recovered as a result of the body search.

Thereafter, [Dagdag] was brought to the Pasig Police Station for proper booking and documentation, his photograph was taken as well as the items seized from the operation. The Request for Laboratory Examination for the seized items [was] prepared and transmitted to the PNP Crime Laboratory. PO1 Millanes brought the request for laboratory examination together with the three (3) sachets of suspected shabu to the Eastern Police District (EPD) of the PNP Crime Laboratory in Marikina City. Police Chief Inspector Isidro L. Cariño who conducted the laboratory examination on the seized evidence issued Physical Science Report No. D-524-07E stating that the specimens yielded positive result for methamphetamine hydrochloride or shabu, a dangerous [drug].

On the other hand, as reflected in Dagdag's Brief, the evidence for the defense shows the following:

"x x x x x x x x x.

At around 9:00 o'clock in the evening of December 20, 2007, **JERRY DAGDAG** (Jerry), his son-in-law, Albert V. Tacsagon[,] Jr. (Albert) and his two (2) grandchildren were watching [a] television show in the living room of their house located at 25 E. Jacinto Str[e]et Bambang, Pasig City. The daughter of [Dagdag], Joanna Camile C. Dagdag (Joanna), was sleeping in her room. Suddenly, two (2) men in civilian clothes and armed with firearms entered the house and poked a gun at [Dagdag]. PO1 Christopher introduced himself as a policeman and asked [Dagdag] if he is @ Jerry Tisoy. [Dagdag] answered "Opo, ano po ang problema?" PO1 Christopher immediately handcuffed [Dagdag] and told him to go with them. [Dagdag] asked PO1 Christopher and his companion why should he go with them when he did nothing wrong. Then, [Dagdag] told his grandchildren to stop crying while Albert was embracing them. PO1 Christopher and his companion pulled [Dagdag] towards the door and advised him not to make a scene on the road otherwise he [would] be shot. On the road, they flagged down a taxi, and when [Dagdag] was about to board the cab, Joanna, who was aroused from her sleep, came running after them and

pulled the hand of [Dagdag]. The [latter] told Joanna to let go of him since the policemen [would] not allow him to let go. The policemen brought [Dagdag] to the Pariancillo Police Headquarters. Thereat, he was brought inside a room on the second floor where PO1 Christopher told him to settle the case for Fifty Thousand Pesos (₱50,000.00). [Dagdag] told PO1 Christopher that he is just a carpenter and he has no money. The third time PO1 Christopher returned to the room, he was already asking a reduced amount of Twenty Thousand Pesos (₱20,000.00). But when [Dagdag] still refused to give the money, PO1 Christopher got angry and hurled invectives at [Dagdag]. PO1 Christopher took out from the drawer three (3) small plastic sachets, a lighter and a pair of scissors. Thereafter, PO1 Christopher put something inside the three (3) small plastic sachets, sealed it (*sic*)[,] and put markings on it (*sic*) using a pentel pen, and told him "You son of a bitch, this will be the evidence that we will use against you and we will pursue the case if you do not give money to us". A few minutes later, PO1 Christopher brought [Dagdag] to Marikina for drug testing, and then he was brought back to the police station where he was detained. (TSN, July 3, 2012, pp. 2-7).

ALBERT V. TACSAGON, JR. (Albert) corroborated the testimony of [Dagdag]. On December 20, 2007 at around 9:00 o'clock in the evening, while Albert was watching television together with his father-in-law [Dagdag] and his two (2) children, two (2) armed men in civilian clothes suddenly barged into their house looking for [Dagdag] .They pointed a gun at [Dagdag] and dragged him out of the house. Albert was surprised and attended to his children because they were frightened of the armed men (TSN, September 17, 2012, pp. 2-4.).

On December 20, 2007 at around 10:30 o'clock in the evening, **JOANNA CAMILLE DAGDAG** (Joanna), while sleeping inside a room of her house located 25 E. Jacinto Street, Bambang, Pasig City, was awakened when she heard the cry of her two (2) children. Joanna witnessed her father, [Dagdag], being accompanied by two (2) men with firearms out of the house. Then, upon seeing [Dagdag] being boarded inside a taxi, Joanna held [Dagdag]'s arm. But [Dagdag] told Joanna to let go, so Joanna released his arm. (TSN, September 25, 2012, pp. 3-5)."[6]

[6] *Rollo*, pp. 3-6.

The Ruling of the RTC

On October 16, 2012, the RTC rendered a Judgment convicting Dagdag on both charges. The dispositive portion of the RTC's Judgment reads:

> **WHEREFORE**, premises considered, accused Jerry Dagdag alias "Tisoy" is hereby found guilty beyond reasonable doubt of the offenses of illegal sale of 7 centigrams (0.07 gram) of methylamphetamine hydrochloride and possession of 14 decigrams (0.14 gram), thereof and sentences him as follows:
>
> 1. For Criminal Case No. 16032-D [violation of Section 5, Article II of R.A. No. 9165] — life imprisonment and to pay a fine of five hundred thousand pesos (₱500,000.00); and
>
> 2. For Criminal Case No. 16033-D [violation of Section 11, Article II of R.A. No. 9165] — imprisonment ranging from twelve years and one day to fifteen years (applying the Indeterminate Sentence Law) and to pay a fine of thirty (*sic*) thousand pesos (₱300,000.00).
>
> The Branch Clerk of this Court is directed to forward the sachets of shabu (Exhibits "M", "N", & "O") to the Philippine Drug Enforcement Agency for destruction.
>
> **SO ORDERED**.[7]

Aggrieved, Dagdag filed an appeal before the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of Dagdag. The dispositive portion of the assailed Decision reads:

> ***WHEREFORE***, the foregoing considered, the appeal is hereby **DISMISSED** and the assailed Judgment is **AFFIRMED with MODIFICATION** in that in Criminal Case No. 16033-D, accused-appellant is ordered to pay a fine in the amount of THREE HUNDRED THOUSAND PESOS (₱300,000.00) and **not** Thirty Thousand Pesos.
>
> ***SO ORDERED***.[8]

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[7] CA *rollo*, p. 98.

[8] *Rollo*, pp. 11-12.

Hence, the instant appeal.

Issue

Stripped to its core, for the Court's resolution is the issue of whether the RTC and CA erred in convicting Dagdag for violating Sections 5 and 11, Article II of RA 9165.

The Court's Ruling

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

Dagdag was charged with the crime of illegal sale and possession of dangerous drugs, defined and penalized under Sections 5 and 11, respectively, of 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.[9]

On the other hand, illegal possession of dangerous drugs under Section 11, Article II of RA 9165 has the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[10]

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.[11] While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for

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

[10] *People v. Fernandez*, G.R. No. 198875, June 4, 2014, p. 2 (Unsigned Resolution).

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

apprehending drug peddlers and distributors,[12] the law nevertheless also requires **strict compliance** with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[13] 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.[14]

In this connection, Section 21, Article II of RA 9165,[15] the applicable law at the time of the commission of the alleged

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

[13] *People v. Guzon*, *supra* note 11, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

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

[15] 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[.]

crimes, 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."[16]

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. The said inventory must be done in the presence of the aforementioned required witness, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made **immediately after, or at the place of apprehension**. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[17] In this connection, this also means that the three required witnesses should already be physically

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

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

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.

Applying the foregoing in the instant case, ***no inventory and photographing of the evidence were conducted whatsoever in the presence of the required witnesses either at the scene of the purported buy-bust operation or even when Dagdag was brought to the police station thereafter.***

Simply stated, the supposed buy-bust operation in the instant case was conducted in *complete and utter derogation* of Section 21 of RA 9165.

It must be highly emphasized that the CA itself acknowledged that **there was *no evidence* presented by the prosecution whatsoever showing that an inventory of the allegedly seized drugs was even conducted by the police:**

> x x x Although ***the prosecution failed to introduce in evidence the inventory of the subject drugs*** x x x[18] (Emphasis, italics and underscoring supplied)

Further, it is equally striking that the CA itself recognized that there was "**the lack of photographs or representatives of the accused or the DOJ.**"[19] Furthermore, the CA likewise readily acknowledged that there was a "**lack of signature[s] of Jerry, his counsel or any representative from the media or the DOJ on the inventory receipt**."[20]

In addition to the foregoing admissions made by the CA on the blatant failure of the prosecution to present certain evidence, a careful review of the testimony of PO1 Christopher Millanes (PO1 Millanes), the police officer who allegedly conducted the buy-bust operation, reveals the following:

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[18] *Rollo*, p. 9.

[19] *Id*.; emphasis and underscoring supplied.

[20] *Id*.; emphasis and underscoring supplied.

First, while PO1 Millanes undertook to mark the allegedly seized three (3) plastic sachets of *shabu* at the scene of the supposed buy-bust operation, **the said marking was patently irregular**. As admitted by PO1 Millanes on cross-examination, the time and place of the marking were not indicated in the markings made:

Q: But you did not put the time when it was first confiscated?

A: No, ma'am.

Q: You did not even put there the place where you confiscated it. Correct?

A: Yes, ma'am.[21]

Second, it must be emphasized that PO1 Millanes, again on cross-examination, admitted point blank that **there was no certificate of inventory prepared by the police:**

Q: And Mr. Witness, in fact, you did not even prepare a certificate of inventory for this matter that, in fact, you were able to confiscate three plastic sachets for the accused to acknowledge it?

A: No, ma'am.[22]

Third, as revealed again during the cross-examination of PO1 Millanes, **there were no pictures taken during the supposed buy-bust as the apprehending team failed to bring a camera**. The pictures of the supposed seized specimen were taken only in the police station:

Q: Where did you take this picture?

A: At the office, ma'am.

Q: But not at the crime scene?

A: Wala po kaming dalang camera, ma'am.[23]

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[21] TSN, May 7, 2010, p. 28.

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

[23] *Id*. at 29.

Fourth, PO1 Millanes testified that upon reaching the police station, **an inventory of the evidence allegedly seized was not conducted. Nor were there any witnesses present**. Upon reaching the police station, the police merely prepared the necessary documents for the crime laboratory. In fact, PO1 Millanes himself revealed that upon reaching the police station, the assigned investigator did not even inspect closely the allegedly recovered specimens:

Q: Mr. Witness, after you arrived at your office, what did you do?

A: Prepare the necessary documents for crime laboratory.

Q: You did not show the shabu to Inspector David?

A: Hindi na po, ma'am, kinustody ko kasi.

Q: When you arrived there, you did not talk to the investigator in order to turn over the accused and prepare the documents?

A: Pinakita ko lang po, ma'am.

Q: To whom?

A: To the investigator, ma'am.

Q: Paano mo siya pinakita, yung shabu?

A: Nagtanong po nasaan yung recovered evidence, pinakita ko.

Q: And then?

A: Tiningnan niya lang po.

Q: After that?

A: Tinago ko po.

Q: Saan mo tinago?

A: Sa kamay ko po hawak.

Q: Hawak-hawak mo lang noon time na yon?

A: Opo.[24]

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[24] *Id*. at 29-30.

Once again, the Court stresses that the presence of the required witnesses at the time of the inventory is **mandatory**, and that the law imposes the said requirement because their presence serves an essential purpose. **Hence, the CA's assessment that the brazen and wholesale deviations of Section 21 of RA 9165 committed by the police in the instant case are mere "minor lapses"**[25] **is unquestionably incorrect. Such an assessment by the CA is irresponsible and reprehensible.**

In *People v. Tomawis*,[26] 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*,[27] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.
>
> The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest.** It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

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[25] *Rollo*, p. 9; emphasis supplied.

[26] G.R. No. 228890, April 18, 2018.

[27] 736 Phil. 749 (2014).

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."[28]

What further militates against according the apprehending officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed. Under the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM), the conduct of buy-bust operations requires the following:[29]

CHAPTER V

x x x x x x x x x

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 — [I]n the conduct of buy-bust operation, the following are the procedures to be observed:

a. Record time of jump-off in unit's logbook;

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[28] *People v. Tomawis*, *supra* note 26, at 11-12.

[29] PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

b. Alertness and security shall at all times be observed[;]

c. Actual and timely coordination with the nearest PNP territorial units must be made;

d. Area security and dragnet or pursuit operation must be provided[;]

e. Use of necessary and reasonable force only in case of suspect's resistance[;]

f. If buy-bust money is dusted with ultra violet powder make sure that suspect ge[t] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;

g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;

h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arm[']s reach;

i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;

j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;

k. Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;

l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;

m. **The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized;**

n. **Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera;** and

o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter

deliver the same to the PNP CLG for laboratory examination. (Emphasis supplied)

The Court has ruled in *People v. Zheng Bai Hui*[30] that it will not presume to set an *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

Both the RTC and CA seriously overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent.[31] And this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases that it has proven the guilt of the accused beyond reasonable doubt,[32] with each and every element of the crime charged in the information proven to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[33] Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

It is worth emphasizing that ***this burden of proof never shifts***. Indeed, the accused need not present a single piece of evidence

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[30] 393 Phil. 68, 133 (2000).

[31] CONSTITUTION, Art. III, Sec. 14, par. (2): "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[32] The Rules of Court provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. (RULES OF COURT, Rule 133, Sec. 2)

[33] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent.

In this connection, the prosecution therefore, in cases involving dangerous drugs, **always** has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:[34]

> x x x We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. **The State must fully establish that for us**. If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.
>
> **Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime**.[35] (Emphasis and underscoring supplied)

To stress, the accused can rely on his right to be presumed innocent. It is thus immaterial, in this case or in any other cases involving dangerous drugs, that the accused put forth a weak defense.

The Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always be advised to do so within the bounds of the law.[36] Without

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[34] 745 Phil. 237 (2014).

[35] *Id*. at 250-251.

[36] *People v. Ramos*, 791 Phil. 162, 175 (2016).

the insulating presence of the representative from the media, the DOJ, and any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*. Thus, this adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.[37]

Concededly, Section 21 of the IRR of RA 9165 provides that "noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items." For this provision to be effective, however, the prosecution must first (1) recognize any lapses on the part of the police officers and (2) be able to justify the same.[38] **In this case, the prosecution neither recognized, much less tried to justify, its deviations from the procedure contained in Section 21, RA 9165.**

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 necessarily have been compromised.[39] As the Court explained in *People v. Reyes*:[40]

> 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

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[37] *People v. Mendoza*, *supra* note 27, at 764.

[38] See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

[39] See *People v. Sumili*, 753 Phil. 352 (2015).

[40] 797 Phil. 671 (2016).

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[41] (Emphasis supplied)

In *People v. Umipang*,[42] the Court dealt with the same issue where the police officers involved did not show any genuine effort to secure the attendance of the required witness before the buy-bust operation was executed. In the said case, the Court held:

Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not *per se* render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the *barangay* chairperson or any member of the barangay council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF 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**

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[41] *Id*. at 690.

[42] 686 Phil. 1024 (2012).

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.[43] (Emphasis and underscoring supplied)

In sum, the prosecution miserably failed to provide justifiable grounds for the apprehending team's deviations from the rules laid down in Section 21 of RA 9165. The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, Dagdag must perforce be acquitted.

As a final note, 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.[44] The RTC and the CA therefore seriously and erred in simply brushing aside Dagdag's defense of frame-up, especially when the testimonies of Dagdag, Albert, his son-in-law, and Joanna, his daughter, were consistent in that the police officers forcibly apprehended Dagdag and planted on Dagdag the supposedly seized specimens of *shabu*. **In this connection, the Court *sternly* reminds the trial and appellate courts to exercise extra vigilance in trying and deciding 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 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

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[43] *Id*. at 1052-1053.

[44] *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

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.[45]

Dagdag in the instant case, despite the blatant disregard of the mandatory requirements provided under RA 9165, has been made to suffer incarceration for more than eleven (11) years. While the Court now reverses this grave injustice by ordering the immediate release of Dagdag, there is truth in the time-honored precept that *justice delayed is justice denied*. *Such an injustice must not be repeated.*

The Court believes that the menace of illegal drugs must be curtailed with resoluteness and determination. Our Constitution declares that the maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.[46]

Nevertheless, by sacrificing the sacred and indelible right to due process for the sheer sake of convenience and expediency, the very maintenance of peace and order sought after is rendered wholly nugatory. By thrashing basic constitutional rights as a means to curtail the proliferation of illegal drugs, instead of protecting the general welfare, oppositely, the general welfare is viciously assaulted. In other words, when the Constitution is disregarded, the war on illegal drugs becomes a self-defeating and self-destructive enterprise. A battle waged against illegal drugs that tramples on the rights of the people, is not a war on drugs; it is a war against the people.

The sacred and indelible right to due process enshrined under our Constitution, fortified under statutory law, should never

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[45] See *People v. Jugo*, G.R. No. 231792, January 29, 2018.

[46] CONSTITUTION, Art. II, Sec. 5.

be sacrificed for the sheer sake of convenience and expediency. Otherwise, the malevolent mantle of the rule of men dislodges the rule of law. In any law-abiding democracy, this cannot and should not be allowed. *Not while this Court sits.*

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated December 1, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05817 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jerry Dagdag *a.k.a.* "Tisoy" 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 Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

Further, let a copy of this Decision be furnished the Chief of the Philippine National Police and the Regional Director of the National Capital Region Police Office, Philippine National Police. The Philippine National Police is **ORDERED** to **CONDUCT** an **INVESTIGATION** on the brazen violation of Section 21 of RA 9165 and other violations of the law committed by the buy-bust team, as well as other similar incidents, and **REPORT** to this Court within thirty (30) days from receipt of this Decision the action taken.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 227867. June 26, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICTOR DE LEON,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; REQUIREMENTS FOR SUCCESSFUL PROSECUTION. —** In an indictment for the illegal sale of *shabu*, it is absolutely necessary for the prosecution to establish with moral certainty the elements thereof, as well as the *corpus delicti* or the seized illegal drug. In addition, the chain of custody requirement must be complied with, leaving no lingering doubt that its identity and evidentiary weight had indeed been preserved. "Chain of custody[, or] the recorded authorized movements and custody of seized drugs x x x from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction," is both crucial and critical in convicting an accused for any violation of RA 9165.

2. **ID.; ID.; ID.; FOUR LINKS IN THE CHAIN OF CUSTODY OF THE SEIZED ILLEGAL DRUGS; WHERE THE PROSECUTION FAILED TO COMPLY WITH THE CHAIN OF CUSTODY RULE AND TO PROFFER JUSTIFIABLE GROUND FOR NON-COMPLIANCE, IT BECOMES THE CONSTITUTIONAL DUTY OF THE COURT TO ACQUIT THE ACCUSED. —** The Court has repeatedly stressed that it is the prosecution's onus to prove every link in the chain of custody — from the time the drug is seized from the accused, until the time it is presented in court as evidence; and where the prosecution fails to strictly comply with the procedure under Section 21, Article II of RA 9165, it must give justifiable ground for its non-compliance. Generally there are four links in the chain of custody of the seized illegal drug: (i) its seizure and marking, if practicable, from the accused, by the apprehending officer; (ii) its turnover by the apprehending officer to the investigating officer; (iii) its turnover by the

investigating officer to the forensic chemist for examination; and, (iv) its turnover by the forensic chemist to the court. In the present case, the prosecution miserably failed to comply with the chain of custody rule and to proffer any justifiable ground for such non-compliance. x x x [I]t becomes the constitutional duty of this Court to acquit the accused-appellant.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Before the Court is an appeal from the May 24, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06923, which affirmed *in toto* the November 3, 2013 Decision[2] of the Regional Trial Court (RTC) of Santiago City, Branch 35, in Criminal Case No. 35-5828, finding accused-appellant Victor De Leon (appellant) guilty of illegal sale of Methamphetamine Hydrochloride or *shabu*, in violation of Section 5, Article II of Republic Act No. (RA) 9165.[3]

Factual Antecedents

The Information against appellant contained these accusatory allegations:

That on or about the 10th day of April, 2007 at Mabini, Santiago City, Philippines and within the jurisdiction of this Honorable Court,

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[1] CA *rollo*, pp. 84-94; penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Rodil V. Zalameda.

[2] Records, pp. 253-258; penned by Judge Efren M. Cacatian.

[3] Comprehensive Dangerous Drugs Act of 2002.

Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

the above-named accused in consideration of two (2) [F]ive Hundred (₱500.00) Philippine Currency marked bills with Serial Number CY815170 and Serial Number FU444638, did then and there willfully, unlawfully and feloniously sell and deliver to IO1 LIRIO T. ILAO, Poseur-buyer, 0.03 [gram] of Methamphetamine Hydrochoride, more or less, locally known as shabu[,] without any authority or license to do the same.

CONTRARY TO LAW.[4]

Records reveal that appellant escaped immediately after the buy-bust operation[5] such that a warrant for his arrest[6] was issued. He was eventually arrested and detained at the Isabela Provincial Jail in Alibagu, Ilagan, Isabela, but for another crime (murder).[7]

Thereafter, on arraignment, appellant pleaded "Not Guilty"[8] to the charge of illegal sale of dangerous drugs against him.

Version of the Prosecution

At about 9:00 a.m. on April 10, 2007, Senior Police Officer 2 Domingo Balido (SPO2 Balido), the Team Leader of PDEA[9] Regional Office (RO) 2, received a call from an informant telling him that she (informant) had set a deal to purchase some *shabu* from appellant.[10] Appellant had been under police surveillance as he was listed under the PDEA drug watch list.[11]

Acting on the information, SPO2 Balido immediately organized a buy-bust team and designated Intelligence Officer 1 Lirio T. Ilao[12] (IO1 Ilao) as poseur-buyer.[13] He gave IO1 Ilao two ₱500.00

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[4] Records, p. 1.

[5] CA *rollo*, p. 57.

[6] Records, p. 30.

[7] *Id.* at dorsal portion.

[8] *Id.* at 40-42.

[9] Philippine Drug Enforcement Agency.

[10] TSN, August 12, 2008, pp. 4-5.

[11] TSN, October 20, 2009, p. 3.

[12] IO2 Lirio Ilao at the time of her testimony; TSN, January 20, 2009, p. 3.

[13] *Id.* at 4-5.

bills as marked money for the purchase of two sachets of *shabu* from appellant.[14] IO1 Seymoure Darius Sanchez (IO1 Sanchez) and Dexter Asayco[15] (IO1 Asayco) were designated as back-up or arresting officers.[16] The team also agreed that IO1 Ilao would "miscall" the cellphone of IO1 Asayco once the transaction was completed.[17]

At about 1:00 p.m. of the same day, the buy-bust team met with the informant.[18] IO1 Ilao and the informant proceeded to appellant's residence at P-3 Looban, Mabini, Santiago City, while the rest of the buy-bust team followed them at a distance of approximately 50 meters.[19]

IO1 Ilao and the informant then knocked at the house of appellant. Upon opening the same, appellant immediately asked them how much *shabu* they were going to buy. IO1 Ilao answered, "worth ₱1,000.00", and handed to him the marked money. In turn, appellant gave IO1 Ilao one plastic sachet containing white crystalline substance and asked her and the informant to wait as he would repack another sachet of *shabu* in his room. While waiting, IO1 Ilao "miscalled" IO1 Asayco. When the team barged into the house, a commotion transpired. The PDEA operatives tried to look for appellant at the room where he was supposedly repacking the *shabu* but they could not find him.[20] Meanwhile, the buy-bust team saw two men[21] using *shabu* inside appellant's house and arrested them.[22]

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[14] TSN, October 20, 2009, p. 11.

[15] IO3 Dexter Asayco at the time of his testimony; TSN, February 9, 2010, p. 3.

[16] TSN, January 20, 2009, p. 6.

[17] TSN, August 12, 2008, p. 7.

[18] *Id*. at 6.

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

[20] TSN, January 20, 2009, pp. 8-10; July 14, 2009, pp. 8-9.

[21] According to IO1 Ilao the names of these men were Bobby Magdangal *y* Madamba and Pedro Molina *y* Quario; records, p. 5.

[22] TSN, August 12, 2008, p. 8.

Afterwards, the buy-bust team proceeded to their office in Tuguegarao City. According to IO1 Ilao, while on their way to their office, she kept custody of the item she bought from appellant.[23] Upon the other hand, IO1 Asayco and IO1 Sanchez testified that their investigator, SPO1 Danilo Natividad (SPO1 Natividad), was in possession of the other seized items since these items were recovered at appellant's house, including the one that appellant sold to IO1 Ilao.[24]

When the buy-bust team arrived at the PDEA office, IO1 Ilao handed to IO1 Sanchez the sachet of suspected *shabu* that she bought from appellant. IO1 Ilao, IO1 Sanchez and IO1 Asayco thereafter marked it with their respective initials "LTI," "SDS," and "DGA."[25] After the marking, IO1 Ilao prepared a "Receipt of [Pr]operty Seized" with IO1 Sanchez and IO1 Asayco attesting that they witnessed the inventory of the listed items therein. There was no indication, however, that any representative of the appellant witnessed the inventory of the seized items (considering that appellant escaped arrest). Neither did any elective public official, representatives from the Department of Justice (DOJ) and the media sign the inventory.[26] Likewise, no photograph of the recovered items was attached to the records of the case.

When she testified in court, IO1 Ilao affirmed that the specimen adduced in evidence was the very subject of the buy-bust operation, and that it was this subject specimen that she and the other members of the PDEA marked at their office.[27]

During the trial, the testimony of Police Senior Inspector Roda Agcaoili (PSI Agcaoili) was dispensed with, as the defense had already admitted the following matters: PSI Agcaoili was an expert witness, she being a forensic chemist at the PNP[28]

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[23] TSN, July 14, 2009, p. 11.

[24] TSN, February 9, 2010, pp. 14-17; August 12, 2008, p. 9.

[25] TSN, January 20, 2009, pp. 11-12.

[26] Records, p. 8.

[27] TSN, January 20, 2009, pp. 12-13.

[28] Philippine National Police.

Crime Laboratory; the PDEA had submitted to the Crime Laboratory a Request for the laboratory examination of the specimen subject of the case; per her examination, the specimen gave a positive result for methamphetamine hydrochloride, a dangerous drug; and, she could identify in court the subject specimen as well as her report covering its examination.[29]

Version of the Defense

Appellant denied the charge against him. The CA summarized appellant's denial in this manner:

> [Appellant] denied the allegations against him. He was allegedly in the public market of Santiago City at around 1:30 in the afternoon of April 10, 2007. When he returned home, his mother and neighbor informed him that PDEA agents forcibly entered his house. After 10 days, he received a subpoena from the Office of the City Prosecutor (OCP) of Santiago City informing him of a criminal case against him.
>
> [Appellant] testified that he does not know any reason why the PDEA agents filed the case against him and he did not prosecute the PDEA agents for falsely testifying against him.[30]

Ruling of the Regional Trial Court

On November 3, 2013, the RTC rendered its Decision finding appellant guilty as charged. It sentenced him to suffer the penalty of life imprisonment and ordered him to pay a fine of ₱500,000.00.[31]

According to the RTC, in a buy-bust operation, all that is necessary for conviction for illegal sale of prohibited drug is the accused's (a) receipt of the buy-bust money as payment for the drug and (b) delivery of the illegal drug to the poseur-buyer who paid for it. The RTC held that these twin facts were proven in this case. It further stressed that the escape of appellant during the buy-bust was of no consequence because the actual sale of the illegal drug took place prior to his escape.[32]

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[29] TSN, July 9, 2008, p. 5.

[30] CA *rollo*, p. 87.

[31] Records, p. 258.

[32] *Id*.

The RTC also denied[33] appellant's motion for reconsideration.

Ruling of the Court of Appeals

In its Decision of May 24, 2016, the CA affirmed the RTC.

The CA held that the elements of illegal sale of dangerous drug were satisfactorily established considering that (1) IO1 Ilao purchased from appellant ₱1,000.00 worth of *shabu*; (2) appellant gave IO1 Ilao one sachet of *shabu* and was in the process of repacking another when the rest of the buy-bust team entered into his home and he, in turn, escaped the premises. The CA also ruled that the one sachet of *shabu* given to IO1 Ilao, which was presented in court, proved that appellant committed illegal sale of dangerous drug.[34] The CA added that the chain of custody rule was complied with in this case.[35]

Undaunted, appellant filed this appeal raising the same arguments he presented before the CA. Essentially, he contends that the prosecution failed to prove beyond reasonable doubt that he committed illegal sale of dangerous drug as there was non-observance of the chain of custody rule under Section 21, Article II of RA 9165.[36]

Our Ruling

The appeal is impressed with merit.

In an indictment for the illegal sale of *shabu*, it is absolutely necessary for the prosecution to establish with moral certainty the elements thereof, as well as the *corpus delicti* or the seized illegal drug. In addition, the chain of custody requirement must be complied with, leaving no lingering doubt that its identity and evidentiary weight had indeed been preserved.[37]

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[33] *Id*. at 284.

[34] CA *rollo*, p. 90.

[35] *Id*. at 91-92.

[36] *Id*. at 34-38.

[37] *People v. Ismael*, G.R. No. 208093, February 20, 2017, 818 SCRA 122, 131-132.

"Chain of custody[, or] the recorded authorized movements and custody of seized drugs x x x from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction,"[38] is both crucial and critical in convicting an accused for any violation of RA 9165. This much is clear particularly from Section 21 thereof which provides for the procedure governing the custody of seized drug and related items, 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;

(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 under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow

[38] *People v. Dumagay*, G.R. No. 216753, February 7, 2018.

> the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

The Court has repeatedly stressed that it is the prosecution's onus to prove every link in the chain of custody — from the time the drug is seized from the accused, until the time it is presented in court as evidence; and where the prosecution fails to strictly comply with the procedure under Section 21, Article II of RA 9165, it must give justifiable ground for its non-compliance.[39]

Generally there are four links in the chain of custody of the seized illegal drug: (i) its seizure and marking, if practicable, from the accused, by the apprehending officer; (ii) its turnover by the apprehending officer to the investigating officer; (iii) its turnover by the investigating officer to the forensic chemist for examination; and, (iv) its turnover by the forensic chemist to the court.[40]

In the present case, the prosecution miserably failed to comply with the chain of custody rule and to proffer any justifiable ground for such non-compliance.

First, there were varying claims as to who actually took custody of the seized illegal drug after the buy-bust operation.

On one hand, IO1 Ilao testified that she kept custody of the recovered drug at the conclusion of the buy-bust operation up to the time she handed it over to the evidence custodian, IO1 Sanchez, at their office, *viz*.:

> Q. Now after conducting the buy-bust operation in the house of [appellant] and when his arrest became futile in view of his [escape], where did you proceed next?

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[39] *Id*.

[40] *People v. Hementiza*, G.R. No. 227398, March 22, 2017, 821 SCRA 470, 485-486.

A. We proceed[ed] to the Regional Office in Tuguegarao Cagayan.

x x x x x x x x x

Q. From the place where you conducted the buy-bust operation at Mabini in the house of [appellant] to the Regional Office in Tuguegarao City[,] who ha[d] custody of the specime[n] that you purchased from [appellant]?
A. I, ma'am.

Q. So it never left you[r] possession?
A. Yes, ma'am.[41]

On the other hand, both IO1 Asayco and IO1 Sanchez testified to the effect that their investigator, SPO1 Natividad, was in possession of the seized items from the time it was allegedly seized from appellant's house, to wit:

[Excerpt of IO1 Asayco's Testimony]
Q. Showing to you this envelope taken from the court evidence custodian, Your Honor[,] as part of the seized articles contained in the inventory[,] will you look at this if it has any relation to the receipt of property seized you earlier mentioned Mr. [W]itness?
A. These are the pieces of evidence recovered from the place of the suspect and one item among these was the one sold by [appellant] to IO1 Ilao.

Q. Can you bring it out, Mr. [W]itness?
A. This one, ma'am.

Court Interpreter:
The witness handed the buy-bust stuff x x x.

x x x x x x x x x

Q. How about the confiscated items, who [was] in possession at the time they were recovered?
A. Our investigator, ma'am.

Q. Who is that investigator?
A. SPO1 Danilo Natividad, ma'am.[42]

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[41] TSN, July 14, 2009, p. 11.

[42] TSN, February 9, 2010, pp. 14-15, 17.

[Excerpt of IO1 Sanchez's Testimony]

Q. So when you arrived at the place[, appellant] was no longer there?
A. Yes, ma'am. He noticed our arrival and he was able to escape from the place, ma'am.

x x x x x x x x x

Q. What about the specimen that was subject of the buy-bust?
A. It was located on the table x x x that was used by the two male, ma'am.

Q. Did IO1 Ilao show you the specimen methamphetamine hydrochloride that [s]he was able to purchase from [appellant]?
A. Yes, ma'am.

Q. And what did you do with this specimen[,] if any?
A. We turned it over to our investigator, ma'am.[43]

Plainly, it was unclear as to who actually kept custody of the item sold by appellant to IO1 Ilao. Likewise, there were conflicting accounts as to when and where the PDEA marked the items allegedly seized from appellant's house, including the specimen subject of the buy-bust. Prosecution witness IO3 Asayco testified that the marking was done at appellant's house.[44] Yet another prosecution witness, IO1 Ilao, testified later that the marking thereof was done at their office in Tuguegarao City.[45] Evidently, these two prosecution witnesses could not seem to get their act together.

It bears stressing that marking must be done immediately upon the seizure of the drug and in the presence of the apprehended violator of the law. The prompt marking is necessary in order that the subsequent handlers of the seized drug may use it as reference point, as the same sets apart the item from other materials from the moment it is confiscated until its disposal after the court proceedings. Simply put, marking is essential

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[43] TSN, August 12, 2008, pp. 8-9.

[44] TSN, February 9, 2010, p. 23.

[45] TSN, July 14, 2009, p. 12.

to preserve the integrity and evidentiary value of the recovered dangerous drug.[46]

Second, while the absence of appellant during the marking and inventory of the seized item could be justified considering that he had evaded arrest, the presence of his representative could have been obtained because there is evidence that appellant's mother and other relatives were at the place of incident during and after the buy-bust operation.[47] However, the PDEA agents did not explain at all why they failed to require such presence from any representative of appellant.

Third, there was no explanation whatsoever why the PDEA failed to secure the presence of representatives from the DOJ and from the media during the inventory of the item subject of the buy-bust. Interestingly, the prosecution mentioned only the absence of an elective official (*i.e., barangay* officials) during the inventory, which it tried to justify by claiming that the presence of an elective official could result in the divulging or leakage of information that would have compromised the buy-bust operation.[48] Compounding the aforementioned failing is the lack of a photograph of the seized item with no explanation at all for such failing.

True, strict compliance with the requirements under Section 21, Article II, RA 9165, may not, at all times, be possible; still, the prosecution must justify its non-compliance with such requirement. Here the prosecution utterly failed to prove any justification for such non-compliance.

In the context of these circumstances, it becomes the constitutional duty of this Court to acquit the accused-appellant.

WHEREFORE, the appeal is **GRANTED**. The May 24, 2016 Decision the Court of Appeals in CA-G.R. CR-HC No. 06923 is **REVERSED AND SET ASIDE**. Accused-appellant Victor

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[46] *People v. Ismael*, *supra* note 37 at 135, citing *People v. Gonzales*, 708 Phil. 121, 130-131 (2013).

[47] TSN, February 9, 2010, pp. 22-23.

[48] *Id*. at 26.

De Leon is hereby **ACQUITTED** of the charge of violation of Section 5, Article II of Republic Act No. 9165, his guilt not having been established beyond reasonable doubt.

Accused-appellant Victor De Leon is **ORDERED** released from confinement unless he is being lawfully held for another cause. The Director of the Bureau of Corrections is **DIRECTED** to inform the Court of his action within five (5) days from notice.

SO ORDERED.

Bersamin, C.J., Gesmundo, and *Hernando,*[*] *JJ.*, concur.

Jardeleza, J., on official leave.

SECOND DIVISION

[G.R. No. 228539. June 26, 2019]

ASSOCIATION OF NON-PROFIT CLUBS, INC. (ANPC), herein represented by its authorized representative, MS. FELICIDAD M. DEL ROSARIO, *petitioner, vs.* **BUREAU OF INTERNAL REVENUE (BIR), herein represented by HON. COMMISSIONER KIM S. JACINTO-HENARES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 41 IN RELATION TO RULE 45 OF THE RULES OF COURT; NO VIOLATION OF THE DOCTRINE OF HIERARCHY OF COURTS BECAUSE THE PRESENT PETITION IS THE SOLE REMEDY TO APPEAL THE DECISION OF THE REGIONAL TRIAL

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[*] Per Raffle dated June 17, 2019.

COURT IN CASES INVOLVING PURE QUESTIONS OF LAW. — [T]he Court holds that there was no violation of the doctrine of hierarchy of courts because the present petition for review on *certiorari*, filed pursuant to Section 2 (c), Rule 41 in relation to Rule 45 of the Rules of Court, is the *sole* remedy to appeal a decision of the RTC in cases involving pure questions of law. The doctrine of hierarchy of courts is violated only when relief may be had through multiple fora having concurrent jurisdiction over the case, such as in petitions for *certiorari, mandamus*, and prohibition which are concurrently cognizable either by the Regional Trial Courts, the Court of Appeals, or the Supreme Court. x x x Clearly, the correctness of the BIR's interpretation of the 1997 NIRC under the assailed RMC is a pure question of law, because the same does not involve an examination of the probative value of the evidence presented by the litigants or any of them. Thus, being the only remedy to appeal the RTC's ruling upholding the Circular's validity on a purely legal question, direct resort to this Court, through a Rule 45 petition, was correctly availed by ANPC.

2. ID.; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES, RELAXED; THE VALIDITY OF RMC NO. 35-2012 SHOULD HAVE BEEN FIRST SUBJECTED TO THE REVIEW OF THE SECRETARY OF FINANCE BEFORE JUDICIAL RECOURSE MAY BE HAD; THE PRESENT CASE IS AN EXCEPTION TO THE RULE IN VIEW OF THE CIRCUMSTANCES INDICATING THE URGENCY OF JUDICIAL INTERVENTION. — [A]s dictated by the rule on exhaustion of administrative remedies, the validity of RMC No. 35-2012 should have been first subjected to the review of the Secretary of Finance before ANPC sought judicial recourse with the RTC. However, as exceptions to this rule, when the issue involved is purely a legal question (as above-explained), or when there are circumstances indicating the urgency of judicial intervention — as in this case where membership fees, assessment dues, and the like of all recreational clubs would be imminently subjected to income tax and VAT — then the doctrine of exhaustion of administrative remedies may be relaxed.

3. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC) *VIS-A-VIS* RMC NO. 35-2012; RMC NO. 35-2012 PROVIDES FOR THE INTERPRETATION THAT SINCE

THE OLD TAX EXEMPTION PREVIOUSLY ACCORDED UNDER THE 1977 NIRC TO RECREATIONAL CLUB WAS DELETED IN THE 1997 NIRC, THEN THE INCOME OF RECREATIONAL CLUBS FROM WHATEVER SOURCE SHALL BE SUBJECT TO INCOME TAX. — RMC No. 35-2012 is an interpretative rule issued by the BIR to guide all revenue officials, employees, and others concerned in the enforcement of income tax and VAT laws against clubs organized and operated exclusively for pleasure, recreation, and other non-profit purposes ("recreational clubs" for brevity). As to its income tax component, RMC No. 35-2012 provides the interpretation that since the old tax exemption previously accorded under Section 27 (h), Chapter III, Title II of Presidential Decree No. 1158, otherwise known as the "National Internal Revenue Code of 1977" (1977 Tax Code), to recreational clubs was deleted in the 1997 NIRC, then **the income of recreational clubs from whatever source, including but not limited to membership fees, assessment dues, rental income, and service fees, is subject to income tax.**

4. **ID.; ID.; DISTINCTION OF "CAPITAL" AND "INCOME", REITERATED. —** The distinction between "capital" and "income" is well-settled in our jurisprudence. As held in the early case of *Madrigal v. Rafferty*, "capital" has been delineated as a "fund" or "wealth," as opposed to "income" being "the flow of services rendered by capital" or the "service of wealth": Income as contrasted with capital or property is to be the test. **The essential difference between capital and income is that capital is a fund; income is a flow**. A fund of property existing at an instant of time is called capital. A flow of services rendered by that capital by the payment of money from it or any other benefit rendered by a fund of capital in relation to such fund through a period of time is called income. **Capital is wealth, while income is the service of wealth**. x x x In *Conwi v. Court of Tax Appeals*, the Court elucidated that "income may be defined as an amount of money coming to a person or corporation within a specified time, whether as **payment for services, interest** or **profit from investment**. Unless otherwise specified, it means cash or its equivalent. Income can also be thought of as a flow of the fruits of one's labor."

5. **ID.; ID.; AS LONG AS MEMBERSHIP FEES, ASSESSMENT DUES, AND THE LIKE ARE TREATED AS COLLECTIONS**

BY RECREATIONAL CLUBS FROM THEIR MEMBERS AS AN INHERENT CONSEQUENCE OF THEIR MEMBERSHIP AND ARE INTENDED FOR THE MAINTENANCE, PRESERVATION, AND UPKEEP OF THE CLUBS' GENERAL OPERATIONS AND FACILITIES, THESE FEES CANNOT BE CONSIDERED INCOME THAT ARE SUBJECT TO INCOME TAX; THEY ONLY FORM PART OF CAPITAL FROM WHICH NO INCOME TAX MAY BE IMPOSED. — As correctly argued by ANPC, membership fees, assessment dues, and other fees of similar nature **only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive members.** They represent funds "**held in trust"** by these clubs **to defray their operating and general costs and hence, only constitute infusion of capital**. x x x ***[F]or as long as* these membership fees, assessment dues, and the like are treated as collections by recreational clubs from their members as an inherent consequence of their membership, and are, by nature, intended for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, then these fees cannot be classified as "the income of recreational clubs from whatever source" that are "subject to income tax." Instead, they only form part of capital from which no income tax may be collected or imposed.**

6. **ID.; ID.; ID.; BY SWEEPINGLY INCLUDING IN RMC NO. 35-2012 ALL MEMBERSHIP DUES AND ASSESSMENT DUES IN ITS CLASSIFICATION AS INCOME SUBJECT TO TAX, THE BIR EXCEEDED ITS RULE-MAKING AUTHORITY; SAID BIR INTERPRETATION IS DECLARED INVALID. —** [B]y sweepingly including in RMC No. 35-2012 all membership fees and assessment dues in its classification of "income of recreational clubs from whatever source" that are "subject to income tax," the BIR exceeded its rule-making authority. x x x Accordingly, the Court hereby declares the said interpretation to be invalid, and in consequence, sets aside the ruling of the RTC.

7. **ID.; ID.; ID.; AS THE CLUBS ARE NOT SELLING SERVICES TO THE MEMBERS, MEMBERSHIP DUES, ASSESSMENT DUES AND THE LIKE ARE NOT SUBJECT TO VALUE ADDED TAX (VAT). —** It is a basic principle that **before a**

> **transaction is imposed VAT, a sale, barter or exchange of goods or properties, or sale of a service is required**. This is true even if such sale is on a cost-reimbursement basis. x x x As ANPC aptly pointed out, membership fees, assessment dues, and the like are not subject to VAT because in collecting such fees, the club is not selling its service to the members. Conversely, the members are not buying services from the club when dues are paid; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations/ maintenance of the facilities of the organization. **As such, there could be no "sale, barter or exchange of goods or properties, or sale of a service" to speak of, which would then be subject to VAT under the 1997 NIRC.**

APPEARANCES OF COUNSEL

The Law Firm of Verzosa Gutierrez Nolasco Montenegro and Associates for petitioner.

Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated July 1, 2016 and the Order[3] dated November 7, 2016 of the Regional Trial Court of Makati City, Branch 134 (RTC), in Special Civil Case No. 14-985, which denied petitioner Association of Non-Profit Clubs, Inc. (ANPC)'s petition[4] for declaratory relief, thereby upholding in full the validity of Revenue Memorandum Circular (RMC) No. 35-2012.[5]

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[1] *Rollo*, pp. 11-78.

[2] *Id*. at 82-89. Penned by Pairing Judge Elpidio R. Calis.

[3] *Id*. at 90. Penned by Acting Presiding Judge Manuel L. See.

[4] Dated September 15, 2014. *Id*. at 95-114.

[5] Entitled "CLARIFYING THE TAXABILITY OF CLUBS ORGANIZED AND OPERATED EXCLUSIVELY FOR PLEASURE, RECREATION, AND OTHER NON-PROFIT PURPOSES" (August 3, 2012). *Id*. at 92-94.

The Facts

On August 3, 2012, respondent the Bureau of Internal Revenue (BIR) issued RMC No. 35-2012, entitled "Clarifying the Taxability of Clubs Organized and Operated Exclusively for Pleasure, Recreation, and Other Non-Profit Purposes,"[6] which was addressed to all revenue officials, employees, and others concerned for their guidance regarding the income tax and Valued Added Tax (VAT) liability of the said recreational clubs.[7]

On the income tax component, RMC No. 35-2012 states that "**[c]lubs which are organized and operated exclusively for pleasure, recreation, and other non-profit purposes are subject to income tax under the National Internal Revenue Code [(NIRC)] of 1997,**[8] **as amended [(1997 NIRC)].**"[9] The BIR justified the foregoing interpretation based on the following reasons:

> According to the doctrine of *casus omissus pro omisso habendus est*, a person, object, or thing omitted from an enumeration must be held to have been omitted intentionally. The provision in the (1977 Tax Code] which granted income tax exemption to such recreational clubs was omitted in the current list of tax exempt corporations under [the 1997 NIRC], as amended. **Hence, the income of recreational clubs from whatever source, including but not limited to membership fees, assessment dues, rental income, and service fees are subject to income tax**.[10] (Emphasis and underscoring supplied)

Likewise, on the VAT component, RMC No. 35-2012 provides that "**the gross receipts of recreational clubs including but not limited to membership fees, assessment dues, rental income, and service fees are subject to VAT**."[11] As basis, the

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[6] *Id*.

[7] *Id*. at 92.

[8] Republic Act No. 8424, entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES," otherwise known as the "TAX REFORM ACT OF 1997" (January 1, 1998).

[9] *Rollo*, pp. 92-93; emphasis and underscoring supplied.

[10] *Id*. at 93.

[11] *Id*. at 94; emphasis and underscoring supplied.

BIR relied on Section 105,[12] Chapter I, Title IV of the 1997 NIRC, which states that even a nonstock, nonprofit private organization or government entity is liable to pay VAT on the sale of goods or services.[13]

On October 25, 2012, ANPC, along with the representatives of its member clubs, invited Atty. Elenita Quimosing (Atty. Quimosing), Chief of Staff, Operations Group of the BIR, to discuss "specifically the effects of the said [C]ircular and to seek clarification and advice from the BIR on how it will affect the operational requirements of each club and their members/ stakeholders."[14] During their meeting, Atty. Quimosing discussed the basis and effects of RMC No. 35-2012, and further suggested that the attendees submit a position paper to the BIR expressing their concerns.[15]

Consequently, ANPC submitted its position paper,[16] requesting "the non-application of RMC [No.] 35-2012 for income tax and VAT liability on membership fees, association dues, and fees of similar nature collected by [the] exclusive membership

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[12] Section 105. *Persons Liable*. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

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The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by **any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization** (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

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(Emphasis supplied)

[13] See *Commissioner of Internal Revenue v. Court of Appeals*, 385 Phil. 875 (2000), as cited in RMC No. 35-2012. See also *rollo*, p. 93.

[14] *Rollo*, p. 144.

[15] See *id*. at 83 and 144.

[16] By way of a letter dated November 12, 2012 addressed to Commissioner of lnternal Revenue Kim S. Jacinto-Henares. *Id*. at 143-154.

clubs from [their] members which are used to defray the expenses of the said clubs."[17] However, despite the lapse of two (2) years, the BIR has not acted upon the request, and all the member clubs of ANPC were subjected to income tax and VAT on all membership fees, assessment dues, and service fees.[18]

Aggrieved, ANPC, on behalf of its club members, filed a petition[19] for declaratory relief before the RTC on September 17, 2014, seeking to declare RMC No. 35-2012 invalid, unjust, oppressive, confiscatory, and in violation of the due process clause of the Constitution.[20] ANPC argued that in issuing RMC No. 35-2012, the BIR acted beyond its rule-making authority in interpreting that payments of membership fees, assessment dues, and service fees are considered as income subject to income tax, as well as a sale of service that is subject to VAT.[21]

For its part, the Office of the Solicitor General (OSG), on behalf of the BIR, sought the dismissal of the petition for ANPC's failure to exhaust all the available administrative remedies. It also argued that RMC No. 35-2012 is a mere amplification of the existing law and the rules and regulations of the BIR on the matter, positing that the said Circular merely explained that by removing recreational clubs from the list of tax exempt entities or corporations, Congress intended to subject them to income tax and VAT under the 1997 NIRC.[22]

The RTC Ruling

In a Decision[23] dated July 1, 2016, the RTC denied the petition for declaratory relief[24] and upheld the validity and constitutionality

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[17] *Id*. at 152.

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

[19] *Id*. at 95-114.

[20] See *id*. at 100 and 113.

[21] See *id*. at 100-112.

[22] See *id*. at 83-84.

[23] *Id*. at 82-89.

[24] See *id*. at 89.

of RMC No. 35-2012.[25] On the procedural issue, the RTC found that there was no violation of the doctrine of exhaustion of administrative remedies, since judicial intervention was urgent in light of the impending imposition of taxes on the membership fees and assessment dues paid by the members of the exclusive clubs.[26] As to the substantive issue, the RTC found that given the apparent intent of Congress to subject recreational clubs to taxes, the BIR, being the administrative agency concerned with the implementation of the law, has the power to make such an interpretation through the issuance of RMC No. 35-2012. As an interpretative rule issued well within the powers of the BIR, the same need not be published and neither is a hearing required for its validity.[27]

Undaunted, ANPC sought reconsideration,[28] which the RTC denied in an Order[29] dated November 7, 2016. Raising pure questions of law, ANPC, herein represented by its authorized representative, Ms. Felicidad M. Del Rosario, filed the instant petition for review on *certiorari* directly before the Court.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the RTC erred in upholding in full the validity of RMC No. 35-2012.

The Court's Ruling

The petition is partly meritorious.

I.

The Court first resolves the procedural issues.

In its Comment,[30] the BIR, through the OSG, seeks the dismissal of the present petition on the ground that ANPC violated

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[25] See *id*. at 87.

[26] See *id*. at 85.

[27] See *id*. at 86-87.

[28] The motion for reconsideration was not attached in the *rollo*.

[29] *Rollo*, p. 90.

[30] Dated January 12, 2018. *Id*. at 165-175.

the doctrine of hierarchy of courts due to its direct resort before the Court.[31] Moreover, it asserts that ANPC violated the doctrine of exhaustion of available administrative remedies, pointing out that ANPC should have first elevated the matter to the Secretary of Finance for review pursuant to Section 4,[32] Title I of the 1997 NIRC.[33]

The contentions are untenable.

First, the Court holds that there was no violation of the doctrine of hierarchy of courts because the present petition for review on *certiorari*, filed pursuant to Section 2 (c), Rule 41 in relation to Rule 45 of the Rules of Court, is the *sole* remedy to appeal a decision of the RTC in cases involving pure questions of law. The doctrine of hierarchy of courts is violated only when relief may be had through multiple fora having concurrent jurisdiction over the case, such as in petitions for *certiorari, mandamus*, and prohibition which are concurrently cognizable either by the Regional Trial Courts, the Court of Appeals, or the Supreme Court. In *Uy v. Contreras*:[34]

> [W]hile it is true that this Court, the Court of Appeals, and the Regional Trial Courts have concurrent original jurisdiction to issue writs of *certiorari, prohibition, mandamus, quo warranto*, and *habeas corpus*, such concurrence does not accord litigants unrestrained freedom of choice of the court to which application therefor may be directed.

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[31] See *id*. at 172-173.

[32] Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*. — The power to **interpret** the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, **subject to review by the Secretary of Finance**.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals. (Emphases supplied)

[33] See *rollo*, pp. 168-172.

[34] G.R. Nos. 111416-17, September 26, 1994, 237 SCRA 167.

There is a hierarchy of courts determinative of the venue of appeals which should also serve as a general determinant of the proper forum for the application for the extraordinary writs. A becoming regard for this judicial hierarchy by the petitioner and her lawyers ought to have led them to file the petition with the proper Regional Trial Court.[35] (Emphasis and underscoring supplied)

Clearly, the correctness of the BIR's interpretation of the 1997 NIRC under the assailed RMC is a pure question of law,[36] because the same does not involve an examination of the probative value of the evidence presented by the litigants or any of them.[37] Thus, being the only remedy to appeal the RTC's ruling upholding the Circular's validity on a purely legal question, direct resort to this Court, through a Rule 45 petition, was correctly availed by ANPC.

Anent the issue of exhaustion of administrative remedies, the Court likewise holds that the said doctrine was not transgressed.

At the onset, it is apt to point out that RMC No. 35-2012 only clarified the taxability (particularly, income tax and VAT liability) of clubs organized and operated exclusively for pleasure, recreation, and other non-profit purposes based on the BIR's own interpretation of the NIRC provisions on income tax and VAT. Evidently, it was not designed "to implement a primary legislation by providing the details thereof" as in a *legislative rule*; but rather, was intended only to "provide guidelines to the law which the administrative agency is in charge of enforcing,"[38] as the said Circular was, in fact, addressed to "[a]ll [r]evenue [o]fficials, [e]mployees[,] and [o]thers [c]oncerned"[39] to guide

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[35] *Id*. at 170.

[36] See *Calamba Steel Center, Inc. v. Commissioner of Internal Revenue*, 497 Phil. 23, 33 (2005).

[37] See *Republic of the Philippines v. Malabanan*, 646 Phil. 631, 637-638 (2010).

[38] *BPI Leasing Corporation v. Court of Appeals*, 461 Phil. 451, 459 (2003).

[39] *Rollo*, p. 92.

them in the enforcement of income tax and VAT laws against fees collected by the said clubs.

Given its nature, RMC No. 35-2012 is therefore subject to the administrative review of the Secretary of Finance pursuant to Section 4, Title I of the 1997 NIRC, which provides:

> Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to **interpret** the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, **subject to review by the Secretary of Finance**.
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> x x x x x x x x x
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> (Emphases supplied)

Thus, as dictated by the rule on exhaustion of administrative remedies,[40] the validity of RMC No. 35-2012 should have been first subjected to the review of the Secretary of Finance before ANPC sought judicial recourse with the RTC.

However, as exceptions to this rule, when the issue involved is purely a legal question (as above-explained), or when there are circumstances indicating the urgency of judicial intervention[41] — as in this case where membership fees, assessment dues, and the like of all recreational clubs would be imminently subjected to income tax and VAT — then the doctrine of exhaustion of administrative remedies may be relaxed.

Accordingly, ANPC's recourse to the RTC and now, before this Court are permissible and hence, are not grounds to dismiss

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[40] It is well-settled that "before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought." (*Samar II Electric Cooperative, Inc. v. Seludo, Jr.*, 686 Phil. 786, 796 [2012].)

[41] See *Banco De Oro v. Republic of the Philippines*, 750 Phil. 349, 381-382 (2015).

this case. That being said, the Court now proceeds to resolve the substantive issue on whether or not RMC No. 35-2012 is valid.

II.

To recount, RMC No. 35-2012 is an interpretative rule issued by the BIR to guide all revenue officials, employees, and others concerned in the enforcement of income tax and VAT laws against clubs organized and operated exclusively for pleasure, recreation, and other non-profit purposes ("recreational clubs" for brevity).

As to its income tax component, RMC No. 35-2012 provides the interpretation that since the old tax exemption previously accorded under Section 27 (h),[42] Chapter III, Title II of Presidential Decree No. 1158, otherwise known as the "National Internal Revenue Code of 1977"[43] (1977 Tax Code), to recreational clubs was deleted in the 1997 NIRC, then **the income of recreational clubs from whatever source, including but not limited to membership fees, assessment dues, rental income, and service fees, is subject to income tax.**

The interpretation is partly correct.

Indeed, applying the doctrine of *casus omissus pro omisso habendus est* (meaning, a person, object or thing omitted from an enumeration must be held to have been omitted intentionally[44]), the fact that the 1997 NIRC omitted recreational clubs from the list of exempt organizations under the 1977 Tax Code evinces

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[42] Section 27. *Exemptions from tax on corporations*. — The following organizations shall not be taxed under this Title in respect to income received by them as such —

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(h) Club organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member[.]

[43] Entitled "A DECREE TO CONSOLIDATE AND CODIFY ALL THE INTERNAL REVENUE LAWS OF THE PHILIPPINES" (June 3, 1977).

[44] *Rollo*, p. 86.

the deliberate intent of Congress to remove the tax income exemption previously accorded to these clubs. As such, the income that recreational clubs derive "from whatever source"[45] is now subject to income tax under the provisions of the 1997 NIRC.

However, notwithstanding the correctness of the above-interpretation, **RMC No. 35-2012 erroneously foisted a sweeping interpretation that membership fees and assessment dues are sources of income of recreational clubs from which income tax liability may accrue**, *viz.*:

> The provision in the [1977 Tax Code] which granted income tax exemption to such recreational clubs was omitted in the current list of tax exempt corporations under the [1997 NIRC], as amended. **Hence, the income of recreational clubs from whatever source, including but not limited to membership fees, assessment dues**, rental income, and service fees **[is] subject to income tax**.[46] (Emphases and underscoring supplied)

The distinction between "capital" and "income" is well-settled in our jurisprudence. As held in the early case of *Madrigal v. Rafferty*,[47] "capital" has been delineated as a "fund" or "wealth," as opposed to "income" being "the flow of services rendered by capital" or the "service of wealth":

> Income as contrasted with capital or property is to be the test. **The essential difference between capital and income is that capital is a fund; income is a flow**. A fund of property existing at an instant of time is called capital. A flow of services rendered by that capital by the payment of money from it or any other benefit rendered by a fund of capital in relation to such fund through a period of time is called income. **Capital is wealth, while income is the service of wealth**. (See Fisher, "The Nature of Capital and Income.") The Supreme Court of Georgia;expresses the thought in the following figurative language: "The fact is that property is a tree, income is the fruit; labor is a tree, income the fruit; capital is a tree, income

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[45] Section 32 (A), Chapter VI, Title II of the 1997 NIRC.

[46] *Rollo*, p. 93.

[47] 38 Phil. 414 (1918).

the fruit." (*Waring vs. City of Savannah* [1878], 60 Ga., 93.) A tax on income is not a tax on property. **"Income," as here used, can be defined as "profits or gains."** (*London County Council vs. Attorney-General* [1901], A. C., 26; 70 L. J. K. B. N. S., 77; 83 L. T. N. S., 605; 49 Week. Rep., 686; 4 Tax Cas., 265. See further Foster's Income Tax, second edition [1915], Chapter IV; Black on Income Taxes, second edition [1915], Chapter VIII; *Gibbons vs. Mahon* [1890], 136 U.S., 549; and *Towne vs. Eisner*, decided by the United States Supreme Court, January 7, 1918.)[48] (Emphases and underscoring supplied)

In *Conwi v. Court of Tax Appeals*,[49] the Court elucidated that "income may be defined as an amount of money coming to a person or corporation within a specified time, whether as **payment for services, interest** or **profit from investment**. Unless otherwise specified, it means cash or its equivalent. Income can also be thought of as a flow of the fruits of one's labor."[50]

As correctly argued by ANPC, membership fees, assessment dues, and other fees of similar nature **only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive members.**[51] They represent funds "**held in trust**" by these clubs **to defray their operating and general costs and hence, only constitute infusion of capital**.[52]

Case law provides that in order to constitute "income," there must be realized "gain."[53] Clearly, because of the nature of membership fees and assessment dues as funds inherently dedicated for the maintenance, preservation, and upkeep of the

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[48] *Id*. at 418-419.

[49] G.R. No. L-48532, August 31, 1992, 213 SCRA 83 (1992).

[50] *Id*. at 87-88; emphases supplied.

[51] *Rollo*, p. 68.

[52] See *id*. at 40-42.

[53] *Chamber of Real Estate and Builders' Associations, Inc. v. Romulo*, 628 Phil. 508, 531 (2010).

clubs' general operations and facilities, nothing is to be gained from their collection. This stands in contrast to the fees received by recreational clubs coming from their income-generating facilities, such as bars, restaurants, and food concessionaires, or from income-generating activities, like the renting out of sports equipment, services, and other accommodations. In these latter examples, regardless of the purpose of the fees' eventual use, gain is already realized from the moment they are collected because capital maintenance, preservation, or upkeep is not their pre-determined purpose. As such, recreational clubs are generally free to use these fees for whatever purpose they desire and thus, considered as unencumbered "fruits" coming from a business transaction.

Further, given these recreational clubs' non-profit nature, membership fees and assessment dues cannot be considered as funds that would represent these clubs' interest or profit from any investment. In fact, these fees are paid by the clubs' members without any expectation of any yield or gain (unlike in stock subscriptions), but only for the above-stated purposes and in order to retain their membership therein.

In fine, *for as long as* these membership fees, assessment dues, and the like are treated as collections by recreational clubs from their members as an inherent consequence of their membership, and are, by nature, intended for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, then these fees cannot be classified as "the income of recreational clubs from whatever source" that are "subject to income tax."[54] Instead, they only form part of capital from which no income tax may be collected or imposed.

It is a well-enshrined principle in our jurisdiction that the State cannot impose a tax on capital as it constitutes an unconstitutional confiscation of property. As the Court held in *Chamber of Real Estate and Builders' Associations, Inc. v. Romulo*:[55]

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[54] *Rollo*, p. 93.

[55] *Supra* note 53.

As a general rule, the power to tax is plenary and unlimited in its range, acknowledging in its very nature no limits, so that the principal check against its abuse is to be found only in the responsibility of the legislature (which imposes the tax) to its constituency who are to pay it. **Nevertheless, it is circumscribed by constitutional limitations.** At the same time, like any other statute, tax legislation carries a presumption of constitutionality.

The constitutional safeguard of due process is embodied in the fiat "[no] person shall be deprived of life, liberty or property without due process of law." In *Sison, Jr. v. Ancheta* [215 Phil. 582 (1984)], we held that the **due process clause may properly be invoked to invalidate, in appropriate cases, a revenue measure when it amounts to a confiscation of property**. But in the same case, we also explained that we will not strike down a revenue measure as unconstitutional (for being violative of the due process clause) on the mere allegation of arbitrariness by the taxpayer. There must be a factual foundation to such an unconstitutional taint. This merely adheres to the authoritative doctrine that, where the due process clause is invoked, considering that it is not a fixed rule but rather a broad standard, there is a need for proof of such persuasive character.

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Certainly, **an income tax is arbitrary and confiscatory if it taxes capital because capital is not income**. In other words, it is income, not capital, which is subject to income tax. x x x.[56] (Emphases supplied)

In *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary*,[57] the Court held that "[a]s a matter of power[,] a court, when confronted with an interpretative rule, [such as RMC No. 35-2012,] is free to (i) give the force of law to the rule; (ii) go to the opposite extreme and substitute its judgment; or (iii) give some intermediate degree of authoritative weight to the interpretative rule."[58] Thus, by sweepingly including in RMC No. 35-2012 all membership fees and assessment dues in its classification of "income of recreational clubs from whatever source'' that are "subject to

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[56] *Id*. at 530-531, other citations omitted.

[57] G.R. No. 108524, November 10, 1994, 238 SCRA 63.

[58] *Id*. at 70.

income tax,"[59] the BIR exceeded its rule-making authority. Case law holds that:

> [T]he rule-making power of administrative agencies cannot be extended to amend or expand statutory requirements or to embrace matters not originally encompassed by the law. Administrative regulations should always be in accord with the provisions of the statute they seek to carry into effect, and any resulting inconsistency shall be resolved in favor of the basic law.[60]

Accordingly, the Court hereby declares the said interpretation to be invalid, and in consequence, sets aside the ruling of the RTC.

In the same way, the Court declares as invalid the BIR's interpretation in RMC No. 35-2012 that membership fees, assessment dues, and the like are part of "the gross receipts of recreational clubs" that are "subject to VAT."[61]

It is a basic principle that **before a transaction is imposed VAT, a sale, barter or exchange of goods or properties, or sale of a service is required**.[62] This is true even if such sale is on a cost-reimbursement basis.[63] Section 105, Chapter I, Title IV of the 1997 NIRC reads:

> Section 105. *Persons Liable*.— Any person who, in the course of trade or business, **sells, barters, exchanges, leases goods or properties, renders services**, and any person who **imports goods** shall be **subject to the value-added tax (VAT)** imposed in Sections 106 to 108 of this Code.
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> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the **buyer, transferee** or **lessee** of the

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[59] *Rollo*, p. 93.

[60] *CS Garment, Inc. v. Commissioner of Internal Revenue*, 729 Phil. 253, 275 (2014).

[61] *Rollo*, p. 94.

[62] See *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, 649 Phil. 519, 533 (2010).

[63] See *Commissioner of Internal Revenue v. Court of Appeals*, *supra* note 13.

goods, properties or services. This rule shall likewise apply to existing contracts of **sale or lease of goods, properties or services** at the time of the effectivity of Republic Act No. 7716.

The phrase "*in the course of trade or business*" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it **sells exclusively to members or their guests**), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business. (Emphases supplied)

As ANPC aptly pointed out, membership fees, assessment dues, and the like are not subject to VAT because in collecting such fees, the club is not selling its service to the members. Conversely, the members are not buying services from the club when dues are paid; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations/ maintenance of the facilities of the organization.[64] **As such, there could be no "sale, barter or exchange of goods or properties, or sale of a service" to speak of, which would then be subject to VAT under the 1997 NIRC.**

WHEREFORE, the petition is **GRANTED**. The Decision dated July 1, 2016 and the Order dated November 7, 2016 of the Regional Trial Court of Makati City, Branch 134, in Special Civil Case No. 14-985, are hereby **SET ASIDE**. The Court **DECLARES** that membership fees, assessment dues, and fees of similar nature collected by clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofit purposes do not constitute as: ***(a)*** "the income of recreational clubs from whatever source" that are "subject to income tax"; and ***(b)*** part of the "gross receipts of recreational clubs" that are "subject to [Value Added Tax]." Accordingly, Revenue Memorandum

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[64] *Rollo*, pp. 71-72.

Circular No. 35-2012 should be interpreted in accordance with this Decision.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 229243. June 26, 2019]

MAXIMA P. SACLOLO and TERESITA P. OGATIA, *petitioners, vs.* **ROMEO MARQUITO, MONICO MARQUITO, CLEMENTE MARQUITO, ESTER M. LOYOLA, MARINA M. PRINCILLO, LOURDES MARQUITO and LORNA MARQUITO,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; SALES; EQUITABLE MORTGAGE; WHEN THE PARTIES ENTERED INTO A CONTRACT DENOMINATED AS A CONTRACT OF SALE AND THEIR INTENTION WAS TO SECURE AN EXISTING DEBT BY WAY OF A MORTGAGE, THE CONTRACT SHALL BE CONSIDERED AS AN EQUITABLE MORTGAGE. — In *Spouses Salonga v. Spouses Concepcion*, the Court explained the nature of an equitable mortgage. x x x The provision shall apply to a contract purporting to be an absolute sale. In case of doubt, a contract purporting to be a sale with right to repurchase shall be considered as an equitable mortgage. In a contract of mortgage, the mortgagor merely subjects the property to a lien, but the ownership and possession thereof are retained by him. For the presumption in Article 1602 of the New Civil Code to arise, two requirements must concur: (a) that the parties entered into a contract

denominated as a contract of sale; and (b) that their intention was to secure an existing debt by way of a mortgage. The existence of any of the circumstances defined in Article 1602 of the New Civil Code, not the concurrence nor an overwhelming number of such circumstances[,] is sufficient for a contract of sale to be presumed an equitable mortgage. x x x The nomenclature given by the parties to the contract is not conclusive of the nature and legal effects thereof. Even if a document appears on its face to be a sale, the owner of the property may prove that the contract is really a loan with mortgage, and that the document does not express the true intent of the parties. There is no conclusive test to determine whether a deed absolute on its face is really a simple loan accommodation secured by a mortgage. The decisive factor in evaluating such deed is the intention of the parties as shown by all the surrounding circumstances, such as the relative situation of the parties at that time, the attitude, acts, conduct, and declarations of the parties before, during and after the execution of said deed, and generally all pertinent facts having a tendency to determine the real nature of their design and understanding. As such, documentary and parol evidence may be adduced by the parties. When in doubt, courts are generally inclined to construe a transaction purporting to be a sale as an equitable mortgage, which involves a lesser transmission of rights and interests over the property in controversy.

2. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE LOWER COURT, MORE SO WHEN SUPPORTED BY THE EVIDENCE, COMMAND NOT ONLY RESPECT BUT EVEN FINALITY AND ARE BINDING ON THE SUPREME COURT; CASE AT BAR. — In the instant case, the RTC and CA both held that the subject *Memorandum of Deed of Sale with Right of Repurchase*, while purporting to be a sale with right to repurchase, was, in fact, an equitable mortgage. Factual findings of the lower court, more so when supported by the evidence, as in this case, command not only respect but even finality and are binding on the Court. Further, the findings of the RTC and the CA on the nature of the transaction have attained finality considering that the respondents never challenged the same.

3. CIVIL LAW; CONTRACTS; SALES; EQUITABLE MORTGAGE; WHEN THE TRUE TRANSACTION

BETWEEN THE PARTIES IS AN EQUITABLE MORTGAGE AND NOT A SALE WITH RIGHT TO REPURCHASE, THERE IS NO REDEMPTION OR REPURCHASE TO SPEAK OF AND THE PERIODS PROVIDED UNDER ARTICLE 1606 OF THE CIVIL CODE DO NOT APPLY; THE APPLICABLE PRESCRIPTIVE PERIOD IS TEN (10) YEARS FROM THE TIME THE CAUSE OF ACTION ACCRUES; CASE AT BAR. — An equitable mortgage, like any other mortgage, is a mere accessory contract "constituted to secure the fulfillment of a principal obligation," *i.e.*, the full payment of the loan. Since the true transaction between the parties was an equitable mortgage and not a sale with right of repurchase, there is no "redemption" or "repurchase" to speak of and the periods provided under Article 1606 do not apply. Instead, the prescriptive period under Article 1144 of the Civil Code is applicable. In other words, the parties had 10 years from the time the cause of action accrued to file the appropriate action. x x x Although the *Memorandum of Deed of Sale with Right of Repurchase* was executed in 1984 and the period to redeem the same supposedly lapsed in 1994 if such contract were a true sale with right to repurchase, both the RTC and CA found that subsequent loans were extended to either or both of the petitioners in 1987, 2003, and 2004, "using the same land as security for the loan." These facts were alleged in petitioners' Complaint and were not specifically denied in respondents' Answer. The release of additional loans on the basis of the same security, coupled with the fact that respondents never filed an action to consolidate ownership over the subject property under Article 1607, evidently shows that for 19 years, respondents expressly recognized: 1) that petitioners continued to own the subject property and 2) that the loan and equitable mortgage subsisted. Thus, petitioners' cause of action to recover the subject property can be said to have accrued only in 2004, that is, when respondents rejected petitioners' offers to pay and extinguish the loan and to recover the mortgaged property as it was only at this time that respondents manifested their intention not to comply with the true agreement of the parties. Undoubtedly, **the filing of the complaint in 2005 was made well-within the 10-year prescriptive period**.

4. ID.; ID.; ID.; ID.; ID.; REMEDY OF THE CREDITOR IS TO COLLECT THE OUTSTANDING AMOUNT OF DEBTOR'S LOAN, PLUS INTEREST, AND TO

FORECLOSE ON THE SUBJECT PROPERTY SHOULD THE LATTER FAIL TO PAY; CREDITOR CANNOT APPROPRIATE THE SUBJECT PROPERTY WITHOUT PRIOR FORECLOSURE AS THAT WOULD PRODUCE THE SAME EFFECT AS *PACTUM COMISSORIUM*, WHICH IS PROHIBITED; CASE AT BAR. — Respondents, for their part, are not without remedy. They are entitled to collect the outstanding amount of petitioners' loan, plus interest, and to foreclose on the subject property should the latter fail to pay the same. To allow respondents to appropriate the subject lot without prior foreclosure would produce the same effect as a *pactum comissorium*. Upon full satisfaction of the debt, the mortgage, being a security contract, shall be extinguished and the property should be returned to herein petitioners. As the records are bereft of any basis for the determination of the outstanding amount of the loan, the Court is left with no choice but to remand the instant case to the RTC for a determination of the outstanding amount of the loan and the imposition of the applicable interest, and for a declaration of whether or not respondents are entitled to foreclose on the equitable mortgage.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Vincent Aclon Cablao for respondents.

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 Decision[1] of the Court of Appeals (CA) dated July 10, 2015 and the Resolution[2]

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[1] *Rollo*, pp. 33-42. Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Pamela Ann Abella Maxino and Jhosep Y. Lopez concurring.

[2] *Id*. at 44-46. Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Edgardo L. Delos Santos and Pamela Ann Abella Maxino concurring.

dated November 14, 2016 in CA-G.R. CEB-CV. No. 01796. The CA Decision denied the appeal and affirmed the Decision[3] dated July 26, 2006 of Branch 3, Regional Trial Court, Guiuan, Eastern Samar (RTC), in Civil Case No. 1159, denying the Complaint on the ground that the right to repurchase/redeem the subject property had already expired.

The Facts and Antecedent Proceedings

The dispute involved a co-owned parcel of coconut land, which Maxima P. Saclolo (petitioner Saclolo) and Teresita P. Ogatia (petitioner Ogatia) (together, petitioners) inherited from their father.[4]

Petitioners claimed that on December 27, 1987, they each obtained a loan of ₱3,500.00 from Felipe Marquito, the father of Romeo Marquito, Monico Marquito, Clemente Marquito, Ester M. Loyola, Marina M. Princillo, Lourdes Marquito and Lorna Marquito[5] (respondents). Petitioners used their land as collateral for the loan obligation.[6] On said date, respondents' father began occupying the land.[7] In March 2003, petitioner Ogatia borrowed an additional ₱6,000.00, and again used her aliquot share of the land as collateral for the loan.[8] In June 2004, petitioner Saclolo also borrowed an additional amount of ₱10,000.00 from respondents, using her aliquot share of the land as collateral.[9]

Sometime in October 2004, petitioners verbally informed respondents of their intention to "redeem" the property.[10] On November 18, 2004, a written offer to redeem the property was

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[3] *Id*. at 69-80. Penned by Presiding Judge Rolando M. Laode-o.

[4] *Id*. at 34.

[5] *Id*.

[6] *Id*.

[7] *Id*. at 35.

[8] *Id*. at 34.

[9] *Id*.

[10] *Id*.

made.[11] Respondents, however, refused.[12] Thus, petitioners were constrained to file a Complaint for redemption of mortgaged properties, specific performance with damages before the RTC.[13] During the proceedings, they manifested their willingness to deposit the amounts due on their loan obligation for the purpose of redemption.[14]

Respondents, on the other hand, alleged that in 1984, petitioners sold the subject property for ₱1,000.00 under a *Memorandum of Deed of Sale with Right of Repurchase*.[15] Since then, they have been in actual possession of the property in the concept of owner and even introduced improvements thereon worth ₱120,000.00.[16] They admitted that since 1984, petitioners, on numerous occasions, borrowed money from them but explained that they extended said loans on the understanding that petitioners would execute a deed of absolute sale in their favor.[17]

After trial, the RTC found that the true transaction between the parties was one of equitable mortgage.[18] However, it held that the period for the redemption of the property had lapsed as it was filed beyond the four-year period under Article 1606[19] of the Civil Code.[20] Thus, it dismissed the complaint.[21]

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[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 35.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*. at 40 and 79.

[19] Art. 1606. The right referred to in Article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

Should there be an agreement, the period cannot exceed ten years.

However, the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase.

[20] *Rollo*, p. 80.

[21] *Id*.

Petitioners' filed a Motion for Reconsideration.[22] On the other hand, respondents failed or refused to challenge the finding that the real transaction between the parties was an equitable mortgage.[23] Thus, this issue attained finality.[24]

When the RTC denied their motion,[25] petitioners appealed to the CA alleging that the RTC erred in ruling that their right to redeem the property had already prescribed.[26] They argued that since the transaction was found to be an equitable mortgage, the property should be subjected to a foreclosure sale and the period to redeem the property under Article 1606 does not apply.[27]

The Ruling of the CA

The CA denied the appeal and affirmed the Decision of the RTC.[28] The CA held that "inasmuch as [respondents] did not interpose their own appeal, the trial court's finding that the transaction between the parties is an equitable mortgage can no longer be disturbed x x x in line with the rule that only assigned errors will be decided during appeal."[29] Nevertheless, the CA agreed that the real transaction between the parties was one of equitable mortgage.[30]

Further, the CA agreed that petitioners' action had prescribed, but found the RTC's application of the four-year period under Article 1606 incorrect. The CA explained that under Articles 1142[31]

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[22] *Id*. at 36.

[23] *Id*. at 41.

[24] *Id*.

[25] *Id*. at 36.

[26] *Id*. at 37.

[27] *Id*.

[28] *Id*. at 42.

[29] *Id*. at 41.

[30] *Id*. at 40.

[31] Art. 1142. A mortgage action prescribes after ten years.

and 1144,[32] petitioners had 10 years from the execution of the *Memorandum of Deed of Sale with Right to Repurchase* on July 26, 1984 "to redeem the property."[33] As petitioners only formally offered to redeem the property on November 18, 2004, the action had prescribed.[34]

On reconsideration, however, the CA reversed its ruling on the proper prescriptive period and agreed "with the trial court that [petitioners could] no longer repurchase or redeem the property pursuant to Article 1606 of the Civil Code."[35]

Hence, this Petition.

Issue

Whether the action has prescribed.

The Court's Ruling

The Petition has merit.

In *Spouses Salonga v. Spouses Concepcion*,[36] the Court explained the nature of an equitable mortgage, *viz*.:

Article 1602 of the New Civil Code of the Philippines provides that a contract shall be presumed to be an equitable mortgage, in any of the following cases:

(1) When the price of a sale with right to repurchase is unusually inadequate;
(2) When the vendor remains in possession as lessee or otherwise;

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[32] Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

[33] *Rollo*, p. 41.

[34] *Id*.

[35] *Id*. at 45.

[36] 507 Phil. 287 (2005).

(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
(4) When the purchaser retains for himself a part of the purchase price;
(5) When the vendor binds himself to pay the taxes on the thing sold;
(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

In any of the foregoing case, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.

The provision shall apply to a contract purporting to be an absolute sale. In case of doubt, a contract purporting to be a sale with right to repurchase shall be considered as an equitable mortgage. In a contract of mortgage, the mortgagor merely subjects the property to a lien, but the ownership and possession thereof are retained by him.

For the presumption in Article 1602 of the New Civil Code to arise, two requirements must concur: (a) that the parties entered into a contract denominated as a contract of sale; and (b) that their intention was to secure an existing debt by way of a mortgage. The existence of any of the circumstances defined in Article 1602 of the New Civil Code, not the concurrence nor an overwhelming number of such circumstances[,] is sufficient for a contract of sale to be presumed an equitable mortgage.

If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. However, if the records appear to be contrary to the evident intention of the contracting parties, the latter shall prevail.

The nomenclature given by the parties to the contract is not conclusive of the nature and legal effects thereof. Even if a document appears on its face to be a sale, the owner of the property may prove that the contract is really a loan with mortgage, and that the document does not express the true intent of the parties.

There is no conclusive test to determine whether a deed absolute on its face is really a simple loan accommodation secured by a mortgage. The decisive factor in evaluating such deed is the intention

of the parties as shown by all the surrounding circumstances, such as the relative situation of the parties at that time, the attitude, acts, conduct, and declarations of the parties before, during and after the execution of said deed, and generally all pertinent facts having a tendency to determine the real nature of their design and understanding. As such, documentary and parol evidence may be adduced by the parties. When in doubt, courts are generally inclined to construe a transaction purporting to be a sale as an equitable mortgage, which involves a lesser transmission of rights and interests over the property in controversy.[37]

In the instant case, the RTC and CA both held that the subject *Memorandum of Deed of Sale with Right of Repurchase*, while purporting to be a sale with right to repurchase, was, in fact, an equitable mortgage.[38] Factual findings of the lower court, more so when supported by the evidence, as in this case, command not only respect but even finality and are binding on the Court.[39] Further, the findings of the RTC and the CA on the nature of the transaction have attained finality considering that the respondents never challenged the same.[40]

Thus, the only issue for resolution before the Court is whether petitioners' action to "redeem" the subject property has prescribed. Both the RTC and the CA held that while the true transaction was one of equitable mortgage under Articles 1602 and 1603 of the Civil Code, petitioners could no longer "repurchase" or "redeem" the subject property as the period for redemption under Article 1606 of the Civil Code has lapsed.[41] **This is erroneous.**

An equitable mortgage, like any other mortgage, is a mere accessory contract "constituted to secure the fulfillment of a principal obligation,"[42] *i.e.*, the full payment of the loan.

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[37] *Id*. at 302-304. Citations omitted. Emphasis supplied.

[38] *Rollo*, pp. 39-40.

[39] *Spouses Lumayag v. Heirs of Nemeño*, 553 Phil. 293, 303 (2007).

[40] *Rollo*, p. 41.

[41] *Id*. at 45 and 80.

[42] CIVIL CODE, Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

Since the true transaction between the parties was an equitable mortgage and not a sale with right of repurchase, there is no "redemption" or "repurchase" to speak of and the periods provided under Article 1606 do not apply. Instead, the prescriptive period under Article 1144[43] of the Civil Code is applicable. In other words, the parties had 10 years from the time the cause of action accrued to file the appropriate action.

A review of the records unequivocally shows that the parties faithfully abided by their true agreement for 19 years counted from the execution of the *Memorandum of Deed of Sale with Right of Repurchase*.

Although the *Memorandum of Deed of Sale with Right of Repurchase* was executed in 1984 and the period to redeem the same supposedly lapsed in 1994 if such contract were a true sale with right to repurchase, both the RTC and CA found that subsequent loans were extended to either or both of the petitioners in 1987, 2003, and 2004, "using the same land as security for the loan."[44] These facts were alleged in petitioners' Complaint[45] and were not specifically denied in respondents' Answer.[46]

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(1) That they be constituted to secure the fulfillment of a principal obligation;

(2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;

(3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

[43] Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

[44] *Rollo*, pp. 34 and 39.

[45] *Id*. at 81-84.

[46] *Id*. at 85-87.

The release of additional loans on the basis of the same security, coupled with the fact that respondents never filed an action to consolidate ownership over the subject property under Article 1607,[47] evidently shows that for 19 years, respondents expressly recognized: 1) that petitioners continued to own the subject property and 2) that the loan and equitable mortgage subsisted.

Thus, petitioners' cause of action to recover the subject property can be said to have accrued only in 2004, that is, when respondents rejected petitioners' offers to pay and extinguish the loan and to recover the mortgaged property as it was only at this time that respondents manifested their intention not to comply with the true agreement of the parties. Undoubtedly, **the filing of the complaint in 2005 was made well-within the 10-year prescriptive period**. Such treatment is more in keeping with the principle that:

> The provisions of the Civil Code governing equitable mortgages disguised as sale contracts, like the one herein, are primarily designed to curtail the evils brought about by contracts of sale with right to repurchase, particularly the circumvention of the usury law and *pactum commissorium*. Courts have taken judicial notice of the well-known fact that contracts of sale with right to repurchase have been frequently resorted to in order to conceal the true nature of a contract, *that is*, a loan secured by a mortgage. It is a reality that grave financial distress renders persons hard-pressed to meet even their basic needs or to respond to an emergency, leaving no choice to them but to sign deeds of absolute sale of property or deeds of sale with *pacto de retro* if only to obtain the much-needed loan from unscrupulous money lenders.[48]

Respondents, for their part, are not without remedy. They are entitled to collect the outstanding amount of petitioners' loan, plus interest, and to foreclose on the subject property

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[47] CIVIL CODE, Art. 1607. In case of real property, the consolidation of ownership in the vendee by virtue of the failure of the vendor to comply with the provisions of Article 1616 shall not be recorded in the Registry of Property without a judicial order, after the vendor has been duly heard.

[48] See *Heirs of Reyes, Jr. v. Reyes*, 641 Phil. 69, 86-87 (2010).

should the latter fail to pay the same.[49] To allow respondents to appropriate the subject lot without prior foreclosure would produce the same effect as a *pactum comissorium*.[50] Upon full satisfaction of the debt, the mortgage, being a security contract, shall be extinguished[51] and the property should be returned to herein petitioners. As the records are bereft of any basis for the determination of the outstanding amount of the loan, the Court is left with no choice but to remand the instant case to the RTC for a determination of the outstanding amount of the loan and the imposition of the applicable interest, and for a declaration of whether or not respondents are entitled to foreclose on the equitable mortgage.

WHEREFORE, the Petition is **GRANTED**. The Decision dated July 10, 2015 and the Resolution dated November 14, 2016 in CA-G.R. CEB-CV. No. 01796 are **REVERSED**. The instant case is **REMANDED** to Branch 3, Regional Trial Court, Guiuan, Eastern Samar to determine the outstanding amount of the loan and the applicable interest, to fix a reasonable period for the payment of the same, and to order the return of the subject property only upon full satisfaction thereof.

SO ORDERED.

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

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[49] *Montevirgen v. CA*, 198 Phil. 338, 346-347 (1982).

[50] *Id*. at 346.

[51] CESAR L. VILLANUEVA, *LAW ON SALES* 547 (2009 ed).

FIRST DIVISION

[G.R. No. 229828. June 26, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELSIE JUGUILON *y* EBRADA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF *SHABU*; ELEMENTS THAT MUST BE ESTABLISHED TO SECURE A CONVICTION; PRESENT IN CASE AT BAR. — To secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (1) the identities of the buyer and the seller, the object of the sale and the consideration for the sale; and (2) the delivery of the thing sold and the payment therefor. What is material in the prosecution of an illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation of the *corpus delicti* in court as evidence. The evidence on record showed the presence of all these elements as culled from the testimony of PO2 Villarete, who represented himself as the poseur-buyer in the buy-bust operation. He categorically and positively identified the appellant as the seller of the dangerous drugs contained in plastic packs who handed him the same upon the latter giving her the marked ₱500 bill with the boodle money. PO2 Villarete's testimony was corroborated on material points by his back-up PO2 Cansancio and in part by PCI Lourdes Ingente as well as Forensic Chemist Mendoza who examined the items seized and found them to be positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. This detailed account of PO2 Villarete was bolstered by the presentation in court of the *corpus delicti* which is the drug itself.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST; WHERE THE ACCUSED WAS VALIDLY ARRESTED IN *FLAGRANTE DELICTO*, THE SEIZED ITEMS WERE ADMISSIBLE IN EVIDENCE. — Appellant invokes illegal arrest and search. She avers that her warrantless arrest was illegal since she was not then committing any crime. Her averment fails to persuade. Under the

circumstances portrayed by the prosecution's evidence, the arrest of appellant, albeit without warrant, was effected under Section 5(a), Rule 113 of the Rules of Court or the arrest of a suspect in *flagrante delicto*. Appellant was clearly arrested in *flagrante delicto* as she was then committing a crime, a violation of the Dangerous Drugs Act in the presence of the buy-bust team. Consequently, the seized items were admissible in evidence as the search, being an incident to a lawful arrest, needed no warrant for its validity.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF *SHABU*; THE BUY-BUST OPERATION IS LEGITIMATE IN CASE AT BAR. — Appellant further raises the following issues: (1) the absence of a prior surveillance; (2) the non-presentation of the original buy-bust money which was not dusted with fluorescent powder; and (3) the non-presentation of the informant. According to her, these cast doubt on the veracity of the operation. We however, find appellant's arguments unmeritorious. Prior surveillance is not a prerequisite for the validity of an entrapment operation, especially when the buy-bust team is accompanied by their informant at the crime scene. Similarly, the absence of marked money does not create a hiatus in the evidence for the prosecution provided that the prosecution has adequately proved the sale. Also, the use of dusted money is not indispensable to prove the illegal sale of drugs, as held in *People v. Felipe*. Neither is it necessary to present the informant as his testimony would merely be corroborative and cumulative.

4. ID.; ID.; ID.; THERE WAS FAITHFUL COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 OF RA 9165 AND ITS IMPLEMENTING RULES IN THIS CASE. — Contrary to the protestation of appellant, the evidence on record shows that there had been faithful compliance with the foregoing provision by the apprehending team. As borne out by the records, the seized items were duly marked as "EJ 02-20-07-1" and "EJ 02-20-07-2" by PO2 Villarete immediately upon their arrival at the PDEA Office. "Marking upon immediate confiscation" contemplates even marking at the nearest police station or office of the apprehending team. Thereafter, a physical inventory of the seized items was conducted as evidenced by the "Certificate of Inventory" which was signed by SPO1 Cabal, media representative Domingo of GMA-7, Prosecutor Carillo, and

Councilor Iso. A photograph of appellant with the seized items and inventory witnesses was likewise taken. After this, a request for laboratory examination was prepared by the buy-bust team and the items were transmitted personally by PO2 Villarete to the PNP Regional Crime Laboratory Office 7 where these were received by PO2 Fortes. After conducting an examination, Forensic Chemist Mendoza found the items positive for methamphetamine hydrochloride or *shabu*. During the trial, PO2 Villarete identified the subject items to be the same items sold by appellant to him.

5. ID.; ID.; ID.; PENALTY OF LIFE IMPRISONMENT AND A FINE OF PHP500,000, IMPOSED. — Pursuant to Section 5, Article II of RA 9165, the illegal sale of dangerous drugs is punishable by life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million regardless of the quantity or purity of the drug involved. The courts below therefore correctly imposed the penalty of life imprisonment and a fine in the amount of ₱500,000.00 on appellant since the imposition of the death penalty has been proscribed by RA 9346.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the July 30, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB-CR HC NO. 01424 affirming the July 25, 2011 Judgment[2] of the Regional Trial Court (RTC) of Cebu City, Branch 57 in Criminal Case No. CBU-79460, finding Elsie Juguilon[3] *y* Ebrada (appellant) guilty

[1] CA *rollo*, pp. 107-117; penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. Delos Santos and Renato C. Francisco.

[2] Records, pp. 311-322; penned by Presiding Judge Enriqueta Loquillano-Belarmino.

[3] Also spelled as "Juguelon" "Ogilon" in some parts of the records.

of violation of Section 5 (Illegal Sale of *Shabu*), Article II of Republic Act (RA) No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged in an Information that reads:

> That on or about the 20th day of February 2007, at about 1:00 in the afternoon, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, without being authorized by law, did then and there sell, deliver or give away to a poseur buyer Two (2) heat sealed transparent plastic packs of white crystalline substance, [with] a total net weight of 48.65 grams known as SHABU, containing Methamphetamine hydrochloride, a dangerous drug.
>
> CONTRARY TO LAW.[4]

On arraignment, the appellant pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

Version of the Prosecution

On the second week of February 2007, the Philippine Drug Enforcement Agency (PDEA) Office in Cebu City received information that appellant was engaged in the illegal drug trade in *Barangay* Carreta, Cebu City. PDEA Regional Director Amado E. Marquez, Jr. (RD Marquez) instructed SPO2 Ramil B. Villaluz to verify the information, a task that was subsequently assigned to PO2 Rey[5] Robert S. Villarete (PO2 Villarete) and PO2 George Cansancio (PO2 Cansancio). A three-day surveillance confirmed the veracity of the report. Appellant's errand boy (the informant) volunteered to help the PDEA. At around 10:00 a.m. of February 20, 2007, the informant told PO2 Villarete that appellant had *shabu* and that the latter was willing to meet them in front of the Cebu Health Office at Gen. Maxilom Extension, Cebu City. PO2 Villarete immediately relayed the news to RD Marquez, who instructed SPO1 Antonio R. Cabal (SPO1 Cabal) to initiate a short briefing for a buy-bust operation. A team was thus formed to undertake the operation against appellant. PO2 Villarete was

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[4] Records, p.1.

[5] Also spelled as "Ray" in some parts of the records.

designated as the poseur-buyer and was provided with a marked ₱500 bill, along with a wad of papers wrapped in a newspaper which conveyed the impression of being boodle money. PO2 Cansancio served as back-up. Upon arriving at the target area in front of the Cebu Health Office at around 1:00 p.m., PO2 Villarete saw the informant with a female companion. After alighting from the vehicle, PO2 Villarete was introduced to appellant by the informant. PO2 Villarete asked how much a "*bulto*" or five grams would cost, and appellant answered that the price was ₱20,000.00. PO2 Villarete said that he wanted to buy 10 "*bultos*". Appellant handed to PO2 Villarete something wrapped in a newspaper sealed with tape. PO2 Villarete saw two plastic packs, and when he tore the edge of one pack, he found that it contained *shabu*. PO2 Villarete gave to appellant the marked money, but before appellant could count the money, PO2 Villarete sent a call to SPO1 Cabal as the pre-arranged signal that the transaction had been completed; and then introduced himself to appellant as a PDEA operative. PO2 Cansancio told appellant that she had committed a crime and advised her of her constitutional rights. After the arrest, the operatives proceeded to the PDEA Office with appellant, along with her daughter and the latter's *yaya* who shortly appeared.

At the PDEA Office, the seized plastic packs were marked by PO2 Villarete with the initials "EJ-02-20-07 1"[6] and "EJ-02-20-07 2" and signed each pack. Thereafter, an inventory of the items[7] was conducted in the presence of SPO1 Cabal, *Barangay* Sta. Cruz Councilor Elsa V. Iso (Councilor Iso), Prosecutor Rudolph Joseph Val J. Carillo (Prosecutor Carillo) and media representative Alan P. Domingo (Domingo) of the GMA-7. A photograph of appellant and the seized items together with the inventory witnesses was likewise taken.[8] A letter request for laboratory examination[9] together with the marked plastic

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[6] "EJ 02-20-20-7 1" in the CA Decision.

[7] Exhibit "E", records, p. 81.

[8] Exhibits "H" and "I", *id*. at 83.

[9] Exhibit "A", *id*. at 78.

packs was then transmitted by PO2 Villarete to the Philippine National Police (PNP) Regional Crime Laboratory Office 7; this letter-request was received by PO2 Fortes in the crime laboratory. The qualitative examination conducted on the specimen yielded positive for methamphetamine hydrochloride or *shabu* per Chemistry Report No. D-213-2007[10] of Forensic Chemical Officer Jude Daniel M. Mendoza (Forensic Chemist Mendoza).

Version of the Defense

Appellant, a licensed midwife, denied the charge against her. She claimed that, at around 1:00 p.m. of February 20, 2007, she was with her daughter and a friend within the vicinity of the Cebu Health Office to have a Certificate of Live Birth typewritten by a typist working outside the health office.

Momentarily, an acquaintance of hers, Chadwick Tabotabo (Chadwick), who was inside a car, signalled her to come forward. When she was nearing Chadwick, she was suddenly pushed inside the car with her daughter and friend "Baki" and asked what she was holding. She was slapped when she said that it was tide powder which she had just bought from the supermarket. She was thereafter brought to the office of the PDEA.

Ruling of the Regional Trial Court

The RTC found for the prosecution; it rejected appellant's defense of frame-up in light of the positive and categorical testimonies of the arresting officers who were not ill motivated to charge her with such a serious crime. The RTC likewise found the chain of custody over the seized items duly established. Thus, on July 25, 2011, the RTC rendered a Judgment, the decretal portion of which reads:

> WHEREFORE, premises considered, accused Elsie Juguilon is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.
>
> The two packs of shabu are forfeited in favor of the government for proper disposal.

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[10] Exhibit "C", *id*. at 79.

SO ORDERED.[11]

Dissatisfied therewith, appellant appealed to the CA.

Ruling of the Court of Appeals

The CA upheld the conviction of appellant for violation of Section 5, Article II of RA 9165. It held that the prosecution was able to prove the existence of all the essential elements of an illegal sale of dangerous drugs. It rejected appellant's argument that the seized items were inadmissible in evidence, stressing that appellant was caught by the PDEA officers in *flagrante delicto* selling *shabu*; hence, her subsequent arrest was a valid warrantless arrest. The CA also stated that the existence of the *corpus delicti* had been proven as the integrity and evidentiary value of the drugs was preserved, thus establishing sufficiently an unbroken chain of custody.

Appellant moved for reconsideration but the same was denied by the CA in its September 7, 2016 Resolution.[12]

On October 28, 2016, appellant filed the present appeal.

In our Resolution dated April 24, 2017, we required the parties to file supplemental briefs, but both manifested that they were no longer filing such briefs.

Our Ruling

The appeal lacks merit.

After reviewing the evidence on record, the Court is fully convinced that a legitimate buy-bust operation was indeed conducted against appellant.

To secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (1) the identities of the buyer and the seller, the object of the sale and the consideration

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[11] Records, p. 322.

[12] CA *rollo*, pp. 158-159; penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. Delos Santos and Germano Francisco D. Legaspi.

for the sale; and (2) the delivery of the thing sold and the payment therefor. What is material in the prosecution of an illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation of the *corpus delicti* in court as evidence.[13]

The evidence on record showed the presence of all these elements as culled from the testimony of PO2 Villarete, who represented himself as the poseur-buyer in the buy-bust operation. He categorically and positively identified the appellant as the seller of the dangerous drugs contained in plastic packs who handed him the same upon the latter giving her the marked ₱500 bill with the boodle money. PO2 Villarete's testimony was corroborated on material points by his back-up PO2 Cansancio and in part by PCI Lourdes Ingente as well as Forensic Chemist Mendoza who examined the items seized and found them to be positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. This detailed account of PO2 Villarete was bolstered by the presentation in court of the *corpus delicti* which is the drug itself.

Buy-bust operation legitimate; warrantless arrest and search valid.

Appellant invokes illegal arrest and search. She avers that her warrantless arrest was illegal since she was not then committing any crime. Her averment fails to persuade. Under the circumstances portrayed by the prosecution's evidence, the arrest of appellant, albeit without warrant, was effected under Section 5 (a), Rule 113 of the Rules of Court[14] or the arrest of a suspect in *flagrante delicto*. Appellant was clearly arrested in *flagrante delicto* as she was then committing a crime, a violation of the Dangerous Drugs Act in the presence of the buy-bust team. Consequently, the seized items were admissible

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[13] *People v. Dalawis*, 772 Phil. 406, 419-420 (2015).

[14] RULES OF COURT, Rule 113, Section 5(a) provides:

a) when, in his presence, the person to be arrested has committed, is actually committing or is attempting to commit an offense.

in evidence as the search, being an incident to a lawful arrest, needed no warrant for its validity.

Appellant further raises the following issues: (1) the absence of a prior surveillance; (2) the non-presentation of the original buy-bust money which was not dusted with fluorescent powder; and (3) the non-presentation of the informant. According to her, these cast doubt on the veracity of the operation. We however, find appellant's arguments unmeritorious.

Prior surveillance is not a prerequisite for the validity of an entrapment operation, especially when the buy-bust team is accompanied by their informant at the crime scene.[15] Similarly, the absence of marked money does not create a hiatus in the evidence for the prosecution provided that the prosecution has adequately proved the sale.[16] Also, the use of dusted money is not indispensable to prove the illegal sale of drugs, as held in *People v. Felipe*.[17] Neither is it necessary to present the informant as his testimony would merely be corroborative and cumulative.[18]

Equally untenable is appellant's final argument that the buy-bust team failed to observe the requirements of Section 21, Article II of RA 9165.

The procedure to be followed in the custody and handling of seized illegal drugs is provided in Section 21(1) of RA 9165 and Section 21(a) of its Implementing Rules and Regulations (IRR).

Section 21(1), Article II of RA 9165 provides:

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,

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[15] *People v. Monceda*, 721 Phil. 106, 119 (2013).

[16] *People v. Unisa*, 674 Phil. 89, 111 (2011).

[17] 663 Phil. 132, 143 (2011).

[18] *People v. Monceda*, *supra* at 119-120.

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.

Its Implementing Rules and Regulations state:

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

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

Contrary to the protestation of appellant, the evidence on record shows that there had been faithful compliance with the

foregoing provision by the apprehending team. As borne out by the records, the seized items were duly marked as "EJ 02-20-07-1" and "EJ 02-20-07-2" by PO2 Villarete immediately upon their arrival at the PDEA Office. "Marking upon immediate confiscation" contemplates even marking at the nearest police station or office of the apprehending team.[19] Thereafter, a physical inventory of the seized items was conducted as evidenced by the "Certificate of Inventory"[20] which was signed by SPO1 Cabal, media representative Domingo of GMA-7, Prosecutor Carillo, and Councilor Iso. A photograph of appellant with the seized items and inventory witnesses was likewise taken. After this, a request for laboratory examination was prepared by the buy-bust team and the items were transmitted personally by PO2 Villarete to the PNP Regional Crime Laboratory Office 7 where these were received by PO2 Fortes. After conducting an examination, Forensic Chemist Mendoza found the items positive for methamphetamine hydrochloride or *shabu*. During the trial, PO2 Villarete identified the subject items to be the same items sold by appellant to him.

Defense of denial and alibi correctly rejected

Appellant's defense of denial and alibi was correctly rejected by the courts below. It has been ruled that "the defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just easily be concocted and is a common and standard defense ploy in most prosecution for violation of the Dangerous Drugs Act."[21]

Penalty

Pursuant to Section 5, Article II of RA 9165, the illegal sale of dangerous drugs is punishable by life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million regardless of the quantity or purity of the drug involved.

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[19] *People v. Endaya*, 739 Phil. 611, 631 (2014).

[20] Exhibit "E", records, p. 81.

[21] *People v. Akmad*, 773 Phil. 581, 591-592 (2015).

The courts below therefore correctly imposed the penalty of life imprisonment and a fine in the amount of ₱500,000.00 on appellant since the imposition of the death penalty has been proscribed by RA 9346.[22]

WHEREFORE, the appeal is **DISMISSED**. The July 30, 2015 Decision and the September 7, 2016 Resolution of the Court of Appeals in CA-G.R. CEB-CR HC No. 01424 are hereby **AFFIRMED**.

SO ORDERED.

Bersamin, C.J., Reyes, A. Jr.,[*] *Gesmundo*, and *Carandang, JJ.*, concur.

FIRST DIVISION

[G.R. No. 231010. June 26, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ORLY VISPERAS *y* ACOBO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS THAT MUST BE PROVED BEYOND REASONABLE DOUBT. — In a successful prosecution for violation of Section 5, Article II of RA 9165, the following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. What is material is proof that the

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[22] An Act Prohibiting the Imposition of the Death Penalty in the Philippines.

[*] Per Raffle dated September 6, 2017.

transaction actually occurred, coupled with the presentation before the court of the *corpus delicti*. More than that, the prosecution must also establish the integrity of the dangerous drug, because the dangerous drug is itself the *corpus delicti* of the case.

2. ID.; ID.; ID.; FAILURE TO SECURE THE ATTENDANCE OF THE REQUIRED WITNESSES AND TO OFFER ANY REASON FOR SUCH FAILURE RESULTED IN THE ACQUITTAL OF THE ACCUSED. — [J]urisprudence requires that, in the event that the presence or attendance of the essential witnesses is not obtained, the prosecution must establish not only the reasons for their absence, but also that earnest efforts were exerted in securing their presence. The prosecution must explain the reasons for the procedural lapses, and the justifiable grounds for failure to comply must be proven, since the Court cannot presume what these grounds are or that they even exist. In this case, the prosecution failed to prove both requisites. The Court has thoroughly reviewed the records and cannot find any mention at all that the physical inventory and that photographing of the confiscated *shabu* had been done or were done in the presence of an elected public official, a representative from media and the DOJ. None of the signatures of the elected public official, nor of a representative from the media, nor of a representative from the DOJ appear in the Inventory Receipt. And the State has not given any reason for the complete failure of the arresting officers to secure the attendance of these required witnesses. To the foregoing must be added the fact that there is nothing on record to indicate that the arresting team ever exerted an honest-to-goodness attempt to secure their presence. Given the fact that no elected public official, no representative from the media and no representative from the DOJ was present during the physical inventory and the photographing of the seized *shabu*, the evils of switching of, "planting" or contamination of the evidence create serious lingering doubts as to the integrity of the alleged *corpus delicti*. x x x Appellant Orly Visperas *y* Acoba is **ACQUITTED** of the indictment against him, his guilt not having been proven beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Appellant Orly Visperas *y* Acobo (appellant) appeals from the October 16, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 06149, that affirmed the April 1, 2013 Decision[2] of the Regional Trial Court (RTC) of Dagupan City, Branch 44, in Criminal Case No. 2010-0518-D, finding him guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (RA) No. 9165.

Factual Antecedents

Appellant was charged with violation of Section 5, Article II of RA 9165, the accusatory portion of the Amended Information alleging *viz*.:

> That on or about **September 29, 2010**, in the evening in Mapandan, Pangasinan and within the jurisdiction of the Honorable Court, the above-named accused did, then and there willfully, unlawfully and feloniously, SELL, TRADE, DELIVERED [sic], DISTRIBUTED [sic], DISPENSED [sic] to an undercover police officer who acted as poseur-buyer one (1) heat-sealed transparent plastic sachet of methamphetamine hydrochloride with a weight of 0.028 grams [sic], without necessary permit or authority to sell.
>
> CONTRARY TO Section 5, Article II, of RA 9165.[3]

During his arraignment, appellant pleaded not guilty. Thereafter, trial ensued.

Version of the Prosecution

On September 29, 2010, SPO1 Roberto Molina (SPO1 Molina) and SPO1 Ronnie Quinto (SPO1 Quinto) relayed to Chief of

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[1] CA *rollo*, pp. 85-99; penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios.

[2] Records, pp. 149-155; penned by Presiding Judge Genoveva Coching-Maramba.

[3] *Id*. at 33.

Police, P/S Insp. Dominick Soriano Poblete (PSI Poblete), a report from a confidential asset that appellant was selling *shabu* in Mapandan, Pangasinan. PSI Poblete ordered them to plan and conduct a buy-bust operation against appellant. SPO1 Molina was designated as the poseur-buyer and to him were delivered three 100-peso bills marked as buy-bust money.

At around 8 p.m. of the same day, the buy-bust team arrived at the house of appellant. SPO1 Quinto occupied a vantage point a short distance away. The confidential asset introduced SPO1 Molina to appellant and a transaction for the sale of *shabu* transpired. SPO1 Molina then gave appellant the buy-bust money. Appellant went inside his house, and, upon his return, handed a plastic sachet of *shabu* to SPO1 Molina. With the *shabu* in his possession, SPO1 Molina signaled SPO1 Quinto that the sale was consummated. SPO1 Quinto rushed toward appellant and arrested him. He also informed appellant of the nature of his arrest and his constitutional rights. SPO1 Molina then conducted a search on the person of appellant and recovered the buy-bust money. After this, SPO1 Molina and SPO1 Quinto proceeded to the police station with appellant.

When they reached the police station, SPO1 Molina turned over the sachet of *shabu* and the marked money to the duty investigator, SPO1 Jeffrey Natividad, who prepared the documents needed for the prosecution of appellant and forwarded the sachet of *shabu* to the police crime laboratory. Forensic Chemist Ma. Theresa Amor C. Manuel performed a chemical examination on the contents of the sachet and the results confirmed that it was indeed *shabu*.

Version of the Defense

Appellant claimed that, on September 29, 2010, he was eating *isaw* with his niece and nephew in front of his house at Brgy. Poblacion, Mapandan, Pangasinan, when SPO1 Molina approached and invited him to the municipal hall to answer a complaint against him. He voluntarily accepted the invitation, but, upon his arrival, he was frisked and told to remove his clothes and sit on a couch. Two hours later, he was incarcerated.

Ruling of the Regional Trial Court

In its Decision dated April 1, 2013, the RTC found appellant guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165. The RTC gave short shrift to appellant's account of the case, and sustained the prosecution's evidence that appellant was arrested for selling *shabu* to an undercover police officer during a buy-bust operation over appellant's uncorroborated denial and version of the incident. The RTC, thus, sentenced appellant to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

Ruling of the Court of Appeals

In its Decision of October 16, 2015, the CA affirmed the RTC's Decision. It held that the prosecution's evidence established the acts constituting the illegal sale of *shabu*. The CA ruled that the prosecution was able to preserve the integrity and evidentiary value of the seized items. It held that appellant failed to show that the police officers who arrested him were impelled by bad faith or ill-intent, or that there had been tampering with the evidence, for which reason the court may safely rely on the presumption that the integrity of the evidence has been properly preserved.

Moreover, the CA ruled that the apparent failure to comply with Section 21, Article II of RA 9165, particularly, the procedure to be observed in the inventory and photographing of the *shabu* seized during the buy-bust operation will not render the same inadmissible in evidence.

Hence, this appeal.

Our Ruling

The appeal is meritorious.

In a successful prosecution for violation of Section 5, Article II of RA 9165, the following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. What is material is proof that the transaction actually occurred, coupled with the presentation

before the court of the *corpus delicti*.[4] More than that, the prosecution must also establish the integrity of the dangerous drug, because the dangerous drug is itself the *corpus delicti* of the case.[5]

Section 21, Article II of RA 9165, sets forth the mandatory procedural safeguards in a buy-bust operation, 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; x x x.

The Implementing Rules and Regulations (IRR) further expand on the proper procedure to be followed under Section 21(1), Article II of RA 9165, thus —

> (a) The apprehending office/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

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[4] *People v. Caiz*, 790 Phil. 183, 196 (2016).

[5] *Id*. at 197.

photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

In *People v. Lim*,[6] the Court stressed the importance of the presence or attendance of the three witnesses, namely, any elected public official, the representative from the media, and the DOJ representative, at the time of the physical inventory and photograph of the seized items. In the event of their absence, the Court held:

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code proved futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.[7] (Emphasis in the original)

On top of these, there must be evidence of earnest efforts to secure the attendance of the necessary witnesses. In *People v. Ramos*,[8] the Court ruled:

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[6] G.R. No. 231989, September 4, 2018.

[7] *Id.*

[8] G.R. No. 233744, February 28, 2018. (Citations omitted).

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or **a showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[9] (Emphasis in the original)

In other words, jurisprudence requires that, in the event that the presence or attendance of the essential witnesses is not obtained, the prosecution must establish not only the reasons for their absence, but also that earnest efforts were exerted in securing their presence.[10] The prosecution must explain the reasons for the procedural lapses, and the justifiable grounds for failure to comply must be proven, since the Court cannot presume what these grounds are or that they even exist.[11]

In this case, the prosecution failed to prove both requisites. The Court has thoroughly reviewed the records and cannot find

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[9] *Id*.

[10] *People v. Pascua*, G.R. No. 227707, October 8, 2018.

[11] *People v. Ramos*, *supra* note 8.

any mention at all that the physical inventory and that photographing of the confiscated *shabu* had been done or were done in the presence of an elected public official, a representative from media and the DOJ. None of the signatures of the elected public official, nor of a representative from the media, nor of a representative from the DOJ appear in the Inventory Receipt. And the State has not given any reason for the complete failure of the arresting officers to secure the attendance of these required witnesses. To the foregoing must be added the fact that there is nothing on record to indicate that the arresting team ever exerted an honest-to-goodness attempt to secure their presence.

Given the fact that no elected public official, no representative from the media and no representative from the DOJ was present during the physical inventory and the photographing of the seized *shabu*, the evils of switching of, "planting" or contamination of the evidence create serious lingering doubts as to the integrity of the alleged *corpus delicti*.

WHEREFORE, the appeal is **GRANTED**. The October 16, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06149 is **REVERSED and SET ASIDE**. Appellant Orly Visperas *y* Acoba is **ACQUITTED** of the indictment against him, his guilt not having been proven beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for another lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections. The said Director is **DIRECTED** to report to this Court the action taken within five (5) days from receipt of this Decision.

SO ORDERED.

Bersamin, C.J., Gesmundo, Reyes, J. Jr.,* and *Carandang, JJ.*, concur.

* Per Raffle dated October 29, 2018.

SECOND DIVISION

[G.R. No. 233205. June 26, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SPO2 EDGARDO MENIL *y* BONGKIT,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; WHERE THE PROSECUTION FAILED TO ESTABLISH TREACHERY BY CLEAR AND CONVINCING EVIDENCE, ACCUSED SHOULD ONLY BE CONVICTED OF HOMICIDE. — The prosecution failed to establish by clear and convincing evidence that treachery attended the commission of the crime. Treachery is never presumed. It is required that the manner of attack must be shown to have been attended by treachery as conclusively as the crime itself. In the present case, the prosecution was not able to establish by clear and convincing evidence that the killing of the victim was attended by treachery. Thus, the accused should only be convicted of the crime of Homicide, not Murder.

2. ID.; ID.; ID.; ELEMENTS OF TREACHERY THAT MUST BE PROVEN TO QUALIFY THE CRIME TO MURDER; THAT THE ACCUSED DELIBERATELY ADOPTED THE MEANS OF EXECUTION WAS NOT PROVEN BY CLEAR AND CONVINCING EVIDENCE. — [T]o qualify the crime to Murder, the following elements of treachery in a given case must be proven: (a) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate; and, (b) said means of execution were deliberately or consciously adopted. It has been repeatedly held that for treachery to be appreciated, **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. In the instant case, the Court finds that the second requisite for treachery, *i.e.*, that the accused deliberately adopted the means of execution, was not proven by clear and convincing evidence

by the prosecution. The means of execution used by the accused cannot be said to be deliberately or consciously adopted since it was more of a result of a sudden impulse due to his previous heated altercation with the victim than a planned and deliberate action.

3. 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 Revised Penal Code is *reclusion temporal*. In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. x x x 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. 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 April

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[1] See Notice of Appeal dated May 11, 2017, *rollo*, pp. 22-23.

[2] *Rollo*, pp. 3-21. Penned by Associate Justice Perpetua T. Atal-Paño with Associate Justices Romulo V. Borja and Rafael Antonio M. Santos, concurring.

28, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01266-MIN, which affirmed the Judgment[3] dated November 26, 2013 of the Regional Trial Court, Branch 3, Butuan City (RTC) in Criminal Case No. 6048, finding herein accused-appellant SPO2 Edgardo Menil *y* Bongkit (Menil) guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The Facts

Menil was charged with the crime of Murder under the following Information:[4]

> That at or about 1:30 o'clock in the morning of December 28, 1993 at the ground floor of Sing-Sing Garden and Restaurant, Villanueva Street, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, by means of force and violence and with treachery and evident premeditation, did then and there willfully, unlawfully[,] and feloniously attack, assault[,] and shot with the use of a handgun one Edwin B. Bagaslao [(victim)] thereby inflicting upon him [a] gunshot wound on his head which caused his subsequent death.
>
> CONTRARY TO LAW: (Art. 248 of the Revised Penal Code)[5]

Upon arraignment, Menil pleaded not guilty.

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

> The prosecution presented three (3) witnesses, namely: Cynthia Rose Coloma, the victim's common-law wife, Ricardo Oracion Torralba and Dr. Renato Salas Muñez.
>
> Coloma testified that on December 28, 1993 at around 1:00 o'clock in the morning, she and the victim Edwin B. Bagaslao were about to leave the Christmas party held at Tip-Topp Disco in Sing-Song Garden

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[3] CA *rollo*, pp. 37-41. Penned by Presiding Judge Francisco F. Maclang.

[4] Records, p. 1.

[5] *Id*.

Restaurant and organized by the Butuan Bet Takers Association, of which victim Bagaslao was a member. As they were on their way downstairs, accused-appellant Menil pushed Coloma. A heated argument ensued. It appeared that accused-appellant was looking for the girl who left him on the dance floor and had mistaken Coloma to be that girl. Dodoy[6] Plaza [(Dodoy)], who was also a member of the organization, pacified the victim and accused-appellant.

When the two were already on their path on the sidewalk of the Sing-Sing Garden, accused-appellant suddenly came from behind and shot the victim. Prosecution witness Toralba, who was also leaving the party, was approximately one (1) meter away from the victim and accused-appellant. He saw the latter shoot the victim. Torralba also testified that accused-appellant ran away after the shooting incident.

The victim fell on the shoulders of Coloma. Dodoy Plaza and the other friends of the victim brought him to the hospital on board a police car. Coloma reported the incident to the police station and had the incident blottered. Thereafter, she went to the hospital where the victim was admitted. However, at around 3:00 o'clock in the afternoon of the same day, the victim died.

Dr. Muñez, who signed the Medical Certificate, testified that the victim was admitted due to "*a gunshot wound point of entry right zygomatic area, point of exit left parietal region*[.]"[7]

Version of the Defense

The version of the defense, as summarized by the CA, is as follows:

As for accused-appellant, he vehemently denied the accusations hurled against him.

He testified that on December 27, 1993, he was strolling along Montilla Boulevard at about 9:00 o'clock in the evening. There, he saw some friends namely Armando de Castro and Jose Tadyamon, who invited him to join them at Sing-Sing Garden where they sat themselves and had beer.

At around 11:00 o'clock in the evening, Bagaslao and some of his companions, who were seated two tables away from accused-

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

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

appellant, allegedly got very rowdy. Accused-appellant admonished them to behave themselves.

At 1:20 o'clock in the morning of the next day, accused-appellant and his companions decided to call it a night and went downstairs. On the way down, Bagaslao blocked his path. By the time accused-appellant was [on] the last step of the stairs, Bagaslao grabbed his revolver. Accused-appellant had no choice but to grapple with Bagaslao in order to regain possession of the revolver. Bagaslao then said to him, "*patuo-tuo ka*" which translates to English as "*you're pretending to be someone*[.]"

After the grappling, a shot was fired. Bagaslao fell. Accused-appellant denies having killed Bagaslao.[8]

Ruling of the RTC

After trial on the merits, in its Judgment dated November 26, 2013, the RTC convicted Menil of the crime of Murder. The dispositive portion of said Judgment reads:

WHEREFORE, the foregoing considered, accused **EDGARDO B. MENIL** is found **GUILTY** beyond reasonable doubt of the crime of Murder, for the death of Edwin B. Bagaslao, as defined under **Article 248 of the Revised Penal Code**, as amended by **Republic Act No. 7659**, qualified by **treachery** and **evident premeditation**. The accused **EDGARDO B. MENIL** is hereby sentenced to suffer a penalty of ***Reclusion Perpetua*** without **possibility of parole.**

Furthermore, the accused **EDGARDO B. MENIL** is ordered to indemnify the heirs of Edwin B. Bagaslao, the following sums:

a. Fifty Thousand **(₱50,000.00)** Pesos, as ***civil indemnity ex delicto;***
b. Fifty Thousand **(₱50,000.00)** Pesos, as ***moral damages****;* and
c. Twenty Five Thousand **(₱25,000.00)** Pesos, as ***exemplary damages.***

SO ORDERED.[9]

The RTC ruled that the prosecution was able to establish beyond reasonable doubt the guilt of the accused.[10] The accused

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

[9] CA *rollo*, p. 41.

[10] *Id*. at 40.

freely admitted regarding the shooting, which resulted to the death of the victim.[11] In fact, he testified under oath that the firearm that was used to shoot the victim was his service firearm.[12] Further, the RTC held that treachery and evident premeditation attended the killing of the victim.[13] There was clear showing that the accused deliberately and consciously employed a specific form or plan of attack, which would ensure the commission of the crime.[14]

Aggrieved, Menil appealed to the CA.

Ruling of the CA

On appeal, in its assailed Decision dated April 28, 2017, the CA affirmed the conviction by the RTC with modifications:

> WHEREFORE, the appeal is hereby DENIED. The assailed Judgment dated November 26, 2013 of the Regional Trial Court, Branch 3, Butuan City in Criminal Case No. 6048 is AFFIRMED with MODIFICATION. Accused-appellant EDGARDO B. MENIL is found GUILTY beyond reasonable doubt of the crime of MURDER and is hereby sentenced to suffer the penalty of *reclusion* [*p*]*erpetua* without possibility of parole.
>
> Accused-appellant is also ORDERED to pay the heirs of Edwin B. Bagaslao the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.
>
> SO ORDERED.[15]

The CA ruled that the prosecution witnesses positively identified Menil as the perpetrator of the crime.[16] It further

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[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Rollo*, p. 20.

[16] *Id*. at 9.

ruled that the fact that the witnesses' testimonies were given only fourteen (14) years after the incident is of no moment.[17] Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, witnesses can remember with high degree of reliability the identity of criminals at any given time.[18] Furthermore, the CA noted that after the warrant of arrest for Menil was first issued, the return thereof provided that he could no longer be found in his indicated residence, thus the case was temporarily archived by the trial court.[19] In fact, it took eleven (11) years before Menil was finally apprehended.[20] Flight, in jurisprudence, has always been a strong indication of guilt, betraying a desire to evade responsibility.[21] Lastly, it ruled that treachery attended the killing of the victim.[22] However, the prosecution failed to prove the presence of the aggravating circumstance of evident premeditation.[23]

Hence, this appeal.

Issues

Whether the CA erred in affirming Menil'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.[24] This is axiomatic

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[17] *Id*. at 14.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] *Id*. at 17.

[23] *Id*. at 18.

[24] *People v. Duran, Jr.*, G.R. No. 215748, November 20, 2017, 845 SCRA 188, 211.

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.[25] The appeal confers the appellate court full jurisdiction over the case and renders such competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[26]

The accused should only be convicted of the crime of Homicide, not Murder.

In the assailed Decision, the CA held that treachery attended the commission of the crime, thus Menil should be convicted of the crime of Murder. The CA ruled:

> In the case at bench, the victim Bagaslao and his common-law wife were walking on the sidewalk, awaiting for their ride back home, when accused-appellant suddenly appeared at their back and shot the victim. To recall, although the victim and accused-appellant had an altercation at the stairs of the restaurant prior to the shooting, the two were pacified by a certain Dodong Plaza. Thus, the victim had no reason to suspect that [the] accused-appellant had any intention of shooting or killing him. The shooting of the unsuspecting victim was sudden and unexpected[,] which effectively deprived him of the chance to defend himself or to repel the aggression, insuring the commission of the crime without risk to the aggressor and without any provocation on the part of the victim.[27]

The Court disagrees.

The prosecution failed to establish by clear and convincing evidence that treachery attended the commission of the crime. Treachery is never presumed. It is required that the manner of attack must be shown to have been attended by treachery as conclusively as the crime itself.[28]

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[25] *Id*.

[26] *Ramos v. People*, 803 Phil. 775, 783 (2017).

[27] *Rollo*, p. 18.

[28] *People v. Gonzales, Jr.,* 411 Phil. 893, 917 (2001), citing *People v. Manalo*, 232 Phil. 105, 118 (1987).

In the present case, the prosecution was not able to establish by clear and convincing evidence that the killing of the victim was attended by treachery. Thus, the accused should only be convicted of the crime of Homicide, not Murder.

To start, it has been consistently held by the Court that chance encounters, impulse killing or crimes committed at the spur of the moment or **that were preceded by heated altercations are generally not attended by treachery for lack of opportunity of the accused to deliberately employ a treacherous mode of attack**.[29]

In this case, Menil and the victim had a heated altercation at the restaurant prior to the killing of the victim by the accused. It is true that a certain Dodoy had pacified their fight. **However, this does not necessarily mean that at the time the shooting incident happened, they already had cool and level heads since only a short amount of time had lapsed between the heated altercation and the shooting of the victim**.[30] **Immediately after they were pacified by Dodoy, the victim went down the stairs followed by Menil and upon reaching the sidewalk, Menil immediately shot the victim**. Verily, the victim should have still been aware that there was a possibility of an impending attack as the armed accused was still in the same area. As testified by Coloma:

Q What happened next when the accused Edgardo Menil pushed you?

A Edwin Bagaslao asked him why did you push her?

Q What was the answer of the accused?

A According to him, he was looking for that girl who left him on the dance floor.

Q What happened after that?

A Heated argument pursued.

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[29] *Id*. at 916, citing *People v. De Jesus*, 204 Phil. 247, 260 (1982); *People v. Maguddatu*, 209 Phil. 489, 495 (1983).

[30] TSN, February 22, 2007, pp. 6-8.

Q With whom?

A Between accused Edgardo Menil and Edwin Bagaslao.

Q What were (*sic*) the argument about?

A Edwin Bagaslao told him that I was not the woman who left him at the dance floor, because I am his wife.

Q After Edwin Bagaslao said that, what was *(sic)* the accused do?

A They were pacified because somebody intervene *(sic)*.

Q Who pacified the two?

A Dodoy Plaza.

Q After they were pacified, what happened next?

A We went down and were about to go home.

Q Who was your companion when you went down?

A I was with Edwin Bagaslao.

Q After that when you went down what happened?

A When we were already downstairs, and we were already taking the path on the sidewalk of the Sing-Sing Garden, all of a sudden this Edgardo Menil approached us from behind.

Q After the accused approached you from behind, what happened next?

A I heard a soft gun report.[31] (Emphasis and underscoring supplied)

Furthermore, to qualify the crime to Murder, the following elements of treachery in a given case must be proven: (a) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate; and, (b) said means of execution were deliberately or consciously adopted.[32]

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[31] *Id*.

[32] *People v. Aquino*, 396 Phil. 303, 307 (2000).

It has been repeatedly held that for treachery to be appreciated, **both** elements must be present.[33] It is not enough that the attack was sudden, unexpected, and without any warning or provocation.[34] 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 the instant case, the Court finds that the second requisite for treachery, *i.e.*, that the accused deliberately adopted the means of execution, was not proven by clear and convincing evidence by the prosecution. The means of execution used by the accused cannot be said to be deliberately or consciously adopted since it was more of a result of a sudden impulse due to his previous heated altercation with the victim than a planned and deliberate action. Similarly, in another case, the Court held, "[t]here is no treachery when the assault is preceded by a heated exchange of words between the accused and the victim; or when the victim is aware of the hostility of the assailant towards the former."[35]

Thus, due to the absence of the aggravating circumstance of treachery, Menil should only be convicted 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 Revised Penal Code 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

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[33] *Id*.

[34] *People v. Sabanal*, 254 Phil. 433, 436-437 (1989).

[35] *People v. Escarlos*, 457 Phil. 580, 599 (2003), citing *People v. Reyes*, 420 Phil. 343, 353 (2001).

lower in degree is *prision mayor* with a range of six (6) years and one (1) day to twelve (12) years.

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 downgrading of the crime to Homicide, the Court's ruling in *People v. Jugueta*[37] 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 **SPO2 EDGARDO MENIL *y* BONGKIT 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 Edwin B. Bagaslao 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.

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[36] *People v. Duavis*, 678 Phil. 166, 179 (2011).

[37] 783 Phil. 806 (2016).

FIRST DIVISION

[G.R. No. 234040. June 26, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AUGUSTO N. MAGANON,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165) *VIS-À-VIS* RA 10640 (AN ACT AMENDING SECTION 21 OF RA 9165); RA 10640 NOW ONLY REQUIRES THE ATTENDANCE OF TWO WITNESSES DURING THE INVENTORY AND PHOTOGRAPHING OF THE SEIZED DRUGS. — As the Court noted in *People v. Lim*, RA 10640 now only requires two witnesses to be present during the physical inventory and photographing of the seized items: (1) an elected public official; **and** (2) either a representative from the National Prosecution Service **or** the media. Hence, the witnesses required are: (a) *prior* to the amendment of RA 9165 by RA 10640, a representative from the media **and** the Department of Justice (DOJ), **and** any elected public official; or (b) *after* the amendment of RA 9165 by RA 10640, an elected public official **and** a representative of the National Prosecution Service **or** the media.

2. ID.; ID.; ID.; CONDITIONS FOR THE SAVING CLAUSE TO APPLY, EXPLAINED; TO BE ADMISSIBLE IN EVIDENCE, THE PROSECUTION MUST RECOGNIZE THAT THERE WERE LAPSES IN THE PROCEDURE AND THAT THEY OFFERED VALID JUSTIFICATION FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE ITEMS WERE NOT COMPROMISED. — [A]s the Court observed in *People v. Lim*, the saving clause previously contained in Section 21(a), Article II of the IRR of RA 9165 was essentially incorporated or inserted into the law by RA 10640 which, to re-state, pertinently provides that "[n]oncompliance 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." Hence, for

this saving mechanism under RA 10640 to apply, the self-same conditions must be met, *viz*.: those laid down in previous jurisprudence interpreting and applying Section 21(a), Article II of the IRR of RA 9165 prior to its amendment, *i.e.*, (1) the prosecution must acknowledge or recognize the lapse/s in the prescribed procedure, and then provide justifiable reasons for said lapse/s, **and** (2) the prosecution must show that the integrity and evidentiary value of the seized items has been properly preserved. The justifiable ground/s for failure to comply with the procedural safeguards mandated by the law must be proven as a fact, as the Court cannot presume what these grounds are or that they even exist.

3. **ID.; ID.; ID.; PURPOSE OF THE LAW IN REQUIRING THE PRESENCE OF CERTAIN WITNESSES, EXPLAINED. —** The purpose of the law in requiring the presence of certain witnesses, at the time of the seizure and inventory of the seized items, is to "insulate the seizure from any taint of illegitimacy or irregularity." In *People v. Mendoza*, the Court ruled that "without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the *shabu*, 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*) might again rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*, and thus adversely affect the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would preserve an unbroken chain of custody."

4. **ID.; ID.; ID.; FAILURE TO SECURE THE PRESENCE OF THE REQUIRED WITNESSES WITHOUT VALID REASONS AND WITHOUT EXERTING EARNEST EFFORT TO DO SO, RENDERED NUGATORY THE PURPOSE OF THE LAW AND ADVERSELY AFFECTED THE INTEGRITY AND CREDIBILITY OF THE SEIZURE AND CONFISCATION OF THE SUBJECT SACHETS OF *SHABU*; ACCUSED IS ACQUITTED. —** In the case at bar, the reliance of the police operatives on the lone witness, Brgy. Capt. Santiago, who was the very party interested in the arrest, prosecution and conviction of appellant, as it was this *barangay*

captain himself who requested the buy-bust operation against appellant, and the police operatives' failure to secure the presence of either a DOJ *or* media representative, without justifiable reasons and without exerting earnest efforts to do so, effectively rendered nugatory the salutary purpose of the law, which is designed to provide an insulating presence during the inventory and photographing of the seized items, in order to obviate switching, 'planting' or contamination of the evidence. Needless to say, this adversely affected the integrity and credibility of the seizure and confiscation of the sachets of *shabu* subject of this case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the May 30, 2017 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08159, which affirmed the Judgment[2] of the Regional Trial Court (RTC) of Pasig City, Branch 164, finding accused-appellant Augusto Maganon *y* Nabia (appellant) guilty of illegal sale and illegal possession of dangerous drugs under Sections 5 and 11, Article II of Republic Act No. (RA) 9165.

Factual Antecedents

On November 28, 2014, appellant was charged with illegal sale (Crim. Case No. 19752-D) and illegal possession (Crim. Case No. 19753-D) of dangerous drugs in two separate Informations, to wit:

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[1] CA *rollo*, pp. 139-153; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Pedro B. Corales and Jhosep Y. Lopez.

[2] Records, pp. 88-98; penned by Presiding Judge Jennifer Albano Pilar.

Crim. Case No. 19752-D
Violation of Section 5, Article II, RA 9165

On or about November 23, 2014, in Pasig City and within the jurisdiction of this Honorable Court, [appellant] not being lawfully authorized by law, did then and there, wilfully, unlawfully, and feloniously sell, deliver, and give away to PO1 Marvin Santos *y* Avila, a member of Philippine National Police, who acted as a police poseur buyer, two (2) heat-sealed transparent plastic sachets each containing 0.03 gram of white crystalline substance or with a total weight of 0.06 gram, which were found positive [xxx] for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.[3]

Crim. Case No. 19753-D
Violation of Section 11, Article II, RA 9165

On or about November 24, 2014, in Pasig City and within the jurisdiction of this Honorable Court, [appellant] not being lawfully authorized to possess any dangerous drug, did then and there wilfully, unlawfully, and feloniously have in his possession and under his custody and control four (4) heat-sealed transparent plastic sachets each containing 0.03 gram or with a total weight of 0.12 grams [sic] of white crystalline substance, which were found positive [xxx] for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.[4]

Upon arraignment, appellant pleaded not guilty to the crimes charged. Thereafter, trial ensued.

Version of the Prosecution

On November 22, 2014, at around 3 p.m., PCI Renato Bañas Castillo (PCI Castillo), Chief of Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG) of the Pasig City Police Station, received a report from a confidential informant that appellant was involved in the rampant selling of illegal

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[3] *Id*. at 1.

[4] *Id*. at 3.

drugs in C. Santos St., Purok 4, Brgy. Ugong, Pasig City. PCI Castillo, thus, ordered that a buy-bust operation be made against appellant. PO1 Marvin A. Santos (PO1 Santos) was designated as poseur-buyer and given two one hundred-peso bills to be used as marked money.[5]

The next day, November 23, 2014, the buy-bust team proceeded to the barangay hall of Brgy. Ugong to coordinate the planned operation and to place said operation on blotter. Thereafter, PO1 Santos, together with the confidential informant, went to the house of appellant, while the other members of the buy-bust team positioned themselves nearby. Upon arriving at the target area, PO1 Santos and the confidential informant saw appellant seated in front of his house. They approached appellant and PO1 Santos asked to buy *shabu* worth two hundred pesos. PO1 Santos gave the marked money to appellant who, thereafter, gave him (PO1 Santos) two plastic sachets which contained suspected *shabu*. PO1 Santos put the said two sachets in his pocket. He, then, made the pre-arranged signal and held the hand of appellant while the buy-bust team converged thereat. PO1 Santos ordered appellant to produce the marked money and empty his pockets; appellant did as told, and the marked money and four plastic sachets which contained suspected *shabu* were recovered from appellant. PO1 Santos placed the said four sachets in his other pocket so it will not get mixed with the two sachets he previously bought from appellant. Due to the sudden influx of people at the place of the arrest, the buy-bust team decided to proceed to the *barangay* hall of Brgy. Ugong to secure appellant and the evidence. At the *barangay* hall, PO1 Santos marked and inventoried the aforesaid plastic sachets in the presence of appellant, Brgy. Capt. Engracio E. Santiago (Brgy. Capt. Santiago) and Ms. Zenaida Concepcion, head of the Anti-Drug Abuse Council of Pasig City. Brgy. Capt. Santiago and appellant signed the inventory.[6]

Thereafter, the team brought appellant to the police station where the evidence was turned over by PO1 Santos to the duty

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[5] CA *rollo*, pp. 141-142.

[6] *Id.* at 142-143.

investigator, PO1 Lodjie Coz (PO1 Coz), who prepared the necessary documentation. Thereafter, PO1 Santos and PO1 Coz went to the Eastern Police District-Crime Laboratory Service in Mandaluyong City and submitted the seized sachets of suspected *shabu* to the forensic chemist, PCI Rhea Fe Alviar (PCI Alviar), who conducted the laboratory examinations which confirmed the presence of methamphetamine hydrochloride or *shabu* in the said sachets.[7]

Version of the Defense

On November 22, 2014, appellant arrived at his house from work. His common-law spouse, Rosemarie Apinan, was eating lunch at the time. Thereafter, four police officers suddenly entered appellant's house and searched it. When they found nothing, they arrested appellant and brought him to the *barangay* hall of Brgy. Ugong. Appellant saw several sachets and two one hundred-peso bills on top of a table in the presence of the Brgy. Capt. Santiago. After appellant and Brgy. Capt. Santiago signed the inventory, the police officers brought him to the Pasig City Police Station.[8]

Ruling of the Regional Trial Court

On November 25, 2015, the RTC rendered judgment finding appellant guilty of the crimes charged, to wit:

> WHEREFORE:
>
> 1. In *Criminal Case No. 19752-D*, the Court finds [appellant] Augusto N. Maganon GUILTY beyond reasonable doubt of the crime of selling *shabu* penalized under Section 5, Article II of RA 9165, and hereby imposed [sic] upon him the penalty of life imprisonment and a fine of five hundred thousand pesos (₱500,000.00) with all the accessory penalties under the law.
> 2. In *Criminal Case No. 19753[-D]*, the Court finds [appellant] Augusto N. Maganon GUILTY beyond reasonable doubt of

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[7] *Id*. at 143.

[8] *Id*. at 144.

> violation of Section 11, Article II of RA 9165, and hereby imposes upon him an indeterminate penalty of imprisonment from twelve (12) years and one (1) day, as minimum, to sixteen (16) years, as maximum, and a fine of three hundred thousand pesos (₱300,000.00) with all the accessory penalties under the law.
>
> The six (6) transparent plastic sachets of *shabu* (Exhibits "P" to "U") subject matter of these cases are hereby ordered confiscated in favour of the government and turned over to the PDEA for destruction in accordance with law.
>
> SO ORDERED.[9]

The RTC gave credence to the testimony of PO1 Santos over that of appellant. It ruled that the prosecution was able to establish all the elements of illegal sale and all the elements of illegal possession of *shabu*. It also found that there was an unbroken chain of custody of the evidence, thus, the integrity and evidentiary value of the sachets of *shabu* bought and confiscated from appellant had been preserved.

Ruling of the Court of Appeals

On May 30, 2017, the CA affirmed the Judgment of the RTC:

> WHEREFORE, the appeal is DENIED. The assailed *Decision* of the RTC is AFFIRMED.
>
> SO ORDERED.[10]

The CA ruled that the prosecution had sufficiently established every link of the chain of custody from the time of the seizure of the drugs up to their presentation before the RTC; that while the police officers did not strictly follow the requirements under Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, the prosecution was nonetheless able to properly preserve the integrity and evidentiary value of the seized items; and that in any event, the prosecution presented justifiable grounds for non-compliance with the said requirements.

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[9] Records, p. 98.

[10] CA *rollo*, p. 153.

Hence, this appeal.

Issue

In the main, appellant contends that the police operatives violated Section 21, Article II of RA 9165 and its IRR, because they failed to comply with the procedural requirements during the marking, the inventory and the photographing of the evidence; hence, this creates reasonable doubt as to the integrity and evidentiary value of the seized items and justifies the acquittal of appellant.

Our Ruling

The appeal is meritorious.

It is axiomatic that the presentation of the dangerous drugs as evidence in court is a basic requirement in every prosecution for the illegal sale and for illegal possession of dangerous drugs. The prosecution must establish with moral certainty the identity of the prohibited drugs as this is the very *corpus delicti* of the crime. Equally important, the prosecution must prove that there has been an unbroken chain of custody over the dangerous drugs to erase any lingering doubts as to its identity owing to or by reason of switching, "planting" or contamination of evidence. Each link in the chain of custody of evidence must be accounted for from the moment the drugs are seized up to their presentation as evidence in court.[11]

The acts subject of this case were allegedly committed after the effectivity of RA 10640.[12] In order to preserve the chain of

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[11] *People v. Ramos*, G.R. No. 233744, February 28, 2018.

[12] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002. Approved on July 15, 2014.

As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018, footnote 26), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of

custody of evidence in drugs cases, Section 21, Article II of RA 9165, as amended by RA 10640, spells out the mandatory procedural safeguards in a buy-bust operation 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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

As the Court noted in *People v. Lim*,[13] RA 10640 now only requires two witnesses to be present during the physical inventory

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general circulation." RA 10640 was published on July 23, 2014 in "The Philippine Star" (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and "Manila Bulletin" (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014. The acts subject of this case allegedly occurred on November 23 and 24, 2014, hence, after the effectivity of RA 10640.

[13] G.R. No. 231989, November 13, 2018. (*En Banc* Resolution)

and photographing of the seized items: (1) an elected public official; **and** (2) either a representative from the National Prosecution Service **or** the media.[14] Hence, the witnesses required are: (a) *prior* to the amendment of RA 9165 by RA 10640, a representative from the media **and** the Department of Justice (DOJ), **and** any elected public official; or (b) *after* the amendment of RA 9165 by RA 10640, an elected public official **and** a representative of the National Prosecution Service **or** the media.[15]

Significantly also, as the Court observed in *People v. Lim*,[16] the saving clause previously contained in Section 21 (a), Article II of the IRR of RA 9165 was essentially incorporated or inserted into the law by RA 10640 which, to re-state, pertinently provides that "[n]oncompliance 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." Hence, for this saving mechanism under RA 10640 to apply, the self-same conditions must be met, *viz*.: those laid down in previous jurisprudence interpreting and applying Section 21 (a), Article II of the IRR of RA 9165 prior to its amendment, *i.e.*, (1) the prosecution must acknowledge or recognize the lapse/s in the prescribed procedure, and then provide justifiable reasons for said lapse/s,[17] **and** (2) the prosecution must show that the integrity and evidentiary value of the seized items has been properly preserved.[18] The justifiable ground/s for failure to comply with the procedural safeguards mandated by the law must be proven as a fact, as the Court cannot presume what these grounds are or that they even exist.[19]

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[14] *Id*.

[15] *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.

[16] G.R. No. 231989, September 4, 2018. (*En Banc* Decision)

[17] *People v. Alagarme*, 754 Phil. 449, 461 (2015).

[18] *People v. Ramos*, *supra* note 11.

[19] *Id*.

In the absence of the witnesses required by law, during the physical inventory and photographing of the seized items, the Court stressed in *People v. Lim*[20] that —

> It must be **alleged and proved** that the presence of the three witnesses (now two witnesses under RA 10640) to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
>
> (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code proved futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or** (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**[21] (Emphasis in the original)

The prosecution must provide proof of earnest efforts to secure the attendance of these witnesses. As the Court explained in *People v. Ramos*:[22]

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or **a showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a

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[20] *Supra* note 16.

[21] *Id*.

[22] *Supra* note 11.

sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[23] (Emphasis in the original; underline supplied)

In the case at bar, the records indicate that only an elected public official, *i.e.*, Brgy. Capt. Santiago, was present during the physical inventory and photographing of the seized items at the *barangay* hall of Brgy. Ugong, Pasig City. Upon the other hand, the prosecution admitted the absence of a representative from the DOJ and from media, and sought to explain the reasons for such absence through the testimony of PO1 Santos, to wit:

Prosecutor Ponpon:
Q: After you marked the evidence, what did you do next, if any?
A: I accomplished the inventory in front of Barangay Chairman Santiago.

Q: Who else were present during the inventory?
A: The chief of ADCOP but there in [sic] no representative from the media and DOJ.

Q: Why [was] the preparation of the inventory was [sic] not witness [sic] by the media and the representative from the DOJ?
A: My contact person in the media had a new number[.] I was not able to contact him.

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[23] *Id*.

Q: What effort did you exert in contacting him?
A: I asked other police officers about his number but they did not know the new number.

x x x x x x x x x

Q: You said you prepared the Inventory of Seized Evidence in the presence of Barangay Captain Santiago, how about the representative from the DOJ, what effort tid [sic] you exert to contact the DOJ witness [sic] the inventory?
A: Our chief tried to call a representative from the DOJ but no [sic] available personnel.[24]

The Court finds the above-quoted explanations unjustified and said efforts to secure either of said witnesses insufficient for the following reasons.

First, the decision to make the buy-bust operation subject of this case was reached a day before the buy-bust operation. Indeed, as testified to by PO1 Santos, on November 22, 2014, at around 3 p.m., PCI Castillo received the report from their confidential informant of appellant's alleged involvement in the illegal sale of *shabu*. After the preparation of the necessary documentation and coordination with the PDEA, the decision was reached to undertake the subject buy-bust operation the following day, November 23, 2014, at around 12 noon.[25]

Second, PO1 Santos likewise testified that his contact in the media had changed his contact number; that he did not know the new contact number; and that his fellow-police officers did not, likewise, know of the said new contact number. However, PO1 Santos failed to explain why he did not exert reasonable efforts to secure the new contact number through other means *or* find another suitable media representative *prior* to undertaking the buy-bust operation, considering that, as previously stated, the decision to make the subject buy-bust operation was made a day before the actual buy-bust operation itself. It is evident that the police operatives had ample time to procure or secure

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[24] TSN, October 1, 2015, pp. 6-7.

[25] TSN, May 26, 2015, pp. 3 and 9.

a media representative who can be on standby prior to the buy-bust operation.

In *People v. Balderrama*,[26] while an elected public official was present during the inventory and photographing of the seized items, there was no media and DOJ representative. The police operatives claimed that the buy-bust operation happened so fast that they were not able to summon the required witnesses. In rejecting their explanation and acquitting the accused, the Court held that, based on the testimony of the poseur-buyer himself, the police operatives had ample time (some eight hours to be exact) to secure the required witnesses, but unjustifiably failed to do so.[27] Similarly, in *People v. Ramos*,[28] an elected public official was present, but no representative from the media and from the DOJ was present. In rejecting the explanation of the police operatives on the unavailability of the said witnesses, the Court noted that the briefing on the planned buy-bust operation was done as early as 2 p.m. and the operation was conducted at 8 p.m. of the same day, thus, giving them sufficient time to secure the attendance of said witnesses, who were nonetheless conspicuous by their absence.[29]

And third, with respect to the explanation for the absence of a DOJ representative, the evidence is hearsay, because, as PO1 Santos' testimony bears out, it was his chief, PCI Castillo, who allegedly tried to contact the DOJ representative. However, there is no showing that PO1 Santos in fact saw or knew that his chief was indeed trying to contact a DOJ representative; worse, PCI Castillo himself did not testify in court that he even attempted to do so. Moreover, the prosecution again failed to explain why no DOJ representative was contacted, considering that the police operatives had ample time, since the decision to conduct the buy-bust operation was made a day prior to the actual conduct thereof. PO1 Santos' testimony on this point

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[26] G.R. No. 232645, February 18, 2019.

[27] *Id*.

[28] *Supra* note 11.

[29] *Id*.

constitutes mere statements of unavailability, lacking actual serious attempts to contact the said witness; thus, unacceptable as justified grounds for non-compliance.

The necessity of a media representative *or* a DOJ representative, during the physical inventory and photographing of the seized items becomes all the more critical and imperative in this case, because, as correctly pointed out by appellant, it was the lone witness present, Brgy. Capt. Santiago, who requested the making of the buy-bust operation against appellant. As stated in the affidavit of arrest executed by PO1 Santos, which he confirmed[30] during his testimony in open court: "3. *Na, ganap na alas 11:00 ng tanghali, ika-23 ng Nobyembre 2014 ay nagsagawa kami ng pagpupulong para sa gaganaping buy-bust operation ayon na rin sa kahilingan ng kanilang Punong Barangay na si Kapitan Engracio E[.] Santiago x x x.*"[31] It appears that, apart from the report of the confidential informant the day before, it was Brgy. Capt. Santiago himself who requested the buy-bust operation against appellant. Indeed, during the testimony of appellant, the trial court even asked appellant whether he was aware that it was Brgy. Capt. Santiago who tipped the police operatives about his (appellant's) alleged involvement in the illegal sale of *shabu*.[32]

The purpose of the law in requiring the presence of certain witnesses, at the time of the seizure and inventory of the seized items, is to "insulate the seizure from any taint of illegitimacy or irregularity."[33] In *People v. Mendoza*,[34] the Court ruled that "without the insulating presence of the representative from the

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[30] TSN, October 1, 2015, p. 14.

[31] Records, p. 10.

[32] COURT:
Q Do you know, Mr. Witness, that it was Barangay Captain Santiago who tipped you to that SAID (Station Anti-Illegal Drugs) about your selling of drugs?
A: I do not know, Your Honor. (TSN, October 19, 2015, p. 12)

[33] *People v. Catalan*, 699 Phil. 603, 619 (2012).

[34] 736 Phil. 749 (2014).

media or the Department of Justice, or any elected public official during the seizure and marking of the *shabu*, 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*) might again rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*, and thus adversely affect the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would preserve an unbroken chain of custody."[35]

In the case at bar, the reliance of the police operatives on the lone witness, Brgy. Capt. Santiago, who was the very party interested in the arrest, prosecution and conviction of appellant, as it was this *barangay* captain himself who requested the buy-bust operation against appellant, and the police operatives' failure to secure the presence of either a DOJ *or* media representative, without justifiable reasons and without exerting earnest efforts to do so, effectively rendered nugatory the salutary purpose of the law, which is designed to provide an insulating presence during the inventory and photographing of the seized items, in order to obviate switching, 'planting' or contamination of the evidence. Needless to say, this adversely affected the integrity and credibility of the seizure and confiscation of the sachets of *shabu* subject of this case.

WHEREFORE, the appeal is **GRANTED**. The May 30, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08159 is **REVERSED** and **SET ASIDE**. Appellant Augusto Maganon *y* Nabia is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for another lawful cause.

Let a copy of this Decision be furnished the Director, Bureau of Corrections, National Bilibid Prison, Muntinlupa City for immediate implementation. The said Director is **DIRECTED**

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[35] *Id*. at 764.

to report to this Court the action taken within five (5) days from receipt of this Decision.

SO ORDERED.

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

Jardeleza, J., on official leave.

THIRD DIVISION

[G.R. No. 236383. June 26, 2019]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **MARILYN H. CELIZ and LUVISMINDA H. NARCISO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LAW REGULATING GOVERNMENT PROCUREMENT ACTIVITIES (R.A. NO. 9184); MANDATES THAT ALL GOVERNMENT PROCUREMENT MUST BE DONE THROUGH COMPETITIVE BIDDING; NEGOTIATED PROCUREMENT, ONE OF THE ALTERNATIVE METHODS, IS AVAILABLE UNDER CERTAIN CONDITIONS; REQUIREMENTS FOR A NEGOTIATED PROCUREMENT TO BE VALID, ENUMERATED AND EXPLAINED. — Generally, all government procurement must be done through competitive bidding. Alternative methods of procurement, however, are available under the conditions provided in R.A. No. 9184. For infrastructure projects in particular, the only alternative mode is negotiated procurement. In negotiated procurement, the procuring entity directly negotiates the contract with a technically, legally and financially capable supplier, contractor or consultant. x x x Even if the resort to negotiated procurement is justified, its application does

not warrant dispensing with the other requirements under R.A. No. 9184. The respondents and the other concerned officials should still, among other things: (a) conduct a pre-procurement conference; (b) post the procurement opportunity in the Philippine Government Electronic Procurement System, the website of the Procuring Entity and its electronic procurement service provider, if any, and any conspicuous place in the premises of the Procuring Entity; and (c) require the submission of a bid security and a performance security. Most important is the pre-procurement conference, which the BAC is mandated to hold for each and every procurement, except for small procurements such as infrastructure projects costing ₱5,000,000.00 and below. It is at this stage that the BAC checks the availability of the appropriations and programmed budget for the contract, the readiness of the budget release (*i.e.*, the SARO), and the adherence of the bidding documents, technical plans, specifications, and scope of work to the relevant general procurement guidelines. Sufficient appropriation is also required before the government enters into a contract. While Sections 85 and 86 of the Government Auditing Code requires an appropriation prior to the *execution* of the contract, the enactment of R.A. No. 9184 modified this requirement by requiring the availability of funds upon the commencement of the procurement process.

2. ID.; ID.; PUBLIC OFFICIALS AND EMPLOYEES; MISCONDUCT, DEFINED; DISTINGUISHED FROM GRAVE MISCONDUCT. — Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. *Grave Misconduct*, as distinguished from simple misconduct, involves the additional element of corruption, willful intent to violate the law or disregard established rules. Mere failure to comply with the law, however, is not sufficient. There should be a showing of deliberateness on the part of the respondents, with the purpose of securing benefits for themselves or for some other person.

3. ID.; ID.; ID.; RESPONDENTS VIOLATED THE PROVISIONS OF RA 9184 AND THE LAW INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES (PD 1445); THEIR REPEATED PARTICIPATION IN HIGHLY IRREGULAR PROCUREMENT PROCESS MAKE THEM LIABLE FOR GRAVE MISCONDUCT WHICH CARRIES THE PENALTY OF DISMISSAL FROM

THE SERVICE. — Section 53(b), Article XVI of R.A. No. 9184 evidently does not contemplate a yearly occasion and the promotion of tourism to justify resort to negotiated procurement. Since the Dinagyang Festival is an annual event that has always been scheduled to take place in the middle of January, there was plenty of time for the preparation of the necessary infrastructure. Furthermore, aside from the promotion of tourism, there was no showing that the repairs were necessitated by a calamity, that there was imminent danger to life or property, or that there was a loss of vital public services and utilities. Evidently, the decision of the respondents and other DPWH Region VI officials to begin the repairs for the Iloilo Diversion Road with only two (2) months left before the Dinagyang Festival is not the urgent situation contemplated under Section 53(b), Article XVI of R.A. No. 9184. x x x The respondents in this case agreed with all the BAC resolutions that: (a) recommended directly negotiating with IBC for the Asphalt Overlay Project; (b) recommended awarding the contract to IBC; and (c) recommended the award to IBC for the lesser amount stated in the SARO, with the promise to pay the remaining balance once the funds are made available. Despite the glaring absence of an appropriation for the Asphalt Overlay Project, and notwithstanding the absence of a justification for the application of negotiated procurement, the respondents repeatedly signed off on these resolutions. Worse, the respondents participated in circumventing the requirement under Section 85 of P.D. No. 1445 that there should be an appropriation before the execution of the contract. This was manifest in their agreement to issue the BAC Resolution dated January 26, 2009, even after IBC has commenced the project a year before. In this manner, the respondents and the other concerned DPWH Region VI officials were able to make it appear that the contract with IBC was executed only after the issuance of the SARO on December 24, 2008. **It should be emphasized, however, that at the time of the issuance of the SARO, IBC already proceeded with the project pursuant to two (2) previous BAC resolutions recommending the direct negotiation of the project to IBC and the award of the contract to IBC. The respondents were also signatories of these prior BAC resolutions.** As a result, the respondents, through their actions, gave unwarranted benefits and advantages to IBC. Their actions also show a willful disregard for the established procurement rules. Without their repeated

participation in this highly irregular procurement process, the award of the project to IBC would not have been accomplished. The respondents' defense of being mere subordinates is without merit, as their conduct show a blatant and willful violation of the procurement rules. Thus, they should be held liable for Grave Misconduct, which carries the penalty of dismissal from the service. Section 12 of R.A. No. 9184 holds the BAC responsible for ensuring that the procuring entity complies with the provisions of the statute and the relevant rules and regulations. This is echoed in Section 12 of the IRR-A. For this reason, the functions of the respondents, as BAC members, are not merely ceremonial. They are tasked to safeguard the mandate of R.A. No. 9184 in order to ensure that the government and the public get the best possible goods, services, and infrastructure.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Sayno Law Office for respondents.

D E C I S I O N

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

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals' (CA) Decision[2] dated September 15, 2017 and Resolution[3] dated December 11, 2017 in CA-G.R. CEB-SP. No. 10438. The CA partially granted the appeal of respondents Marilyn H. Celiz (Marilyn) and Luvisminda H. Narciso (Luvisminda) from the Decision of the Office of the Ombudsman (OMB), which found them guilty of Grave Misconduct and imposed the penalty of dismissal from the service.

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[1] *Rollo*, pp. 20-36.

[2] Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Pamela Ann Abella Maxino and Gabriel T. Robeniol concurring; *id.* at 55-74.

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

Factual Antecedents

On November 20, 2007, the Department of Public Works and Highways (DPWH) Region VI Director, Rolando M. Asis (Director Asis), submitted the approved Program of Works and Estimates for the proposed Asphalt Overlay Project in Iloilo City to the DPWH Secretary. In the program, it was estimated that the amount of ₱54,500,000.00 is necessary to implement the project, which intends to repair about 2.4 kilometers of the Iloilo-Jaro Diversion Road, starting from the Iloilo-Antique Road up to Dungon Bridge.[4]

In a letter dated November 23, 2007, former Iloilo City Mayor Jerry P. Treñas requested Director Asis to immediately implement the project, in time for the upcoming Dinagyang Festival on January 25 to 26, 2008.[5] Director Asis, thus, requested then DPWH Secretary Hermogenes E. Ebdane, Jr. (Secretary Ebdane) for clearance to implement the project through negotiated procurement. He reasoned that the project is urgent because this was the primary route for the Dinagyang Festival, and there is a need to further promote tourism in the region. On November 29, 2007, Secretary Ebdane approved the request.[6]

At that time, the DPWH Region VI Bids and Awards Committee (BAC) was composed of Berna C. Coca (Berna) as the Chairman, Luvisminda as the Vice-Chairman, Danilo M. Peroy (Danilo) as a Member, and Fernando S. Tuares (Fernando) and Marilyn as Provisional Members.[7] On January 2, 2008, the BAC unanimously approved an unnumbered Resolution, which recommended the direct negotiation of the contract for the Asphalt Overlay Project to International Builders' Corporation (IBC). Director Asis approved the Resolution.[8] Thus, BAC Chairman Berna sent an invitation to the President of

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[4] *Id*. at 117-124.

[5] *Id*. at 89, 125.

[6] *Id*. at 126.

[7] *Id*. at 87.

[8] *Id*. at 127-128.

IBC, requesting them to submit a quotation for the project, together with the other bid requirements.[9]

On January 7, 2008, IBC's bid offer was opened and negotiated at the DPWH Regional Office. The following day, the BAC unanimously approved another unnumbered Resolution recommending the award of the project to IBC, with an Approved Budget for the Contract (ABC) in the amount of ₱54,308,803.44.[10]

In a letter dated January 9, 2008, Director Asis informed IBC of BAC's recommendation, with the caveat that the Notice to Proceed cannot be issued until the funds to cover the contract cost are released. In light of the unavailability of funds, Director Asis asked the IBC President whether they were willing to take the risk of proceeding with the project, pending the release of an appropriation. He likewise guaranteed to process the payment as soon as the funds for the project are released.[11] In response, the IBC President agreed to take on the risk, and committed to immediately proceed with the implementation of the Asphalt Overlay Project.[12]

Meanwhile, on March 5, 2008, the Assistant Ombudsman for Visayas sent a letter to the Regional Cluster Director of the Commission on Audit (COA) Region VI, requesting the conduct of a special audit examination on the Asphalt Overlay Project.[13] The State Auditor reported that there were no entries in the books showing that allotments were received, and that obligation requests were made for the implementation of the project. Moreover, the DPWH Region VI Budget Officer and the Fiscal Comptroller informed the State Auditor that there was no project contract submitted for certification as to the availability of allotments and availability of funds. Seeing that there are no records of disbursement, the State Auditor concluded that the

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[9] *Id*. at 89, 129.

[10] *Id*. at 130.

[11] *Id.* at 131.

[12] *Id*. at 90, 132.

[13] *Id*. at 101.

COA was not yet in a position to conduct the audit of the Asphalt Overlay Project.[14]

In a letter dated March 17, 2008, the BAC, including respondents Luvisminda and Marilyn, explained to the Assistant Ombudsman for Visayas that the Asphalt Overlay Project was implemented through negotiated procurement because of the urgent and immediate need to repair a primary national road in time for the Dinagyang Festival on January 24 to 26, 2008. The BAC likewise reasoned that IBC's offer complied with the requirements of the project. Considering its past performance in previous asphalting projects, the Asphalt Overlay Project was awarded to IBC.[15]

On May 13, 2008, an accountant of the DPWH Region VI, Aurora S. Tingzon, certified that there are no available funds, no Sub-Allotment Release Order (SARO), and no Sub-Allotment Advice (SAA) issued for the Asphalt Overlay Project.[16]

Several months later, or on December 24, 2008, DPWH Undersecretary Bashir D. Rasuman approved the SARO for the project, authorizing the expenditure of ₱53,595,000.00.[17] Thereafter, an unnumbered BAC Resolution was issued on January 26, 2009, recommending the award of the contract to IBC in the amount of ₱52,110,000.00. The BAC also resolved to pay the remaining balance to IBC upon availability of funds. This time, the BAC was composed of Engineer Juby B. Cordon (Juby) as the BAC Chairman, Luvisminda as the BAC Vice-Chairman, Danilo as a Member, and Fernando and Marilyn as Provisional Members. Director Asis approved this BAC Resolution.[18]

On the same day, Fernando, acting in his capacity as the Officer-in-Charge (OIC) of the Maintenance Division and as

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[14] *Id*. at 102.

[15] *Id*. at 103-104.

[16] *Id*. at 92, 142.

[17] *Id*. at 133.

[18] *Id*. at 134.

the "Project In-Charge," informed the BAC Chairman that the DPWH Region VI had received the SARO in the amount of ₱53,595,000.00. However, Fernando noted that the amount available for the payment of the project is only ₱52,110,000.00, as the sum of ₱1,485,000.00 should be deducted in order to pay for the Engineering and Other Administrative Overhead expenses. For this purpose, Fernando suggested to make an additional request for the remaining balance of ₱2,198,803.45, to cover the contract amount with IBC.[19]

On January 28, 2009, the Notice of Award[20] was issued to the IBC President. Soon after, or on January 29, 2009, the DPWH Region VI and the IBC executed a contract[21] for the Asphalt Overlay Project. The contract was signed by the DPWH Region VI through BAC Chairman Juby, in her capacity as the OIC-Assistant Regional Director, and Fernando, in his capacity as the OIC-Maintenance Division.[22]

Subsequently, the OMB Region VI Field Investigation Office (FIO) filed their March 20, 2014 Complaint-Affidavit,[23] charging the respondents and several other officials and employees of the DPWH Region VI with violating Republic Act (R.A.) No. 9184[24] and R.A. No. 3019,[25] and holding them liable for Grave Misconduct. It was specifically alleged that the application of negotiated procurement was unwarranted under the circumstances. There was also no available appropriation at the time of the execution of the contract for the Asphalt Overlay Project. In

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[19] *Id*. at 92, 135.

[20] *Id*. at 136.

[21] *Id*. at 137-141.

[22] *Id*. at 90-91.

[23] *Id*. at 87-94.

[24] AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES (Approved on January 10, 2003).

[25] ANTI-GRAFT AND CORRUPT PRACTICES ACT (Approved on August 17, 1960).

light of their participation in the procurement and implementation of the Asphalt Overlay Project, the OMB Region VI FIO alleged that the respondents were guilty of Grave Misconduct for patently intending to violate or disregard the procurement law, and for violating Section 3(e) of R.A. No. 3019.[26]

In their Joint Counter-Affidavit, the respondents and the other DPWH Region VI officials justified the conduct of negotiated procurement by reiterating the urgent necessity for the project. The two-kilometer road was supposedly the primary route for the parade during the Dinagyang Festival, a major access road, and a central part of the province.[27]

Ruling of the OMB

In a Joint Resolution[28] dated October 6, 2015, the OMB found probable cause to charge the respondents with a violation of Section 3(e) of R.A. No. 3019. The OMB, likewise, found all of them guilty of Grave Misconduct, and meted the penalty of dismissal from the service, thus:

> WHEREFORE, let the attached Information for Violation of Section 3(e) of RA No. 3019 be FILED against respondents Rolando M. Asis, Berna C. Coca, Luvisminda H. Narciso, Fernando S. Tuares, Danilo M. Peroy and Marilyn H. Celiz.
>
> Respondents Rolando M. Asis, Berna C. Coca, Luvisminda H. Narciso, Fernando S. Tuares, Danilo M. Peroy and Marilyn H. Celiz are found GUILTY OF GRAVE MISCONDUCT and hereby meted the penalty of DISMISSAL from the service, which shall carry with it cancellation of eligibility, forfeiture of retirement benefits and the perpetual disqualification from re-employment in the government service.
>
> In the event that the penalty of dismissal can no longer be imposed due to their separation from the service, it shall be converted into FINE amounting to respondents' salary for ONE (1) YEAR, payable to the Office of the Ombudsman, and may be deducted from their

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[26] *Rollo*, pp. 91-94.

[27] *Id*. at 44.

[28] Rendered by Graft Investigation and Prosecution Officer I Gil Rose O. Corcino-Inovejas; *id*. at 42-48.

accrued leave credits or any receivable from their office. It is understood, however, that the accessory penalties of forfeiture of retirement benefits, cancellation of eligibility and perpetual disqualification to hold public office shall still be applied.

SO ORDERED.[29] (Citation omitted)

Aggrieved by the decision of the OMB, the respondents moved for its reconsideration. However, the OMB found the motion unmeritorious in the Order[30] dated March 21, 2016:

WHEREFORE, respondents' Motion for Reconsideration is DENIED.

SO ORDERED.[31]

Insofar as their administrative liability was concerned, the respondents filed a Petition for Review under Rule 43 of the Rules of Court before the CA. According to the respondents, they are mere subordinates with no power to question the decision of their superior officers to negotiate the procurement of the Asphalt Overlay Project. They also argued that their participation was limited to signing the BAC resolutions, and as such, there was no corrupt motive on their part.[32]

Ruling of the CA

In its Decision[33] promulgated on September 15, 2017, the CA ruled that the respondents violated Section 85(1) of Presidential Decree (P.D.) No. 1445[34] for entering into the contract with IBC without an appropriation sufficient to cover the cost of the project.[35] The CA also found that they violated

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[29] *Id*. at 46-47.

[30] *Id*. at 49-53.

[31] *Id*. at 52.

[32] *Id*. at 62.

[33] *Id*. at 55-74.

[34] ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES (Approved on June 11, 1978).

[35] *Rollo*, pp. 65-68.

Section 53 of R.A. No. 9184 when they resorted to negotiated procurement without complying with the requirements of the law.[36] This notwithstanding, the CA found the respondents' appeal partially meritorious. Instead of Grave Misconduct, they were deemed liable for Simple Misconduct because there was no evidence of corrupt motives on their part.[37] The dispositive portion of the CA's decision, thus, reads:

> WHEREFORE, the *Petition For Review under Rule 43* filed by petitioners Marilyn H. Celiz and Luvisminda H. Narciso is PARTIALLY GRANTED. The Office of the Ombudsman's 6 October 2015 *Joint Resolution* in OMB-V-C-14-0182 and OMB-V-A-14-0174 is MODIFIED. We find petitioners Marilyn H. Celiz and Luvisminda H. Narciso guilty of SIMPLE MISCONDUCT and are hereby meted the penalty of SUSPENSION for ONE (1) MONTH and ONE (1) DAY.
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> Petitioners who have not retired shall be REINSTATED after serving their suspension. They shall be entitled to payment of backwages and all benefits from the time that they served the foregoing suspension up to the time of their actual reinstatement.
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> SO ORDERED.[38]

The decision of the CA to hold the respondents liable for Simple Misconduct constrained the OMB to file a Motion for Partial Reconsideration. But in the CA's Resolution[39] dated December 11, 2017, the OMB's motion was denied for failing to assert new matters that would warrant the reversal of the decision. The CA further ruled that the motion was filed late.[40]

Disagreeing with the findings of the CA, the OMB filed the present petition for review, attributing reversible errors on the CA. The OMB argues that the CA clearly found that the respondents violated P.D. No. 1445 and R.A. No. 9184 in the

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[36] *Id*. at 70.

[37] *Id*. at 71-72.

[38] *Id*. at 73.

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

[40] *Id.* at 77.

procurement of the Asphalt Overlay Project. For this reason, the OMB asserts that respondents, as BAC members who assented to the violation of the relevant procurement laws, should be held liable for Grave Misconduct. The OMB further claims that the respondents were not entitled to the award of backwages.[41]

As to the belated filing of their motion for partial reconsideration, the OMB argues that work in all government offices was suspended on October 16 and 17, 2017 in view of the nationwide transport strike. Thus, the filing of the motion on the next working day, or on October 18, 2017, was timely.[42]

Ruling of the Court

Essentially, the Court is tasked to resolve whether the respondents should be held administratively liable for Grave Misconduct, rather than Simple Misconduct. In view of the factual circumstances of this case, the Court finds the petition meritorious.

The OMB's motion for partial reconsideration was timely filed.

Preliminarily, it bears noting that the CA incorrectly denied the OMB's motion for partial reconsideration on the ground that it was belatedly filed.

The OMB concedes that the last day for the filing of its motion for reconsideration was on October 16, 2017, and that its motion was actually filed on October 18, 2017. Nevertheless, as the OMB clearly pointed out in its petition, the Office of the President declared a suspension of government work on October 16-17, 2017 due to the nationwide transport strike.[43] As such, the deadline for the OMB's motion for reconsideration lapsed on the next working day, or on October 18, 2017. Since the OMB filed its Motion for Partial Reconsideration on said date, the motion was not filed out of time.

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[41] *Id.* at 28-35.

[42] *Id*. at 27.

[43] Office of the President, Memorandum Circular No. 28, October 15, 2017; Office of the President, Memorandum Circular No. 29, October 16, 2017.

The respondents violated R.A. No. 9184 and P.D. No. 1445 in the procurement of the Asphalt Overlay Project.

Generally, all government procurement must be done through competitive bidding.[44] Alternative methods of procurement, however, are available under the conditions provided in R.A. No. 9184.[45] For infrastructure projects in particular, the only alternative mode is negotiated procurement.[46]

In negotiated procurement, the procuring entity directly negotiates the contract with a technically, legally and financially capable supplier, contractor or consultant.[47] It may be resorted to in the following cases:

(a) when there has been a failure of public bidding for the second time;

(b) when there is imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

(c) in take-over of contracts that were rescinded or terminated for cause and immediate action is necessary;

(d) where the contract is adjacent or contiguous to an on-going infrastructure project, the original contract of which was the result of a competitive bidding; or

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[44] *R.A. No. 9184*, Article IV, Section 10.

[45] *Id*. at Article XVI, Section 48.

[46] Implementing Rules and Regulations Part A (*IRR-A*) of R.A. No. 9184, Rule XVI, Section 53 (Approved: September 18, 2003); see also Government Procurement Policy Board (*GPPB*) Manual of Procedures for the Procurement of Infrastructure Projects, Vol. 3, p. 73, <https://www.gppb.gov.ph/downloadables/forms/GPM%20-%20Vol.3.pdf> (last accessed May 28, 2019).

[47] *Id*.

(e) under other instances specified in the implementing rules and regulations of R.A. No. 9184.[48]

Here, the respondents argued before the OMB that the Asphalt Overlay Project must be negotiated because time was of the essence. The Dinagyang Festival was soon approaching, and the road used for its primary route needs major repairs.[49] But invoking this circumstance does not automatically warrant the application of negotiated procurement; otherwise, it would be easy to dispense with competitive bidding. As aptly held by the CA,[50] there must be an immediate and compelling need to justify negotiated procurement other than that provided by the respondents. The requirement of urgency is qualified under the law as "arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage

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[48] *R.A. No. 9184*, Article XVI, Section 53; Under the IRR-A of R.A. No. 9184, Rule XVI, Section 53, the following instances likewise justify negotiated procurement:

(a) Procurement of infrastructure, consulting services and goods from another agency of the Government tasked with a centralized procurement of commonly used goods for the government;

(b) In cases of individual consultant hired to do work that is highly technical or proprietary, or primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant;

(c) With the prior approval of the President, and when the procurement for use by the Armed Forces of the Philippines involves major defense equipment and/or defense-related consultancy services, when the expertise or capability required is not available locally, and the Secretary of National Defense has determined that the interests of the country shall be protected by negotiating directly with an agency or instrumentality of another country with which the Philippines has entered into a defense cooperation agreement or otherwise maintains diplomatic relations;

(d) Where the amount involved is Php50,000.00 and below, and the procurement does not result in splitting of contracts;

(e) Lease of privately owned real estate for official use; and

(f) When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations.

[49] *Rollo*, p. 44.

[50] *Id*. at 70.

to or loss of life or property."[51] As such, it does not cover situations outside this qualification, which this Court explained in *Office of the Ombudsman v. De Guzman*,[52] to wit:

> [Negotiated procurement under Republic Act No. 9184, Section 53(b) involves situations beyond the procuring entity's control. Thus, it speaks of "imminent danger . . . during a state of calamity . . . natural or man-made calamities [and] other causes where immediate action is necessary." Following the principle of *ejusdem generis*, where general terms are qualified by the particular terms they follow in the statute, the phrase "other causes" is construed to mean a situation similar to a calamity, whether natural or man-made, where inaction could result in the loss of life, destruction of properties or infrastructures, or loss of vital public services and utilities.[53] (Citation omitted)

Section 53(b), Article XVI of R.A. No. 9184 evidently does not contemplate a yearly occasion and the promotion of tourism to justify resort to negotiated procurement. Since the Dinagyang Festival is an annual event that has always been scheduled to take place in the middle of January, there was plenty of time for the preparation of the necessary infrastructure. Furthermore, aside from the promotion of tourism, there was no showing that the repairs were necessitated by a calamity, that there was imminent danger to life or property, or that there was a loss of vital public services and utilities. Evidently, the decision of the respondents and other DPWH Region VI officials to begin the repairs for the Iloilo Diversion Road with only two (2) months left before the Dinagyang Festival is not the urgent situation contemplated under Section 53(b), Article XVI of R.A. No. 9184.

Even if the resort to negotiated procurement is justified, its application does not warrant dispensing with the other requirements under R.A. No. 9184.[54] The respondents and

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[51] *R.A. No. 9184*, Article XVI, Section 53(b).

[52] G.R. No. 197886, October 4, 2017, 841 SCRA 616.

[53] *Id*. at 637-638.

[54] *Id*. at 633-635.

the other concerned officials should still, among other things: (a) conduct a pre-procurement conference; (b) post the procurement opportunity in the Philippine Government Electronic Procurement System, the website of the Procuring Entity and its electronic procurement service provider, if any, and any conspicuous place in the premises of the Procuring Entity; and (c) require the submission of a bid security and a performance security.[55]

Most important is the pre-procurement conference, which the BAC is mandated to hold for each and every procurement, except for small procurements such as infrastructure projects costing ₱5,000,000.00 and below.[56] It is at this stage that the BAC checks the availability of the appropriations and programmed budget for the contract, the readiness of the budget release (*i.e.*, the SARO), and the adherence of the bidding documents, technical plans, specifications, and scope of work to the relevant general procurement guidelines.[57]

Sufficient appropriation is also required before the government enters into a contract.[58] While Sections 85 and 86 of the Government Auditing Code requires an appropriation prior to the *execution* of the contract, the enactment of R.A. No. 9184 modified this requirement by requiring the availability of funds upon the commencement of the procurement process. As the Court explained in *Jacomille v. Sec. Abaya, et al.*:[59]

The requirement of availability of funds before the execution of a government contract, however, has been modified by R.A. No. 9184. **The said law presents a novel policy which requires, not**

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[55] Also GPPB Manual of Procedures for the Procurement of Infrastructure Projects, Vol. 3, pp. 76-77, <https://www.gppb.gov.ph/downloadables/forms/GPM%20-%20Vol.3.pdf> (last accessed May 28, 2019).

[56] *R.A. No. 9184*, Article VII, Section 20; IRR-A of R.A. No. 9184, Rule VII, Section 20.2.

[57] IRR-A of R.A. No. 9184, Rule VII, Section 20.1.

[58] P.D. No. 1445, Sections 85-86.

[59] 759 Phil. 248 (2015).

only the sufficiency of funds at the time of the signing of the contract, but also upon the commencement of the procurement process. This progressive shift can be gleaned from several provisions of R.A. No. 9184, to wit:

> Section 5. Definition of Terms. — x x x
>
> (a) Approved Budget for the Contract (ABC) — refers to the budget for the contract duly approved by the Head of the Procuring Entity, **as provided for in the General Appropriations Act and/or continuing appropriations**, in the National Government Agencies; the Corporate Budget for the contract approved by the governing Boards, pursuant to E.O.No.518, series of 1979, in the case of Government Financial Institutions and State Universities and Colleges; and the Budget for the contract approved by the respective Sanggunian, in the case of Local Government Units.
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> x x x x x x x x x
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> Section 7. Procurement Planning and Budgeting Linkage[.] — **All procurement should be within the approved budget of the Procuring Entity** and should be meticulously and judiciously planned by the Procuring Entity concerned. Consistent with government fiscal discipline measures, only those considered crucial to the efficient discharge of governmental functions shall be included in the Annual Procurement Plan to be specified in the IRR.
>
> Section 20. Pre-Procurement Conference. — Prior to the issuance of the Invitation to Bid, the BAC is mandated to hold a pre-procurement conference on each and every procurement, except those contracts below a certain level or amount specified in the IRR, in which case, the holding of the same is optional.
>
> **The pre-procurement conference shall assess the readiness of the procurement in terms of confirming the certification of availability of funds**, as well as reviewing all relevant documents and the draft Invitation to Bid, as well as consultants hired by the agency concerned and the representative of the [end-user].

The above-cited provisions of R.A. No. 9184 demonstrate that the law requires the availability of funds before the procuring entity commences the procurement of a government project. As early as

the conception of the ABC, the procuring entity is mandated by law to ensure that its budget is within the GAA and/or continuing appropriation. In the procurement planning stage, the procuring entity is again reminded that all procurement must be within its approved budget. Also, even before the issuance of the invitation to bid, the law requires a pre-procurement conference to confirm the certification that the funds for the government project are indeed available.[60] (Emphases Ours)

In this case, the BAC, of which the respondents were members, approved the direct negotiation of the contract to IBC on January 2, 2008.[61] Eventually, on January 8, 2008, the BAC proceeded to recommend the award of the Asphalt Overlay Project to IBC in the amount of ₱54,308,803.44.[62] By January 10, 2008, IBC started the implementation of the Asphalt Overlay Project.[63]

But in a letter dated May 13, 2008, the DPWH Region VI Accountant stated that there were no available funds, SARO, or SAA for the Asphalt Overlay Project.[64] This was later confirmed by the belated issuance of the SARO on December 24, 2008. The SARO also authorized the expenditure of only ₱53,595,000.00,[65] an amount less than the ABC of ₱54,308,803.44 in the BAC's unnumbered Resolution dated January 2, 2008. Finally, the SARO was issued after the award of the contract to IBC, and about 11 months following the commencement of the project.

On January 26, 2009, the BAC again resolved to recommend the award of the contract for the Asphalt Overlay Project to IBC. This time, the award to IBC was for the amount of ₱52,110,000.00, with an undertaking to pay the remaining amount of ₱2,198,803.45 upon availability of funds.[66] Thereafter, the

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[60] *Id*. at 273-274.

[61] *Rollo*, pp. 127-128.

[62] *Id*. at 130.

[63] *Id*. at 43, 132.

[64] *Id*. at 142.

[65] *Id*. at 133.

[66] *Id*. at 134.

Notice of Award was issued to IBC, and a contract was executed between DPWH Region VI and IBC.[67]

Clearly, the respondents and the other DPWH officials intended to circumvent the requirement that there should be prior appropriation. The execution of the contract with IBC, as well as the issuance of the Notice of Award, was delayed until such time that the SARO was issued. By the time the funds for the project were released, the award of the contract to IBC was already a foregone conclusion. IBC had commenced construction activities as early as January 10, 2008, almost a year prior to the execution of the contract for the project.

The respondents are liable for Grave Misconduct.

While the CA found that the respondents, as BAC members, violated the relevant procurement laws and regulations in the Asphalt Overlay Project, the CA nonetheless ruled that the respondents are liable only for Simple Misconduct.[68] The OMB disagrees and claims that the CA erred in downgrading the administrative liability of the respondents.[69]

The Court agrees with the OMB.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.[70] *Grave Misconduct*, as distinguished from simple misconduct, involves the additional element of corruption, willful intent to violate the law or disregard established rules.[71] Mere failure to comply with the law, however,

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[67] *Id*. at 136-141.

[68] *Id*. at 71-72.

[69] *Id*. at 31-34.

[70] See *Office of the Ombudsman-Visayas, et al. v. Castro*, 759 Phil. 68, 75 (2015); and *Atty. Valera v. Office of the Ombudsman, et al.*, 570 Phil. 368, 385 (2008), citing *Bureau of Internal Revenue v. Organo*, 468 Phil. 111, 118 (2004).

[71] *Atty. Valera v. Office of the Ombudsman, et al.*, *id.*, citing *Civil Service Commission v. Ledesma*, 508 Phil. 569, 580 (2005).

is not sufficient. There should be a showing of deliberateness on the part of the respondents, with the purpose of securing benefits for themselves or for some other person.[72]

The respondents in this case agreed with all the BAC resolutions that: (a) recommended directly negotiating with IBC for the Asphalt Overlay Project; (b) recommended awarding the contract to IBC; and (c) recommended the award to IBC for the lesser amount stated in the SARO, with the promise to pay the remaining balance once the funds are made available. Despite the glaring absence of an appropriation for the Asphalt Overlay Project, and notwithstanding the absence of a justification for the application of negotiated procurement, the respondents repeatedly signed off on these resolutions.

Worse, the respondents participated in circumventing the requirement under Section 85 of P.D. No. 1445 that there should be an appropriation before the execution of the contract. This was manifest in their agreement to issue the BAC Resolution dated January 26, 2009, even after IBC has commenced the project a year before. In this manner, the respondents and the other concerned DPWH Region VI officials were able to make it appear that the contract with IBC was executed only after the issuance of the SARO on December 24, 2008. **It should be emphasized, however, that at the time of the issuance of the SARO, IBC already proceeded with the project pursuant to two (2) previous BAC resolutions recommending the direct negotiation of the project to IBC and the award of the contract to IBC. The respondents were also signatories of these prior BAC resolutions.**

As a result, the respondents, through their actions, gave unwarranted benefits and advantages to IBC. Their actions also show a willful disregard for the established procurement rules. Without their repeated participation in this highly irregular procurement process, the award of the project to IBC would not have been accomplished. The respondents' defense of being mere subordinates is without merit, as their conduct show a

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[72] *Office of the Ombudsman v. De Guzman*, *supra* note 52, at 641.

blatant and willful violation of the procurement rules. Thus, they should be held liable for Grave Misconduct, which carries the penalty of dismissal from the service.[73]

Section 12 of R.A. No. 9184 holds the BAC responsible for ensuring that the procuring entity complies with the provisions of the statute and the relevant rules and regulations. This is echoed in Section 12 of the IRR-A. For this reason, the functions of the respondents, as BAC members, are not merely ceremonial. They are tasked to safeguard the mandate of R.A. No. 9184 in order to ensure that the government and the public get the best possible goods, services, and infrastructure.

WHEREFORE, premises considered, the present petition is **GRANTED**. The Decision dated September 15, 2017 and the Resolution dated December 11, 2017 of the Court of Appeals in CA-G.R. CEB-SP. No. 10438 are hereby **REVERSED** and **SET ASIDE**. A new judgment is entered finding respondents Marilyn H. Celiz and Luvisminda H. Narciso **GUILTY** of **GRAVE MISCONDUCT**. As such, they are **DISMISSED** from the government service with all the accessory penalties of cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government service.

SO ORDERED.

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

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[73] Civil Service Commission Revised Rules on Administrative Cases, Rule 10, Section 46(A)(3); See also the Resolution dated June 20, 2018 in G.R. No. 237503, entitled *Office of the Ombudsman v. Asis*; *rollo*, pp. 194-196.

SECOND DIVISION

[G.R. No. 238261. June 26, 2019]

HEIRS OF THE LATE MANOLO N. LICUANAN, represented by his wife, VIRGINIA S. LICUANAN, *petitioners, vs.* **SINGA SHIP MANAGEMENT, INC., SINGA SHIP MANAGEMENT PTE LTD., SINGAPORE/RENE N. RIEL,** *respondents.*

[G.R. No. 238567. June 26, 2019]

SINGA SHIP MANAGEMENT, INC., SINGA SHIP MANAGEMENT PTE LTD., SINGAPORE/RENE N. RIEL, *petitioners, vs.* **HEIRS OF THE LATE MANOLO N. LICUANAN, represented by his wife, VIRGINIA S. LICUANAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSATION AND BENEFITS; THE POEA-SEC STIPULATES THAT THE BENEFICIARIES OF THE DECEASED SEAFARER MAY SUCCESSFULLY CLAIM DEATH BENEFITS IF THEY ARE ABLE TO ESTABLISH THAT THE SEAFARER'S DEATH IS WORK-RELATED AND HAD OCCURED DURING THE TERM OF HIS EMPLOYMENT CONTRACT. — The terms and conditions of a seafarer's employment are governed by the provisions of the contract he signed with the employer at the time of his hiring. Deemed integrated in his employment contract is a set of standard provisions determined and implemented by the POEA-SEC, called the "Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels," which provisions are considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels. x x x Part B (4) of the same provision further complements Part B (1) by stating the "other liabilities" of the

employer to the seafarer's beneficiaries if the seafarer dies ***(a)*** **as a result of work-related injury or illness, and** ***(b)*** **during the term of his employment.**

2. **ID.; ID.; ID.; FOR THE CLAIMANT TO BE ENTITLED TO THE BENEFITS INCIDENT TO A WORK-RELATED ILLNESS, IT IS NOT REQUIRED THAT THE EMPLOYMENT BE THE SOLE FACTOR IN THE GROWTH, DEVELOPMENT OR ACCELERATION OF SUCH ILLNESS, THUS IT IS ENOUGH THAT THE EMPLOYMENT HAD CONTRIBUTED TO THE DEVELOPMENT OF THE DISEASE; CASE AT BAR. —** While the 2010 POEA-SEC, same as the 2000 POEA-SEC, does not expressly define the term "work-related death," jurisprudence states that the said term should refer to the "seafarer's death resulting from a work-related injury or illness." Here, the Court holds that the first requirement for death compensability was complied with, since it was established that Manolo's death — albeit occurring after his repatriation — resulted from a work-related illness. As the records show, the root cause of his death was his *nasopharyngeal carcinoma*, a non-listed illness under the 2010 POEA SEC which is disputably presumed to be work-related. For their part, SSMI, *et al.* failed to present contrary proof to overturn this presumption of work-relatedness. In fact, as the LA observed, "[Manolo's] diet on board x x x contributed to the development of the disease, hence establishing work connection." Indeed, as case law holds, "[i]t is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits incident thereto. **It is enough that the employment had contributed, even in a small measure, to the development of the disease**." Besides, as aptly pointed out by the CA, the company-designated physician of SSMI, *et al.* issued Manolo a disability rating of Grade 7, which issuance ultimately implies that his disability was work-related. It is settled that **the issuance of a disability rating by the company-designated physician negates any claim that the non-listed illness is not work-related**, as in this case.

3. **ID.; ID.; ID.; WHILE THE GENERAL RULE IS THAT THE SEAFARER'S DEATH SHOULD OCCUR DURING THE TERM OF HIS EMPLOYMENT, THE SEAFARER'S DEATH OCCURING AFTER THE TERMINATION OF**

HIS EMPLOYMENT DUE TO HIS MEDICAL REPATRIATION ON ACCOUNT OF A WORK-RELATED INJURY OR ILLNESS CONSTITUTES AN EXCEPTION THERETO; CASE AT BAR. — With respect to this requirement, the Court, in *Canuel v. Magsaysay Maritime Corporation* (*Canuel*), clarified that "while the general rule is that the seafarer's death should occur during the term of his employment, **the seafarer's death occurring after the termination of his employment due to his medical repatriation on account of a work-related injury or illness constitutes an exception thereto**. This is based on a liberal construction of the 2000 POEA-SEC as impelled by the plight of the bereaved heirs who stand to be deprived of a just and reasonable compensation for the seafarer's death, notwithstanding its evident work-connection." The rationale therefor was explained as follows: x x x Notably, the foregoing doctrine has been further applied by the Court in the succeeding cases of *Racelis v. United Philippine Lines, Inc.* and *C.F. Sharp Crew Management, Inc. v. Legal Heirs of the Late Repiso*, wherein the Court allowed the recovery of death benefits for the heirs of the seafarers who died after they were repatriated and hence, terminated from employment. x x x As discussed above, a seafarer's death occurring after the term of his employment shall be compensable under the POEA-SEC provided that such death was caused by a work-related injury or illness that was sustained during the term of his employment. As such, the CA erred in not attributing grave abuse of discretion on the part of the NLRC in denying the Heirs of Manolo's claim for death benefits. In fine, the petition in **G.R. No. 238261** should be granted, and thus, the amounts of US$50,000.00 or its Philippine Peso equivalent at the time of payment representing death benefits, US$7,000.00 to each of the two (2) minor children of Manolo or US$14,000.00, and ten percent (10%) of such aggregate amount as attorney's fees should be awarded in favor of the Heirs of Manolo as prayed for under Section 20 (B) (1) of the 2010 POEA-SEC.

APPEARANCES OF COUNSEL

Amiel A. Vicente for Heirs of the late Manolo Licuanan.

Del Rosario & Del Rosario for Shinga Ship Management, Inc., *et al.*

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court are consolidated petitions for review on *certiorari*[1] assailing the Decision[2] dated October 12, 2017 and the Resolution[3] dated March 22, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 146325, which reversed and set aside the Decision[4] dated January 29, 2016 and the Resolution[5] dated April 27, 2016 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. OFW (M) 07-08638-14 NLRC LAC OFW (M)-06-000482-15, granting the heirs of the late Manolo N. Licuanan (Manolo), represented by his wife, Virginia S. Licuanan (Heirs of Manolo), disability benefits and attorney's fees.

The Facts

On January 27, 2012, Manolo signed a nine-(9) month contract[6] with Singa Ship Management, Inc. (SSMI),[7] on behalf of Singa Ship Management Pte Ltd., Singapore (SSMPL),[8] to

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[1] *Rollo* (G.R. No. 238261), pp. 9-25; and *rollo* (G.R. No. 238567), pp. 19-39. See Court Resolution dated June 18, 2018 issued by Deputy Division Clerk of Court Teresita Aquino Tuazon; *rollo* (G.R. No. 238261), pp. 287-288; and *rollo* (G.R. No. 238567), pp. 63-64.

[2] *Rollo* (G.R. No. 238261), pp. 27-31; *rollo* (G.R. No. 238567), pp. 43-47. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Ramon A. Cruz and Pablito A. Perez, concurring.

[3] *Rollo* (G.R. No. 238261), p. 33; and *rollo* (G.R. No. 238567), p. 48.

[4] *Rollo* (G.R. No. 238261), pp. 64-72. Penned by Presiding Commissioner Gerardo C. Nograles with Commissioner Gina F. Cenit-Escoto, concurring and Commissioner Romeo L. Go, dissenting.

[5] *Id.* at 74-75.

[6] See Contract of Employment; *id.* at 137.

[7] Referred to as "Singa Ship Management Philippines, Inc." in some parts of the *rollos*.

[8] Referred to as "NYK Shipmanagement Pte. Ltd. Singapore" in some parts of the *rollos*.

work as *chef de partie* on board the vessel "Queen Mary 2." On March 7, 2012, he commenced his duties and boarded the said vessel.[9] Sometime in July 2012, he complained of difficulty in swallowing solid food, which later developed into persistent dry cough.[10] Subsequently, he was evaluated by an ENT[11] specialist in Hamburg, Germany, who diagnosed him with "[a] large ulcerated mass in his naso-pharynx x x x extending to his mastoid[,] x x x [m]uco-tympania of x x x [and] [h]earing loss in the right ear."[12] Manolo was then recommended to undergo nasopharyngeal biopsy of the mass.[13] On July 27, 2012, he was medically repatriated to the Philippines for further tests and evaluation.[14] On August 17, 2012, he was diagnosed by the company-designated physician with *nasopharyngeal carcinoma*, for which he was recommended to be treated with chemoradiotherapy.[15] Initially, his condition was declared as not work-related.[16] However, on November 23, 2012, the same physician issued a medical diagnosis assessing Manolo's illness with a disability rating of Grade 7,[17] which assessment became final on December 14, 2012.[18] On February 15, 2014, Manolo

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[9] See *rollo* (G.R. No. 238261), p. 28.

[10] See *id*. at 162.

[11] Defined as "Ear Nose Throat."

[12] See medical diagnosis dated July 25, 2012 of Dr. Bertie van der Merwe; *rollo* (G.R. No. 238261), p. 92.

[13] See *id*. at 162.

[14] See *id*. See also *id*. at 28.

[15] "Chemoradiotherapy' is a "[t]reatment that combines chemotherapy with radiation therapy." <https://www.cancer.gov/publications/dictionaries/cancer-terms/def/chemoradiation> (visited June 6, 2019). See medical report dated August 17, 2012 of Dr. Solidad Lim Balete (Dr. Balete), Medical Oncologist; *id*. at 12 and 97. See also medical reports dated August 17, 2012 and August 24, 2012; *id*. at 142-143. See further medical diagnosis dated August 23, 2012 of Dr. Gaudencio P. Vega, Radiation Oncologist; *id*. at 98-99.

[16] See *id*. at 142.

[17] See Dr. Balete's medical diagnosis dated November 23, 2012; *id*. at 150. See also medical report dated November 27, 2012; *id*. at 149.

[18] See medical report dated December 14, 2012; *id*. at 151.

died[19] leaving behind his heirs. Accordingly, the Heirs of Manolo filed a complaint for recovery of death benefits, damages, and attorney's fees[20] against SSMI, SSMPL, and Rene N. Riel (SSMI, *et al.*),[21] docketed as NLRC NCR Case No. 07-08638-14.

In their defense, SSMI, *et al.* maintained that the Heirs of Manolo are not entitled to death benefits, considering that Manolo's *nasopharyngeal carcinoma* is not work-related.[22]

The Labor Arbiter's Ruling

In a Decision[23] dated February 23, 2015, the Labor Arbiter (LA) found SSMI, *et al.* jointly and severally liable to pay the Heirs of Manolo the amounts of US$50,000.00 or its Philippine Peso equivalent at the time of payment representing permanent total disability benefits, US$7,000.00 to each of the two (2) minor children of Manolo or US$14,000.00, and ten percent (10%) of such aggregate amount as attorney's fees.[24] In awarding the aforesaid benefits, the LA held that Manolo's *nasopharyngeal carcinoma* is work-related, considering that his poor diet on board Queen Mary 2 contributed to its development.[25] Moreover, the fact that the company-designated physician issued Manolo a disability rating of Grade 7 negated her own finding of non-work relatedness.[26]

Aggrieved, SSMI, *et al*. appealed[27] before the NLRC.

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[19] See Certificate of Death; *id*. at 106.

[20] See Complaint dated July 11, 2014; *id*. at 76-78.

[21] See *id*. at 28 and 163.

[22] *Id*. at 163.

[23] *Id*. at 161-166. Penned by Labor Arbiter Clarissa G. Beltran-Lerios.

[24] *Id*. at 166.

[25] See *id*. at 164-165.

[26] See *id*. at 165-166.

[27] See Notice of Appeal with Memorandum of Appeal dated May 21, 2015; *id*. at 167-198.

The NLRC Ruling

In a Decision[28] dated January 29, 2016, the NLRC reversed and set aside the LA's Decision, ruling that the Heirs of Manolo are not entitled to death benefits because Manolo's death did not occur during the term of his employment, which was more than a year after he was medically repatriated and terminated from work. Nonetheless, it noted that the Heirs of Manolo are not precluded from filing a separate action for disability benefits wherein the issue of work-relatedness may be properly addressed.[29]

Undaunted, the Heirs of Manolo moved for reconsideration,[30] which was denied in a Resolution[31] dated April 27, 2016; hence, they filed a petition for *certiorari*[32] before the CA.

The CA Ruling

In a Decision[33] dated October 12, 2017, the CA reversed and set aside the NLRC ruling, and accordingly, ordered SSMI to pay the Heirs of Manolo disability benefits equivalent to US$20,900.00, plus ten percent (10%) thereof as attorney's fees.[34] While the CA upheld the NLRC's ruling that the Heirs of Manolo are not entitled to death benefits, it nonetheless proceeded to award disability benefits, considering that the company-designated physician already found Manolo's illness to be work-related based on his final assessment of a disability rating of Grade 7.[35]

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[28] *Id*. at 64-72.

[29] See *id*. at 68-70.

[30] Not attached to the *rollos*. See *rollo* (G.R. No. 238261), pp. 15 and 42.

[31] *Id*. at 74-75.

[32] Dated June 20, 2016. *Id*. at 37-62.

[33] *Rollo* (G.R. No. 238261), pp. 27-31; *rollo* (G.R. No. 238567), pp. 43-47.

[34] *Rollo* (G.R. No. 238261), p. 30.

[35] See *id*. at 29-30.

Unswayed, both parties filed their respective motions for reconsideration,[36] which were, however, denied in a Resolution[37] dated March 22, 2018; hence, these consolidated petitions.

The Issue Before the Court

The present controversy revolves around the CA's award of disability benefits equivalent to a Grade 7 disability rating in favor of the Heirs of Manolo.

In the petition, docketed as **G.R. No. 238567**, SSMI, *et al.* submit that the CA erred in ruling that the Heirs of Manolo are entitled to disability benefits, considering that Manolo's illness was not established to be work-related.[38] On the other hand, in the petition, docketed as **G.R. No. 238261**, the Heirs of Manolo contend that the CA erred in holding that they are entitled to disability benefits — instead of death compensation benefits — given that Manolo's death resulted from a work-related injury which occurred during the term of his contract with SSMI.

The Court's Ruling

The petition in **G.R. No. 238567** is denied, while the petition in **G.R. No. 238261** is granted.

At the outset, the Court notes that Manolo died after he was medically repatriated and diagnosed with *nasopharyngeal carcinoma*, for which reason his heirs seek the payment of death benefits — and not total disability benefits — in accordance with Section 20 (B) (1) of the 2010 Philippine Overseas Employment Administration (POEA) Standard Employment Contract (SEC).

The terms and conditions of a seafarer's employment are governed by the provisions of the contract he signed with the employer at the time of his hiring. Deemed integrated in his

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[36] See Heirs of Manolo's Partial Motion for Reconsideration dated November 22, 2017 (*rollo* [G.R. No. 238261], pp. 254-264); and SSMI, *et al.*'s motion for reconsideration dated November 22, 2017 (*rollo* [G.R. No. 238567], pp. 49-60).

[37] *Rollo* (G.R. No. 238261), p. 33; and *rollo* (G.R. No. 238567), p. 48.

[38] See *rollo* (G.R. No. 238567), pp. 26-28.

employment contract is a set of standard provisions determined and implemented by the POEA-SEC, called the "Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels," which provisions are considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels.[39]

Among other basic provisions, the POEA-SEC — specifically its 2010[40] version — stipulates that the beneficiaries of the deceased seafarer may successfully claim death benefits if they are able to establish that the seafarer's death is (*a*) **work-related**, and (*b*) **had occurred during the term of his employment contract.** These requirements are explicitly stated in Section 20 (B) (1) thereof, which reads:

SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR DEATH

1. In case of **work-related death** of the seafarer, **during the term of his contract**, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment. (Emphases supplied)

Part B (4) of the same provision further complements Part B (1) by stating the "other liabilities" of the employer to the seafarer's beneficiaries if the seafarer dies ***(a)* as a result of work-related injury or illness, and *(b)* during the term of his employment,** *viz.*:

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[39] *Canuel v. Magsaysay Maritime Corporation*, 745 Phil. 252, 261 (2014), citing *Nisda v. Sea Serve Maritime Agency*, 611 Phil. 291, 315 (2009).

[40] POEA Memorandum Circular No. 10, Series of 2010, entitled "AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE OVERSEAS EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS" dated October 26, 2010.

SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR DEATH

x x x x x x x x x

4. The other liabilities of the employer <u>when the seafarer dies as a result of work-related injury or illness during the term of employment</u> are as follows:

a. The employer shall pay the deceased's beneficiary all outstanding obligations due the seafarer under this Contract.

b. The employer shall transport the remains and personal effects of the seafarer to the Philippines at employer's expense except if the death occurred in a port where local government laws or regulations do not permit the transport of such remains. In case death occurs at sea, the disposition of the remains shall be handled or dealt with in accordance with the master's best judgment. In all cases, the employer/master shall communicate with the manning agency to advise for disposition of seafarer's remains.

c. The employer shall pay the beneficiaries of the seafarer the Philippines currency equivalent to the amount of One Thousand US dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment. (Emphasis and underscoring supplied)

While the 2010 POEA-SEC, same as the 2000 POEA-SEC, does not expressly define the term "work-related death," jurisprudence states that the said term should refer to the "seafarer's death resulting from a work-related injury or illness."[41]

Here, the Court holds that the first requirement for death compensability was complied with, since it was established that Manolo's death — albeit occurring after his repatriation — resulted from a work-related illness. As the records show, the root cause of his death was his *nasopharyngeal carcinoma*, a

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[41] See *Canuel v. Magsaysay Maritime Corporation*, *supra* note 39, at 263.

non-listed illness under the 2010 POEA SEC which is disputably presumed to be work-related. For their part, SSMI, *et al.* failed to present contrary proof to overturn this presumption of work-relatedness. In fact, as the LA observed, "[Manolo's] diet on board x x x contributed to the development of the disease, hence establishing work connection."[42] Indeed, as case law holds, "[i]t is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits incident thereto. **It is enough that the employment had contributed, even in a small measure, to the development of the disease**."[43]

Besides, as aptly pointed out by the CA, the company-designated physician of SSMI, *et al.* issued Manolo a disability rating of Grade 7, which issuance ultimately implies that his disability was work-related. It is settled that **the issuance of a disability rating by the company-designated physician negates any claim that the non-listed illness is not work-related**,[44] as in this case.

Having established that Manolo's death resulted from his work-related illness, *i.e.*, *nasopharyngeal carcinoma*, the Court holds that the petition in **G.R. No. 238567** lacks merit and should perforce be denied.

That being said, the Court now determines if the second requirement for death compensability, *i.e.*, that Manolo's death occurred during the term of his employment with SSMI, was met.

With respect to this requirement, the Court, in *Canuel v. Magsaysay Maritime Corporation*[45] (*Canuel*), clarified that "while the general rule is that the seafarer's death should occur during the term of his employment, **the seafarer's death occurring after the termination of his employment due to his medical repatriation on account of a work-related injury**

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[42] See *rollo* (G.R. No. 238261), p. 165.

[43] *De Jesus v. NLRC*, 557 Phil. 260, 266 (2007); emphasis supplied.

[44] See *Leonis Navigation Co., Inc. v. Heirs of Villamater*, 628 Phil. 81, 99-100 (2010).

[45] *Supra* note 39.

or illness constitutes an exception thereto. This is based on a liberal construction of the 2000 POEA-SEC as impelled by the plight of the bereaved heirs who stand to be deprived of a just and reasonable compensation for the seafarer's death, notwithstanding its evident work-connection.[46]" The rationale therefor was explained as follows:

> Here, [the seafarer's] repatriation occurred during the eighth (8th) month of his one (1) year employment contract. Were it not for his injury, which had been earlier established as work-related, he would not have been repatriated for medical reasons and his contract consequently terminated pursuant to Part 1 of Section 18 (B) of the 2000 POEA-SEC as hereunder quoted:
>
> SECTION 18. TERMINATION OF EMPLOYMENT
>
> x x x x x x x x x
>
> B. The employment of the seafarer is also terminated when the seafarer arrives at the point of hire for any of the following reasons:
>
> 1. when the seafarer signs-off and is disembarked for medical reasons pursuant to Section 20 (B)[5] of this Contract.
>
> The terminative consequence of a medical repatriation case then appears to present a rather prejudicial quandary to the seafarer and his heirs. Particularly, if the Court were to apply the provisions of Section 20 of the 2000 POEA-SEC as above-cited based on a strict and literal construction thereof, then the heirs of [the seafarer] would stand to be barred from receiving any compensation for the latter's death despite its obvious work-relatedness. Again, this is for the reason that the work-related death would, by mere legal technicality, be considered to have occurred after the term of his employment on account of his medical repatriation. It equally bears stressing that neither would the heirs be able to receive any disability compensation since the seafarer's death in this case precluded the determination of a disability grade, which, following Section 20 (B) in relation to Section 32 of the 2000 POEA-SEC, stands as the basis therefor.
>
> However, a strict and literal construction of the 2000 POEA-SEC, especially when the same would result into inequitable consequences against labor, is not subscribed to in this jurisdiction. Concordant

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[46] *Id*. at 266; emphasis and underscoring supplied.

with the State's avowed policy to give maximum aid and full protection to labor as enshrined in Article XIII of the 1987 Philippine Constitution, contracts of labor, such as the 2000 POEA-SEC, are deemed to be so impressed with public interest that the more beneficial conditions must be endeavoured in favor of the laborer. The rule therefore is one of liberal construction. x x x

x x x x x x x x x

Applying the rule on liberal construction, the Court is thus brought to the recognition that medical repatriation cases should be considered as an exception to Section 20 of the 2000 POEA-SEC. Accordingly, the phrase "work-related death of the seafarer, during the term of his employment contract" under Part A (1) of the said provision should not be strictly and literally construed to mean that the seafarer's work-related death should have precisely occurred during the term of his employment. **Rather, it is enough that the seafarer's work-related injury or illness which eventually causes his death should have occurred during the term of his employment**. Taking all things into account, the Court reckons that it is by this method of construction that undue prejudice to the laborer and his heirs may be obviated and the State policy on labor protection be championed. **For if the laborer's death was brought about (whether fully or partially) by the work he had harbored for his master's profit, then it is but proper that his demise be compensated.** x x x.[47] (Emphases supplied)

Notably, the foregoing doctrine has been further applied by the Court in the succeeding cases of *Racelis v. United Philippine Lines, Inc.*[48] and *C.F. Sharp Crew Management, Inc. v. Legal Heirs of the Late Repiso*,[49] wherein the Court allowed the recovery of death benefits for the heirs of the seafarers who died after they were repatriated and hence, terminated from employment.

In this case, the NLRC ruled that the Heirs of Manolo were precluded from recovering death benefits, since Manolo's death occurred after his repatriation and hence, at the time when his employment with SSMI was already terminated. By virtue of this erroneous finding, the NLRC did not anymore proceed to

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[47] *Id*. at 266-269; emphases supplied.

[48] 746 Phil. 758 (2014).

[49] 780 Phil. 645 (2016).

rule on the issue of work-relatedness. For its part, the CA upheld the NLRC anent denial of death benefits, but awarded disability benefits, since the work-relatedness of Manolo's illness was established.

Clearly, the foregoing pronouncements are inconsistent with the Court's ruling in *Canuel*. As discussed above, a seafarer's death occurring after the term of his employment shall be compensable under the POEA-SEC provided that such death was caused by a work-related injury or illness that was sustained during the term of his employment. As such, the CA erred in not attributing grave abuse of discretion on the part of the NLRC in denying the Heirs of Manolo's claim for death benefits. In fine, the petition in **G.R. No. 238261** should be granted, and thus, the amounts of US$50,000.00 or its Philippine Peso equivalent at the time of payment representing death benefits, US$7,000.00 to each of the two (2) minor children of Manolo or US$14,000.00, and ten percent (10%) of such aggregate amount as attorney's fees should be awarded in favor of the Heirs of Manolo as prayed for under Section 20 (B) (1) of the 2010 POEA-SEC.

WHEREFORE, the petition in **G.R. No. 238567** is **DENIED**, while the petition in **G.R. No. 238261** is **GRANTED**. Accordingly, the Decision dated October 12, 2017 and the Resolution dated March 22, 2018 of the Court of Appeals in CA-G.R. SP No. 146325 are hereby **SET ASIDE**. A new one is **ENTERED** ordering Singa Ship Management, Inc., Singa Ship Management Pte Ltd., Singapore, and Rene N. Riel to jointly and severally pay the Heirs of the Late Manolo N. Licuanan (Manolo), represented by his wife, Virginia S. Licuanan, the amounts of US$50,000.00 or its Philippine Peso equivalent at the time of payment representing death benefits, US$7,000.00 each (or a total of US$14,000.00) to the two (2) minor children of Manolo, and ten percent (10%) of such aggregate amount as attorney's fees.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 238519. June 26, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DESIREE DELA TORRE *y* ARBILLON,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS OF BOTH CRIMES, ENUMERATED; REQUIREMENTS FOR CONVICTION. — [A]ppellant was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of R.A. No. 9165. In order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. On the other hand, when an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. However, in order to sustain a conviction in both instances, the identity of the prohibited drug should be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. To remove any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.

2. ID.; ID.; ID.; SUFFICIENT EVIDENCE TO ESTABLISH A CHAIN OF CUSTODY, EXPLAINED; LINKS IN THE CHAIN OF CUSTODY THAT MUST BE PROVED. — To establish a chain of custody sufficient to make the evidence

admissible, the proponent needs only to prove a rational basis from which to conclude that the evidence is what the party claims it to be. In other words, in a criminal case, the prosecution must offer sufficient evidence from which the trier of fact could reasonably believe that an item still is what the government claims it to be. Thus, the links in the chain of custody that must be established are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.

3. ID.; ID.; ID.; FAILURE TO COMPLY WITH THE CHAIN OF CUSTODY RULE DOES NOT AUTOMATICALLY RENDER THE SEIZURE AND CUSTODY OF THE ITEMS VOID, PROVIDED THAT THE PROSECUTION PROVES THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE DRUGS ARE PROPERLY PRESERVED. — [U]nder certain conditions, strict compliance with the requirements of Section 21, Article II of R.A. No. 9165 may not always be possible. The failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had, nonetheless, been preserved. There has to be a justifiable ground for non-compliance to be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

4. ID.; ID.; ID.; ID.; WHERE THERE WAS NON-OBSERVANCE OF THE WITNESS REQUIREMENT AND NO PLAUSIBLE EXPLANATION WAS GIVEN BY THE PROSECUTION, DOUBT SURFACES ON THE SUFFICIENCY OF THE

EVIDENCE TO CONVICT, HENCE, APPELLANT'S ACQUITTAL IS IN ORDER. — It must be emphasized that the mere marking of the seized drugs, as well as the conduct of an inventory, in violation of the strict procedure requiring the presence of the accused, the media, and responsible government functionaries, fails to approximate compliance with Section 21, Article II of R.A. No. 9165. The presence of these personalities, and the immediate marking and conduct of physical inventory after seizure and confiscation, in full view of the accused, and the required witnesses cannot be brushed aside as a simple procedural technicality. Relative thereto, the prosecution likewise failed to provide any explanation as to why it did not secure the presence of a representative from the DOJ and the media. There was no showing of even an attempt to contact representatives from the DOJ and the media. Minor deviations may be excused in situations where a justifiable reason for non-compliance is explained. However, in the instant case, despite the non-observance of the witness requirement, no plausible explanation was given by the prosecution. x x x The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item. A stricter adherence to Section 21 is required where the quantity of the illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration. If doubt surfaces on the sufficiency of the evidence to convict, regardless that it does only at the stage of an appeal, our courts of justice should, nonetheless, rule in favor of the accused, lest it betrays its duty to protect individual liberties within the bounds of law. Thus, considering that the procedural lapses committed by the arresting officers, which were unfortunately left unjustified, militate against a finding of guilt beyond reasonable doubt against appellant, as the integrity and evidentiary value of the *corpus delicti* had been compromised, the Court is constrained to rule that appellant's acquittal is in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal filed by appellant Desiree Dela Torre *y* Arbillon of the Decision[1] dated July 27, 2017 of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 08268, affirming with modification the Decision[2] dated April 13, 2016 of the Regional Trial Court (*RTC*) of Makati City, Branch 64 in Criminal Case Nos. 15-1009 and 15-1010.

The antecedent facts are as follows:

On March 14, 2015, at around 11:00 a.m., PSupt. Mario Ignacio alerted his team and tasked them to conduct an anti-narcotics operation in Barangay Palanan, Makati City. Prosecution witness PO1 Mauro Pagulayan was informed that their target was a certain *alias* "Zandra" who was suspected to sell illegal drugs in Barangay Palanan. After conducting an anti-narcotics operation in said area, their team, headed by P/Insp. Crisanto Racoma, had a briefing. PO1 Pagulayan was designated as the poseur-buyer. He was given a ₱1,000.00 bill, with serial number RM289309, to be used as marked money. It was also agreed that PO1 Pagulayan would give a pre-arranged signal of scratching the side of his body when the sale was consummated. Meanwhile, PO1 Mario Maramag was designated as police backup, while the rest of the team would serve as perimeter security.[3]

PO1 Maramag coordinated with the Philippine Drug Enforcement Agency and submitted a coordination form in order to legalize the buy-bust operation. Then, PO1 Pagulayan called their regular informant to locate *alias* Zandra. A few hours after, their informant confirmed *alias* Zandra's location and so

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[1] *Rollo*, pp. 2-13; penned by Associate Justice Ramon M. Bato, Jr., and concurred in by Associate Justices Samuel H. Gaerlan and Jhosep Y. Lopez.

[2] CA *rollo*, pp. 45-51; penned by Judge Gina Bibat-Palamos.

[3] *Rollo*, p. 4.

they proceeded to meet the informant at Cash & Carry in Barangay Palanan. From Cash & Carry, PO1 Pagulayan and the rest of the team proceeded on foot towards Diesel Street. There, a female person whom the informant identified as *alias* Zandra stood at the side of the street. PO1 Pagulayan and the informant approached her and the informant introduced PO1 Pagulayan as his friend who wanted to get *shabu*. *Alias* Zandra asked him how much he needed and he said ₱1,000.00, to which *alias* Zandra. replied, "*akin na ang pera*." PO1 Pagulayan handed the marked money to her and she placed it inside her pocket. Thereafter, *alias* Zandra took out three plastic sachets containing white crystalline substances suspected to be *shabu* and asked PO1 Pagulayan to choose among the three. After he had chosen, *alias* Zandra returned the two plastic sachets inside her left pocket. PO1 Pagulayan placed the sachet containing white crystalline substances suspected to be *shabu* inside his pocket and, thereafter, introduced himself to *alias* Zandra as a policeman. PO1 Maramag then arrived and assisted PO1 Pagulayan in arresting *alias* Zandra. PO1 Pagulayan asked *alias* Zandra to take out from her pocket the marked money, as well as the two other plastic sachets containing white crystalline substances suspected to be *shabu*. PO1 Maramag then informed *alias* Zandra of the Miranda rights. They also called for a barangay official who could witness the inventory of the seized items. However, as a lot of people had already started to gather around them, they decided to head to the barangay hall in Palanan.[4]

Inside the barangay hall, PO1 Pagulayan made an inventory of the seized items and marked the sachet containing white crystalline substances suspected to be *shabu*, subject of the sale, as "M.A.P," and the two other sachets recovered from the appellant as "M.A.P-1" and "M.A.P-2," respectively. The seized items were marked and inventoried in the presence of Barangay Kagawad Jose A. Villa, Jr. The barangay *kagawad* signed the Inventory Receipt as proof that he was there to witness the inventory of the seized items. Photos of the appellant, as well as the seized items and buy-bust money, were also taken. Then,

[4] *Id.* at 4-5.

PO1 Pagulayan prepared a request for laboratory examination, the chain of custody form, and a request for drug test. He, thereafter, brought these documents, as well as the seized items, to the crime laboratory. PCI May Andrea Bonifacio conducted a qualitative examination of the three heat-sealed plastic sachets containing white crystalline substances marked as "M.A.P" weighing 0.26 gram, "M.A.P-1" weighing 0.25 gram, and "M.A.P-2" weighing 0.27 gram, and found each one of them to be positive for *methamphetamine hydrochloride* or *shabu*, a dangerous drug. She then reduced her findings on Chemistry Report No. D-227-15.[5]

Appellant was charged in two separate informations for violation of Sections 5 and 11 of Republic Act (*R.A.*) No. 9165 on March 16, 2015, to wit:

In Criminal Case No. 15-1009:

> On the 14th day of March 2015, in the city of Makati, the Philippines, accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver, and give away Methamphetamine Hydrochloride weighing zero point twenty six (0.26) gram, a dangerous drug, in consideration of Php1,000.
>
> CONTRARY TO LAW.[6]

In Criminal Case No. 15-1010:

> On the 14th day of March 2015, in the city of Makati, the Philippines, accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in her possession, direct custody and control a total of zero point fifty two (0.52) gram of Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.
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> CONTRARY TO LAW.[7]

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[5] *Id.* at 5.

[6] Records, p. 3.

[7] *Id.* at 7.

Upon arraignment, appellant pleaded not guilty to both crimes as charged. During pre-trial, the parties agreed to dispense with the testimony of PO3 Voltaire Esguerra and, instead, stipulated on the following: 1) lack of knowledge as to how the appellant was arrested and as to the confiscation of the evidence, and that he was the investigator of the case; 2) he prepared and signed the investigation report, request for drug test, and chain of custody form; 3) he could identify the appellant and the seized items; 4) he signed the inventory receipt of the three pieces of transparent plastic sachets containing white crystalline substances from PO1 Pagulayan; 5) after receiving the seized items from PO1 Pagulayan, he returned the same to the latter for delivery to the crime laboratory as appearing in the chain of custody form; and 6) the scanned image of the ₱1,000.00 bill is a faithful reproduction of the original.[8]

The parties likewise agreed to dispense with the testimony of PCI May Andrea Bonifacio and stipulated that: 1) she is connected with the Southern Police District Crime Laboratory as a forensic chemist; 2) she is authorized to conduct qualitative examination on the specimen submitted to their office for the purpose; 3) on March 14, 2015, their office received drug items seized from the appellant for qualitative examination as per Request for Laboratory Examination; 4) she conducted the qualitative examination on the three heat-sealed transparent plastic sachets, with markings "M.A.P," "M.A.P-1" and "M.A.P-2," containing white crystalline substances; 5) in the course of the examination, she found the specimens positive for the presence of methamphetamine hydrochloride, a dangerous drug; and 6) she reduced into writing her findings as evidenced by Chemistry Report No. D-277-15. To safeguard the integrity of the specimens, she placed the three sachets in a bigger plastic sachet and marked the same with D-277-15, which corresponds to the Chemistry Report number, and with her initial.[9]

For her part, appellant denied the charges against her. She testified that on March 14, 2015, she was at her boyfriend's

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[8] *Rollo*, p. 3.

[9] *Id.* at 3-4.

house, together with a friend, when, suddenly, several civilian men entered her boyfriend's house and started looking for a certain "Tata." Her boyfriend answered that there was no such person in the house. However, the men still proceeded to search the house and told them to go with them to their office. They were taken to the basement of the Criminal Investigation Division (*CID*). Appellant alleged that the men asked money from them. She added that they were later brought to the barangay hall where their photographs were taken, and two plastic sachets and money were presented. Thereafter, they were asked to go to the SOCO to urinate before they were transported back to the CID.[10]

On April 13, 2016, the trial court found appellant guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:
>
> 1. In Criminal Case No. 15-1009, finding the accused Desiree Dela Torre y Arbillon, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and sentencing her to life imprisonment and to pay a fine of THREE HUNDRED THOUSAND PESOS (Php300,000.00) without subsidiary imprisonment in case of insolvency; and
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> 2. In Criminal Cases Nos. 15-1010, finding the accused Desiree Dela Torre y Arbillon, GUILTY of the charge for violation of Section 11, Article II of RA 9165 and sentencing her to an indeterminate penalty of twelve (12) years and one (1) day to fourteen (14) years of imprisonment and to pay a fine of THREE HUNDRED THOUSAND PESOS (Php300,000.00) without subsidiary imprisonment in case of insolvency.
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> SO ORDERED.[11]

On appeal, the CA affirmed the RTC Decision with modification as to the fine imposed. The dispositive portion of which reads:

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[10] CA *rollo*, pp. 109-110.

[11] Records, p. 144.

WHEREFORE, in view of the foregoing, the appeal is DENIED for lack of merit. The Decision dated 13 April 2016 of the Regional Trial Court of Makati, Branch 64 is hereby AFFIRMED with MODIFICATION as to the fine in Criminal Case No. 15-1009 which shall be increased to Php500,000.00 to conform with the imposable fine as provided in Section 5, Article II of RA 9165.

SO ORDERED.[12]

Thus, the instant appeal raising the same issues raised before the appellate court:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTIONS 5 AND 11, ARTICLE II OF REPUBLIC ACT NO. 9165, DESPITE THE PROSECUTION'S FAILURE TO ADEQUATELY ESTABLISH THE CHAIN OF CUSTODY.

II

THE COURT A QUO GRAVELY ERRED IN DISMISSING THE ACCUSED-APPELLANT'S DEFENSE OF DENIAL FOR BEING EASILY CONCOCTED AND A COMMON DEFENSE PLOY IN CASES INVOLVING DANGEROUS DRUGS.[13]

Appellant would like to impress upon this Court that there were significant deficiencies in the chain of custody which render the identity and integrity of the specimen submitted in evidence. Appellant alleged that the marking of dangerous drugs or related items should be made in the presence of the apprehended violator immediately upon arrest; however, in this case, appellant claimed that the seized drug items were not marked on site, but in the barangay hall, at least an hour or two after the arrest was made.

Appellant likewise claimed that during the physical inventory, only an elected public official, *i.e.*, Barangay Kagawad Jose A. Villa, Jr., was present, in violation of the requirements of R.A. No. 9165. There was also no justifiable ground for the

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[12] *Rollo*, p. 12.

[13] CA *rollo*, p. 23.

non-compliance. Thus, considering the irregularities and non-compliance with the chain of custody, appellant asserted that she must be acquitted since the law demands that proof beyond reasonable doubt must be established.

We find merit in the petition.

In the instant case, appellant was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of R.A. No. 9165. In order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.[14] On the other hand, when an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.[15]

However, in order to sustain a conviction in both instances, the identity of the prohibited drug should be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. To remove any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[16]

To establish a chain of custody sufficient to make the evidence admissible, the proponent needs only to prove a rational basis from which to conclude that the evidence is what the party claims

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[14] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[15] *People v. Bio*, 753 Phil. 730, 736 (2015).

[16] See *People v. Viterbo, et al.*, 739 Phil. 593, 601 (2014). See also *People v. Alivio, et al.*, 664 Phil. 565, 576-580 (2011); and *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

it to be. In other words, in a criminal case, the prosecution must offer sufficient evidence from which the trier of fact could reasonably believe that an item still is what the government claims it to be.[17] Thus, the links in the chain of custody that must be established are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.[18]

Section 21(1), Article II of R.A. No. 9165[19] states:

> Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so 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[.]

Supplementing the above-quoted provision, Section 21 (a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 mandates:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation,

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[17] *People v. Romy Lim y Miranda*, G.R. No. 231989, September 4, 2018.

[18] *Id.*

[19] Took effect on July 4, 2002.

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.[20]

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No 9165, it incorporated the saving clause contained in the IRR, thus:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

In the case of *People v. Mendoza*,[20] the Court stressed that without the insulating presence of the representative from the

[20] 736 Phil. 749 (2014).

media or the Department of Justice (*DOJ*), or any elected public official during the seizure and marking of the seized drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A. No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the said drugs that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the presence of such witnesses would have preserved an unbroken chain of custody.[21]

However, under certain conditions, strict compliance with the requirements of Section 21, Article II of R.A. No. 9165 may not always be possible. The failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[22] The Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had, nonetheless, been preserved.[23] There has to be a justifiable ground for non-compliance to be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[24]

However, in the instant case, the Court finds that the arresting officers committed unjustified deviations from the prescribed chain of custody rule, thus, putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from appellant.

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[21] *Id.* at 764.

[22] See *People v. Goco*, 797 Phil. 433, 443 (2016).

[23] *People v. Almorfe, et al.*, 631 Phil. 51, 60 (2010).

[24] *People v. De Guzman y Danzil*, 630 Phil. 637, 649 (2010).

An examination of the records reveals that the inventory and photography of the seized items were made in the presence of only one witness, *i.e.*, Barangay Kagawad Villa, as evidenced by his signature on the Receipt of Property/Evidence Seized. There was no presence of representatives from either the DOJ and the media. It must be likewise pointed out that the marking and preparation of inventory were not immediately done and were not even made at the place of arrest or at the nearest police station, but were actually done in the barangay hall. This fact was confirmed by PO1 Pagulayan, the poseur-buyer of the buy-bust team that apprehended appellant, in his testimony in the direct and cross examinations to *wit*:

PROSECUTOR
Do you have any proof that there was an inventory conducted at the barangay hall?

WITNESS
Yes, ma'am.

PROSECUTOR
And what proof do you have?

WITNESS
The inventory form, ma'am.

PROSECUTOR
If I show to you a copy of that inventory, will you be able to identify it?

WITNESS
Yes, ma'am.

PROSECUTOR
I have here, Mr. Witness, an Inventory Receipt dated March 14, 2015 already marked as our Exhibit E. Will you please go over this and tell us what relation has this with the Inventory Form which you said was accomplished at the barangay hall?

WITNESS
My signature appears there.

PROSECUTOR
Witness, Your Honor, is pointing to his signature appearing above the name PO1 Mauro Pagulayan. Mr. Witness, it appears to be handwritten, whose handwriting is this?

WITNESS
That is my handwriting, ma'am.

PROSECUTOR
And who were present during the inventory?

WITNESS
The elected barangay official.

PROSECUTOR
Who is that?

WITNESS
Kag. Jose Villa.

PROSECUTOR
Who else?

WITNESS
My back-up Mario Maramag.

PROSECUTOR
How about the accused, where was she during the inventory?

WITNESS
She was beside me, ma'am.[25] (Emphases supplied.)

On cross-examination:

ATTY. PERALTA
Yes, Your Honor. Mr. Witness, you mentioned in your Sinumpaang Salaysay that the buy bust operation was conducted on March 14, 2015, is that correct?

WITNESS
Yes, sir.

ATTY. PERALTA
What time did you arrest the accused?

WITNESS
Around 2:30, sir.

ATTY. PERALTA
In the morning or in the afternoon?

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[25] TSN, June 23, 2015, pp. 7-8.

WITNESS
In the afternoon, sir.

ATTY. PERALTA
And after the arrest, did you immediately conduct the physical inventory of the items that you seized?

WITNESS
No, sir. We decided to go to the barangay hall to conduct the inventory.

ATTY. PERALTA
Did you immediately go to the barangay hall?

WITNESS
No, sir, after the buy bust operation, we ordered the suspect to bring out the contents of her pocket.

ATTY. PERALTA
You conducted the physical inventory of the items that you allegedly seized from the accused?

WITNESS
No, sir, we conducted the inventory at the barangay hall.

ATTY. PERALTA
So, you did the inventory?

WITNESS
Yes, sir.

ATTY. PERALTA
Did you do this immediately?

WITNESS
Yes, sir.

ATTY. PERALTA
What time did you do this?

WITNESS
Around 3:00 to 4:00 in the afternoon.

ATTY. PERALTA
Did you indicate the time when you conducted the physical inventory of the items that you seized, did you indicate it in the inventory receipt?

WITNESS
No, sir.

ATTY. PERALTA
Mr. Witness, you would agree with me that you turned over the items that you seized to PO3 Voltaire Esguerra, is that correct?

WITNESS
Yes, sir.

ATTY. PERALTA
And based on your Chain of Custody Form, PO3 Voltaire Esguerra turned it over to you?

WITNESS
Yes, sir.

ATTY. PERALTA
What time did he turn over it to you?

WITNESS
Around 5:00 o'clock, sir.

ATTY. PERALTA
What day?

WITNESS
March 14.

ATTY. PERALTA
Was the time indicated when the items were turned over by PO3 Esguerra?

WITNESS
No, sir.

ATTY. PERALTA
What time did you receive the items from PO3 Esguerra?

WITNESS
Around 5:00 o'clock, sir, I did not know the specific time.

ATTY. PERALTA
Was the time indicated?

WITNESS
No, sir.

ATTY. PERALTA
And after that, you turned over the item that you seized to PCI May Bonifacio?

WITNESS
Yes, sir.

ATTY. PERALTA
Was the time indicated?

WITNESS
Yes, sir.

ATTY. PERALTA
What time?

WITNESS
Around 6:00 o'clock, sir. They put the time there.

ATTY. PERALTA
And during the physical inventory, Mr. Witness, was there a representative from the [DOJ] present?

WITNESS
Only the barangay elected official, sir.

ATTY. PERALTA
There was none?

WITNESS
Yes, sir.

ATTY. PERALTA
Was there a representative from the media present?

WITNESS
None, sir.

ATTY. PERALTA
That would be all, Your Honor.[26] (Emphases supplied.)

It must be emphasized that the mere marking of the seized drugs, as well as the conduct of an inventory, in violation of the strict procedure requiring the presence of the accused, the media, and responsible government functionaries, fails to

[26] *Id.* at 15-18.

approximate compliance with Section 21, Article II of R.A. No. 9165.[27] The presence of these personalities, and the immediate marking and conduct of physical inventory after seizure and confiscation, in full view of the accused, and the required witnesses cannot be brushed aside as a simple procedural technicality.[28] Relative thereto, the prosecution likewise failed to provide any explanation as to why it did not secure the presence of a representative from the DOJ and the media. There was no showing of even an attempt to contact representatives from the DOJ and the media. Minor deviations may be excused in situations where a justifiable reason for non-compliance is explained.[29] However, in the instant case, despite the non-observance of the witness requirement, no plausible explanation was given by the prosecution.

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law. Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item. A stricter adherence to Section 21 is required where the quantity of the illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.[30]

If doubt surfaces on the sufficiency of the evidence to convict, regardless that it does only at the stage of an appeal, our courts

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[27] *People v. Dela Victoria*, April 16, 2018, G.R. No. 233325.

[28] *Id.*

[29] *People v. Crispo*, March 14, 2018, G.R. No. 230065.

[30] *People v. Reyes and Santa Maria*, April 23, 2018, G.R. No. 219953.

of justice should, nonetheless, rule in favor of the accused, lest it betrays its duty to protect individual liberties within the bounds of law.

Thus, considering that the procedural lapses committed by the arresting officers, which were unfortunately left unjustified, militate against a finding of guilt beyond reasonable doubt against appellant, as the integrity and evidentiary value of the *corpus delicti* had been compromised, the Court is constrained to rule that appellant's acquittal is in order.

WHEREFORE, premises considered, the Decision dated July 27, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08268 is **REVERSED** and **SET ASIDE**. Appellant Desiree Dela Torre *y* Arbillon is **ACQUITTED** of the crimes charged for failure of the prosecution to prove her guilt beyond reasonable doubt. She is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is confined for any other lawful cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished to the Superintendent of the Correctional Institution for Women for immediate implementation. Said Superintendent is **ORDERED to REPORT** to this Court, within five (5) working days from receipt of this Decision, the action he/she has taken.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 238589. June 26, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALLEN BAHOYO *y* DELA TORRE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165) AS AMENDED BY RA 10640; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS OF BOTH CRIMES, ENUMERATED; REQUIREMENTS FOR CONVICTION. — To convict an accused who is charged with illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165, the prosecution must establish the following elements by proof beyond reasonable doubt: (a) that the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs. On the other hand, in order to secure a conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused. The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution must show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.

2. ID.; ID.; ID.; RA 10640 REDUCED THE NUMBER OF WITNESSES REQUIRED DURING INVENTORY AND TAKING OF PHOTOGRAPHS; EFFECT OF FAILURE OF THE ARRESTING OFFICERS TO JUSTIFY THE ABSENCE OF ANY OF THE REQUIRED WITNESSES. — [T]he amendments introduced by R.A. No. 10640 reduced the number of witnesses required to be present during the inventory and taking of photographs. At present, only two witnesses are

required — an elected public official AND a representative from the Department of Justice (DOJ) OR the media. It should be noted, however, that even with the passage of R.A. No. 10640, the presence of an elected public official remains indispensable. These witnesses must be present during the inventory stage and are likewise required to sign the copies of the inventory and be given a copy of the same, to ensure that the identity and integrity of the seized items are preserved and that the police officers complied with the required procedure. Failure of the arresting officers to justify the absence of any of the required witnesses shall constitute as a substantial gap in the chain of custody.

3. ID.; ID.; ID.; THE UNJUSTIFIED ABSENCE OF AN ELECTED PUBLIC OFFICIAL DURING THE ACTUAL INVENTORY OF THE SEIZED ITEMS IN THIS CASE CONSTITUTES A SUBSTANTIAL GAP IN THE CHAIN OF CUSTODY; AS THIS SUBSTANTIAL GAP CASTS SERIOUS DOUBT ON THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI*, ACCUSED MUST BE ACQUITTED. — [T]he prosecution failed to justify its non-compliance with the requirements laid down in Section 21, specifically, the presence of the two required witnesses during the actual inventory of the seized items. The unjustified absence of an elected public official during the inventory stage constitutes a substantial gap in the chain of custody. Such absence cannot be cured by the simple expedient of alleging that there has been substantial compliance with the requirement. The law is clear. Before the prosecution can rely on the saving clause found in Section 21, it must first establish that non-compliance was based on justifiable grounds and that they put in their best effort to comply with the same but was *prevented* from *doing so* by circumstances *beyond their control*. This substantial gap or break in the chain casts serious doubt on the integrity and evidentiary value of the *corpus delicti*. As such, Bahoyo must 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

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

On appeal is the Decision[1] dated November 21, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08744, which affirmed *in toto* the Decision[2] dated October 26, 2016 of the Regional Trial Court (RTC) of Makati City, Branch 65, in Criminal Case Nos. R-MKT-16-01156 to 16-01157, finding accused-appellant Allen Bahoyo *y* Dela Torre (Bahoyo) guilty of violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

In two separate Informations dated July 17, 2016, Bahoyo was charged with violation of Sections 5 and 11, Article II of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The Informations read as follows:

Criminal Case No. R-MKT-16-01156-CR
(Violation of Section 5, Article II, R.A. No. 9165)

On July 17, 2016, in the City of Makati, the Philippines, accused not being lawfully authorized by law and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell and distribute one (1) heat sealed plastic sachet containing methamphetamine hydrochloride with a weight of zero point four thousand eight hundred thirty[-]five (0.4835) – gram, a dangerous drug, in consideration of the amount of five hundred (PhP500.00) pesos, in violation of the afore-cited law.

CONTRARY TO LAW.[3]

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[1] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Normandie B. Pizarro and Marie Christine Azcarraga-Jacob, concurring; CA *rollo*, pp. 102-111.

[2] Rendered by Judge Edgardo M. Caldona; *id*. at 56-63.

[3] *Id*. at 56.

Criminal Case No. R-MKT-16-01157-CR
(Violation of Section 11, Article II, R.A. No. 9165)

On July 17, 2016, in the City of Makati, the Philippines, accused, not being authorized by law and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, control and direct custody three (3) heat[-] sealed plastic sachets, containing methamphetamine hydrochloride (also known as shabu) with a total weight of zero point five thousand eight hundred eighteen (0.5818) [gram], a dangerous drug, in violation of the afore-said law.

CONTRARY TO LAW.[4]

Upon being arraigned on July 26, 2016 for violation of Section 11 of R.A. No. 9165, and on August 24, 2016, for violation of Section 5 of the same Act, Bahoyo, assisted by counsel, separately entered a plea of "Not guilty" for the two offenses.[5]

Version of the Prosecution

The prosecution presented two witnesses: Police Officer 2 Sherwin Limbauan (PO2 Limbauan), the poseur-buyer, and PO2 Leonard Sebial (PO2 Sebial), the backup member of the entrapment operation.

On July 17, 2016, a confidential informant arrived at the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG) of the Makati Police Station and reported to PO2 Limbauan about the illegal drug activities of a certain Bahoyo of Barangay Valenzuela, Makati City. A team was immediately formed by Police Superintendent Anthony Bagsik, comprising of ten (10) police officers, including PO2 Limbauan and PO2 Sebial, for a possible buy-bust operation.[6]

PO2 Limbauan and PO2 Sebial were assigned as the poseur-buyer and the immediate back-up, respectively. PO2 Limbauan was provided with one 500-peso bill to be used as buy-bust

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[4] *Id*. at 57.

[5] *Id*.

[6] *Rollo*, pp. 2-3.

money, which he marked by affixing his initials "SCL." It was further agreed that PO2 Limbauan will remove his ballcap to alert PO2 Sebial that the transaction was consummated. After coordinating with the Philippine Drug Enforcement Agency (PDEA), the team received another call from their informant that Bahoyo was presently at the streets of J.P. Rizal corner Sta. Lucia of Barangay Olympia, Makati City.[7]

From there, the buy-bust team proceeded to the target area wherein PO2 Limbauan met with the informant and proceeded to where Bahoyo was conducting his activities. Upon seeing Bahoyo, the informant and PO2 Limbauan approached him. The informant introduced PO2 Limbauan as a buyer who was interested in purchasing ₱500.00 worth of *shabu*. Bahoyo asked for the payment and PO2 Limbauan handed him the marked money. Bahoyo then took out from his pocket four (4) plastic sachets containing white crystalline substance and gave one sachet to PO2 Limbauan. Upon receiving the sachet from Bahoyo, PO2 Limbauan removed his ballcap to alert the team that the transaction has been completed. After introducing themselves as police officers and informing Bahoyo of his constitutional rights, PO2 Limbauan conducted a procedural search and three (3) more sachets containing white crystalline substance were recovered from Bahoyo. At the place of arrest, PO2 Limbauan marked the plastic sachet obtained from the sale with "SCL" and the sachets seized in Bahoyo's possession with "SCL-1," "SCL-2," and "SCL-3."[8]

Thereafter, the buy-bust team proceeded to the Makati Police Station where physical inventory was conducted and photographs were taken in the presence of Bahoyo and Cesar Morales (Morales), a media representative from *Remate*.[9]

PO3 Michael Danao (PO3 Danao) was the police investigator who prepared the investigation report and requests for laboratory

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[7] *Id*.

[8] *Id*. at 3.

[9] *Id*. at 4.

examination of the items that were purchased and obtained from the accused. PO3 Danao also testified that, after the inventory, he turned over to the forensic chemist the seized drugs as evidenced in the chain of custody form.[10]

Police Senior Inspector Ofelia Vallejo, the forensic chemist, received the seized items from PO3 Danao for laboratory examination and, thereafter, prepared Physical Science Report No. D-981-2016. The test revealed that the four (4) plastic sachets containing white crystalline substance were positive for methamphetamine hydrochloride or *shabu*.[11] Morales, a media representative of the tabloid, testified that he signed the inventory form. He was the lone independent witness during the inventory.[12]

Version of the Defense

Bahoyo himself was the lone witness for the defense. He vehemently denied the accusations hurled at him and testified that at 7:30 p.m., he was on his way home to Honradez Street, Barangay Olympia, Makati City when a commotion happened at the parallel side of the street.

Curious, he went to the scene and saw that a woman was being forced by armed men to board a tricycle. When the men saw him, they grabbed his arm and brought him inside to be taken to the SAID-SOTG. Afterwhich, he was detained for the crimes charged.[13]

In a Decision[14] dated October 26, 2016, the RTC found Bahoyo guilty of the crimes charged, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

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[10] *Id*.

[11] *Id*.

[12] CA *rollo*, p. 57.

[13] *Id*. at 59.

[14] *Id*. at 56-63.

1. In Criminal Case No. R-MKT-16-01156-CR, the court finds the accused, Allen Bahoyo y Dela Torre, GUILTY beyond reasonable doubt of the crime of Violation of Section 5, Article II, RA No. 9165 and sentences him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred [T]housand Pesos (PhP500,000.00).

2. In Criminal Case No. R-MKT-16-01157-CR, the court finds the same accused, Allen Bahoyo y Dela Torre, GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II, RA No. 9165 and sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of Three Hundred Thousand Pesos (PhP300,000.00).

The period of detention of the accused should be given full credit.

Let the dangerous drugs subject matter of these cases be disposed of in the manner provided for by law.

The Branch Clerk of Court is directed to transmit the plastic sachets containing shabu subject matter of these cases to the PDEA for said agency's appropriate disposition.

SO ORDERED.[15]

On appeal, the CA affirmed the ruling of the lower court. The appellate court held that the dangerous drugs which constitute the *corpus delicti* of the offense were properly secured and that the absence of a representative from the Department of Justice and an elected public official is not fatal to the prosecution's case. The dispositive portion of the CA Decision[16] dated November 21, 2017 reads:

PENALTY

Under RA 9165, the penalty for the unauthorized sale of shabu, regardless of quantity and purity, is life imprisonment to death and a fine ranging from PhP500,000.00 to PhP10,000,000.00. However, with the enactment of RA 9346, only life imprisonment and fine shall be imposed. Thus, the penalty imposed by the trial court, which is life imprisonment and a fine of PhP500,000.00, is proper. On the

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

[16] *Rollo*, pp. 2-11.

other hand, the penalty for illegal possession of dangerous drugs, is imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from PhP300,000.00 to PhP400,000.00, if the quantity is less than five (5) grams. Here, accused-appellant Bahoyo was found to have been in possession of 0.5818 gram of shabu. Hence, he was properly meted the penalty of imprisonment ranging from twelve (12) [years] and one (1) day, as minimum, to fourteen (14) years and eight (8) months[,] as maximum, and a fine of PhP300,000.00.

FOR THESE REASONS, the appeal is **DENIED**. The assailed Decision dated October 26, 2016 of the Regional Trial Court in Criminal Case Nos. R- MKT-16-01156 to 16-01157 is **AFFIRMED**.

SO ORDERED.[17]

Hence, the present appeal.

Ruling of the Court

The appeal is meritorious.

To convict an accused who is charged with illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165, the prosecution must establish the following elements by proof beyond reasonable doubt: (a) that the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.[18]

On the other hand, in order to secure a conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented

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[17] *Id*. at 11.

[18] *People of the Philippines v. Ismael*, G.R. No. 208093, February 20, 2017, 818 SCRA 122, 132; *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012), citing *People v. Sembrano*, 642 Phil. 476, 490-491 (2010).

as evidence in court and is shown to be the same drugs seized from the accused.[19]

The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution must show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.[20]

In *People v. Relato*,[21] the Court explained that in a prosecution for sale and possession of methamphetamine hydrochloride (*shabu*) prohibited under R.A. No. 9165, the State not only carries the heavy burden of proving the elements of the offense but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. **It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court.** Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.[22]

Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the

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[19] *People of the Philippines v. Ismael*, *id*. at 131-132.

[20] *People of the Philippines v. Ronaldo Paz y Dionisio*, G.R. No. 229512, January 31, 2018, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014); *People v. Alivio, et al.*, 664 Phil. 565, 580 (2011); *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

[21] 679 Phil. 268 (2012).

[22] *Id*. at 277-278.

seizure and custody of dangerous drugs. Paragraph 1 not only provides the manner by which the seized drugs must be handled but, likewise, enumerates the persons who are required to be present during the inventory and taking of photographs, *viz*.:

> **SEC. 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof. (Emphasis and underscoring Ours)

In 2014, R.A. No. 10640[23] amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the anti-drug campaign of the government. Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2), to wit:

> **SEC. 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered. Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources

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[23] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002." Approved on June 9, 2014.

of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment **shall**, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s for whom such items were confiscated and/or seized, or his/her representative or counsel, **with an elected public official AND a representative of the National Prosecution Service OR the media who shall be required to sign the copies of the inventory and be given a copy thereof**: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/ team whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements **under justifiable grounds**, as long as the integrity and the evidentiary value of the seized items are properly by the apprehending officer/ team, shall not render void and invalid such seizures and custody over said items. (Emphasis and underscoring Ours)

A comparison of the cited provisions show that the amendments introduced by R.A. No. 10640 reduced the number of witnesses required to be present during the inventory and taking of photographs. At present, only two witnesses are required — an elected public official AND a representative from the Department of Justice (DOJ) OR the media. It should be noted, however, that even with the passage of R.A. No. 10640, the presence of an elected public official remains indispensable. These witnesses must be present during the inventory stage and are likewise required to sign the copies of the inventory and be given a copy of the same, to ensure that the identity and integrity of the seized items are preserved and that the police officers complied with the required procedure. Failure of the arresting officers to justify the absence of any of the required witnesses shall constitute as a substantial gap in the chain of custody.

The Court, in *People v. Mendoza*,[24] explained that the presence of these witnesses would preserve an unbroken chain of custody and prevent the possibility of tampering with or "planting" of evidence, *viz*.:

> Without the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of [R.A.] No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. x x x[25] (Italics in the original)

Based on the findings of the trial court, media representative Morales was the only witness who signed the inventory form. As to whether or not Morales witnessed the actual inventory or had personal knowledge of the circumstances surrounding the possession, sale, recovery or seizure of the dangerous drugs, the same was not duly established by the prosecution. The arresting officers' failure to secure the presence of an elected public official should not be taken lightly. At the very least, they should have alleged that earnest efforts were made to secure the attendance of these mandatory witnesses.

The Court is well aware that it may be difficult for the arresting officers to strictly comply with the requirements of Section 21 since they operate under varied field conditions and cannot at all times attend to the niceties of procedure. This is precisely why the saving clause found in the last paragraph of Section 21 serves as a satisfactory compromise between two extremes. The Court maintains that minor procedural lapses or deviations from the prescribed procedure are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is alleged and proven as a fact.

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[24] 736 Phil. 749 (2014).

[25] *Id*. at 764.

To the Court's mind, the lower courts relied so much on the narration of the prosecution witnesses that the integrity and evidentiary value of the seized drugs were preserved without taking into account the weight of these procedural lapses.

Simply put, the prosecution cannot simply invoke the saving clause found in Section 21 — that the integrity and evidentiary value of the seized items have been preserved — without justifying their failure to comply with the requirements stated therein. Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and unjustified disregard of procedural safeguards by the police officers themselves. The Court's ruling in *People v. Umipang*[26] is instructive on the matter:

> Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were recognized and explained in terms of justifiable grounds. There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.
>
> For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor

[26] 686 Phil. 1024 (2012).

of accused-appellant, as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.

As a final note, we reiterate our past rulings calling upon the authorities to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society. The need to employ a more stringent approach to scrutinizing the evidence of the prosecution especially when the pieces of evidence were derived from a buy-bust operation redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors.[27] (Citations omitted)

Here, the prosecution failed to justify its non-compliance with the requirements laid down in Section 21, specifically, the presence of the two required witnesses during the actual inventory of the seized items. The unjustified absence of an elected public official during the inventory stage constitutes a substantial gap in the chain of custody. Such absence cannot be cured by the simple expedient of alleging that there has been substantial compliance with the requirement. The law is clear. Before the prosecution can rely on the saving clause found in Section 21, it must first establish that non-compliance was based on justifiable grounds and that they put in their best effort to comply with the same but was *prevented* from *doing so* by circumstances *beyond their control*.

This substantial gap or break in the chain casts serious doubt on the integrity and evidentiary value of the *corpus delicti*. As such, Bahoyo must be acquitted.

Finally, it cannot be gainsaid that it is mandated by no less than the Constitution[28] that an accused in a criminal case shall

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[27] *Id*. at 1053-1054.

[28] Article III, Section 14(2) of the Constitution mandates:

Sec. 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face

be presumed innocent until the contrary is proved. In *People of the Philippines v. Marilou Hilario y Diana and Laline Guadayo y Royo*,[29] the Court ruled that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.

WHEREFORE, premises considered, the appeal is hereby **GRANTED**. The Decision dated November 21, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08744, which affirmed the Decision dated October 26, 2016 of the Regional Trial Court of Makati City, Branch 65 in Criminal Case Nos. RMKT-16-01156 to 16-01157 finding accused-appellant Allen Bahoyo *y* Dela Torre guilty of violating Sections 5 and 11, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Allen Bahoyo *y* Dela Torre is **ACQUITTED** of the crimes charged.

The Director of the Bureau of Corrections is **ORDERED** to **IMMEDIATELY RELEASE** accused-appellant Allen Bahoyo *y* Dela Torre from detention, unless he is being lawfully held in custody for any other reason, and to inform this Court of his action hereon within five (5) days from receipt of this Decision. Let entry of final judgment be issued immediately.

SO ORDERED.

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

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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.

[29] G.R. No. 210610, January 11, 2018.

FIRST DIVISION

[G.R. No. 239092. June 26, 2019]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **SPOUSES RAM M. SARDA and JANE DOE SARDA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; GENERALLY LIMITED TO REVIEWING ERRORS OF LAW; EXCEPTIONS, ENUMERATED. — In a petition for review on *certiorari* under Rule 45, the Court is generally limited to reviewing only errors of law. Nevertheless, the Court has enumerated several exceptions to this rule, such as when: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

2. CIVIL LAW; BANKS AND BANKING; CREDIT CARD TRANSACTION; IN THE ABSENCE OF SUFFICIENT EVIDENCE THAT THE CREDIT CARD ISSUED BY PETITIONER WAS DULY RECEIVED BY RESPONDENT, THE LATTER CANNOT BE HELD LIABLE FOR CASH ADVANCES AND PURCHASES IN THE SAID CREDIT CARD; SUBMISSION OF STATEMENTS OF ACCOUNT IS NOT ENOUGH TO ESTABLISH THAT CARDHOLDER MADE THE PURCHASES APPEARING THEREIN. — In a situation where a pre-approved client was issued a credit card, we have held that such client accepted the credit card by signing

a receipt and using the card to purchase goods and services. A contractual relationship was thereby created between the cardholder and the credit card issuer, governed by the terms and conditions found in the card membership agreement. With the denial of respondents that they received and used the credit card issued to Mr. Sarda, it was incumbent upon BPI to substantiate their claim that Mr. Sarda had used it in various transactions. BPI presented original copies of the statements of account beginning September 21, 2009 to September 22, 2013. All these billings were sent to Mr. Sarda at his office located at Rm. 507 SF Amberland Plaza, Doña J. Vargas Ave., Ortigas Center, Pasig City. However, respondents denied having received any of these monthly billings even as payments were indicated to have been made for those purchases using the primary and supplementary cards. The submission of statements of account is not enough to establish that the cardholder incurred the obligation to pay the purchases appearing therein. That it was respondents who made those purchases cannot also be inferred from the mere fact that substantial payments had been made on the total/minimum amounts due every month, in the absence of proof of the identity of the person who had actually paid them. BPI relies heavily on the supposed strict policy of the reputable establishments appearing in the statements of account in ascertaining the identity of the person presenting a credit card. However, it failed to present any witness from those establishments or any other evidence of respondents' alleged purchases and cash advances from them using the subject cards.

3. ID.; ID.; UNDER BANGKO SENTRAL NG PILIPINAS (BSP) CIRCULAR NO. 702, BANKS AND CREDIT CARD COMPANIES ARE NOW PROHIBITED FROM ISSUING PRE-APPROVED CREDIT CARDS; BSP CIRCULAR NO. 845-14 CLARIFIED THE MEANING OF "PRE-APPROVED CREDIT CARDS" AND ENHANCED THE PROHIBITION AGAINST ISSUING SUCH CARDS. — In relation to the duty imposed on banks to exercise a high degree of diligence in their business transactions, the Bangko Sentral ng Pilipinas (*BSP*) issued Circular No. 702, Series of 2010 pursuant to Monetary Board Resolution No. 1728, dated December 2, 2010, which amended the provisions of the Manual of Regulations for Banks (*MORB*) and the Manual of Regulations for Non-Bank Financial Institutions (*MORNBFI*). Banks, quasi-banks and credit card companies are now prohibited from issuing

pre-approved credit cards. Before issuing credit cards, these entities "must exercise proper diligence by ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments." Subsequently, on August 15, 2014, the BSP issued Circular No. 845-14, further amending the provisions of the MORB and the MORNBFI by clarifying the meaning of "Pre-Approved Credit Cards" and enhancing the prohibition against issuing such cards. It enumerated acts tantamount to issuing such unsolicited credit cards and stressed that the provisions of the circular shall prevail notwithstanding any contrary stipulations in the contract between the cardholder and the bank/non-bank credit card issuer. On the other hand, the term "application" is specifically defined as a "*documented request* of the credit card applicant to a credit card issuer for the availment of a credit card" and it is required that "[T]he intention and consent for the availment of the credit card must be clear and explicit."

4. ID.; PHILIPPINE CREDIT CARD INDUSTRY REGULATION LAW (RA 10870); ISSUERS ARE NOW MANDATED TO CONDUCT "KNOW-YOUR-CLIENT" PROCEDURES AND TO EXERCISE PROPER DILIGENCE IN SCREENING APPLICANTS. — Presently, the governing law is R.A. No. 10870, otherwise known as the Philippine Credit Card Industry Regulation Law. Before issuing credit cards, issuers are now mandated to conduct "know-your-client" procedures and to exercise proper diligence in ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments. Further, in the service level agreement between the acquiring banks and their partner merchants, there shall be a provision requiring such merchants to perform due diligence to establish the identity of the cardholders. Violations of the provisions of the new law, as well as existing rules and regulations issued by the Monetary Board, are penalized with imprisonment or fine, or both.

APPEARANCES OF COUNSEL

S.P. Madrid & Associates for petitioner.
Desierto & Desierto Law Firm for respondents.

D E C I S I O N

GESMUNDO, *J.*:

Before us is an appeal from the April 27, 2018 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 106788, which reversed and set aside the April 12, 2016 Decision[2] of the Regional Trial Court (*RTC*) of Makati City, Branch 143, in Civil Case No. 14-351. The RTC ordered respondents to pay petitioner the accumulated amounts for credit card purchases plus interest and charges and attorney's fees.

Antecedents

Petitioner Bank of the Philippine Islands (*BPI*) is a domestic commercial banking corporation. Among the services it offers is the issuance of credit cards for the purchase of goods and services on credit through its credit card system.

On March 28, 2014, BPI filed a Complaint against spouses Ram M. Sarda (*Mr. Sarda*) and "Jane Doe" Sarda (collectively, *respondents*). BPI alleged that it issued a credit card to Mr. Sarda under terms and conditions attached to the card upon its delivery. Respondents availed of BPI's credit accommodations by using the said credit card and thereafter incurred an outstanding obligation of ₱1,213,114.19 per BPI statement of account, dated September 22, 2013. Based on the bank's records, Mr. Sarda's last payment prior to the cancellation of the BPI credit card was on March 15, 2013, as shown in the March 20, 2013 statement of account. Despite demands for payment, Mr. Sarda refused to settle the obligation.[3]

BPI thus prayed that judgment be rendered against respondents ordering them to pay the principal amount of ₱1,213,114.19:

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[1] *Rollo*, pp. 97-106; penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Ramon R. Garcia and Myra V. Garcia-Fernandez, concurring.

[2] *Id.* at 108-110; penned by Judge Maximo M. De Leon.

[3] Records (Vol. I), pp. 1-2.

₱443,915.46 representing 3.25% finance charge per month and 6% late payment charges per month from October 2013 to February 2014; finance charge at the rate of 3.25% per month and late payment charges amounting to 6% per month or a fraction of month's delay starting March 2014, until the obligation is fully paid; attorney's fees equivalent to 25% of the total claims due and demandable, exclusive of appearance fee for every court hearing; and the costs of suit.[4]

In their Answer, respondents denied having applied for or having received the credit card issued by BPI. They asserted that they had not used said credit card as they did not have physical possession of it. They likewise denied having signed or agreed to the terms and conditions referred to in the complaint, and much less, incur an outstanding obligation of ₱1,213,114.19. Accordingly, they prayed for the dismissal of the complaint and the grant of their counterclaim for attorney's fees in the sum of ₱100,000.00.[5]

At the trial, BPI presented documentary evidence consisting of Delivery Receipt,[6] Terms and Conditions of Use of BPI Express credit card,[7] and original copies of statements of account pertaining to Mr. Sarda's credit card, as well as the testimony of its witness, BPI's Account Specialist, Mr. Arlito M. Igos. For respondents, Mr. Sarda testified to refute BPI's claims.

Ruling of the RTC

The RTC ruled in favor of BPI and against respondents on the basis of the following findings, *viz*:

> The first issue to be resolved is whether defendant Ram M. Sarda has received the credit card from Melissa Tandogon who initially received the said credit card. The fact is that the initial receipt of the credit card by Melissa Tandogon (whom Ram Sarda admitted that

[4] *Id*. at 3.

[5] *Id*. at 80-81.

[6] *Id*. at 29; Exhibit "C".

[7] *Id*. at 30; Exhibit "D".

Melissa was his former employee) does not discount the possibility that the credit card may have been subsequently received by Ram Sarda. Defendant failed to present evidence that Melissa Tandogon has no authority to receive any delivery for Ram Sarda, nor did they show proof that at the time Melissa received the credit card, she was no longer an employee of Ram Sarda. If this is the fact, Ram Sarda should have brought to the attention of BPI the non-receipt of the said credit card from whomsoever received it since the first billing statement was sent to their residence. Even if the address in both complaint and answer was different from the address where the monthly billings were sent, said fact of residence was verified when Ram Sarda received the demand letter at the address similar to that indicated in the billing statements. Thus, this will only show that Ram Sarda is in fact residing in the very address where the billing statements were sent. In fact, plaintiff attached as evidence not only one but numerous billing statements. Accordingly, Ram Sarda has several opportunities to bring to the attention of BPI that they were not in possession of the said credit card if [that] is the fact. On the contrary, this only solidifies the claim of the plaintiff that Ram Sarda was the one receiving the billing statement and paying for the same. Otherwise stated, he is in possession of the credit card. No one in his right mind will keep receiving billing statements if the same is not his. It is for the defendant to establish by clear evidence that he was not the one who used the credit card.

Furthermore, it is a common practice here in the Philippines and even in foreign countries that the card holder is being asked to present identification card to determine if the credit card he is presenting is really his credit card. Otherwise stated, the establishments like [Resorts] World, Manila, Philippine Airlines, Casinos and Hotels (in or outside the country) will not accept credit card if no valid identification bearing the same name as that in the credit card is presented. Meanwhile, assuming that it was Melissa Tandogon who really made use of the credit card, she could not have used it for she does not have any identification bearing the name Ram M. Sarda. Thus, there can be no logical conclusion except that it was defendant Ram M. Sarda who used the credit card.

x x x the plaintiff was able to establish the obligation of the defendant. Corollarily, the defendant failed to pay the said obligation that's why the plaintiff sent a formal demand letter to the defendant to (sic) which the latter ignored.

On the other hand, this court finds the award of the attorney's fees in the amount equal [to] 25% of the principal obligation as unconscionable and excessive in which case this Court reduces said claim to only 15% based from the principal obligation, said amount is considered as fair and reasonable.

Meanwhile, this Court also reduces the claim for finance charges from 3.25% per month to only .5% per month or 6% per annum. The claim for late payment charge of 6% per month is also reduced to only .5% per month or 6% per annum. Said interest payment to be computed from March 28, 2014, the date when the complaint was filed.

x x x x x x x x x

WHEREFORE, viewed in the light of the foregoing premises, judgment is hereby rendered in favor of the plaintiff and against defendants SPS. RAM M. SARDA and JANE DOE SARDA ordering them to pay the plaintiff, jointly and severally, the sum of:

1. ₱1,213,114.19, representing the principal (loan) obligation;
2. 15% representing attorney's fee[s], the same to be computed based from the principal obligation;
3. .5% per month or 6% per annum, representing Finance Charges based from the principal obligation to be computed starting from March 28, 2014; and
4. .5% per month or 6% per annum, representing Late Payment Charges based from the principal obligation to be computed starting from March 28, 2014.

Costs against the defendants.

SO ORDERED.[8]

Dissatisfied, respondents appealed to the CA, arguing that BPI failed to establish the alleged obligation of respondents under the subject principal and supplementary credit cards.

Ruling of the CA

The CA reversed the RTC and held that respondents cannot be made liable to pay for the purchases accumulated under the credit card issued by BPI for the following reasons: 1) BPI

[8] Records (Vol. II). pp. 135-137.

failed to prove that Mr. Sarda had physical possession of the principal credit card issued in his name, and that Ms. Tandogon was authorized to receive the same; 2) BPI failed to prove that Mr. Sarda authorized the issuance of a supplementary card in favor of Ms. Tandogon; 3) BPI failed to prove the receipt by respondents of the monthly billing statements and demand letter; and 4) BPI failed to observe extraordinary diligence and reasonable business prudence in issuing the subject credit cards.[9]

The CA took note of the fact that all statements of account were addressed to Rm. 507 5F Amberland Plaza, Doña Julia Vargas Ave., Ortigas Center, Pasig City. However, the dorsal portion of the demand letter sent by BPI to the same address contained the remarks: "S/O 2 YRS./MOVEOUT/ROMEO ABDINCULA." The CA thus concluded that the respondents could not have known of the outstanding obligation being claimed by BPI, nor could they apprise BPI of their non-receipt of the credit card and monthly billings.[10]

Despite ruling that BPI failed to prove its claims against respondents by preponderance of evidence, the CA nonetheless denied respondents' counterclaim as it found that BPI did not act in bad faith when it erroneously pursued its claims against them.[11]

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated 12 April 2016 of Branch 143 of the Regional Trial Court of Makati City in Civil Case No. 14-351 is **REVERSED** and **SET ASIDE**. The complaint for collection of sum of money in Civil Case No. 14-351 is **DISMISSED**.

SO ORDERED.[12]

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[9] *Rollo*, pp. 100-105.

[10] *Id*. at 103-104.

[11] *Id*. at 104-105.

[12] *Id*. at 105.

ISSUE

WHETHER OR NOT MR. SARDA SHOULD BE HELD LIABLE TO PAY THE TOTAL AMOUNTS DUE UNDER THE PRINCIPAL AND SUPPLEMENTARY CREDIT CARDS ISSUED BY BPI.

Petitioner's Arguments

BPI argues that given the documentary evidence consisting of statements of account showing continuing transactions using the subject credit cards, it is irrelevant to discuss whether Mr. Sarda actually received the credit card issued in his name, or whether the supplementary card issued to Ms. Tandogon was utilized under his responsibility.[13]

As to the monthly billings, BPI points out that respondents' accountability started way back in 2009. Thus, even if assuming that respondents had moved out from the address indicated in the statements of account two years prior to the demand letter dated October 1, 2013, it was nevertheless established that Mr. Sarda was receiving the said billings and making payments between 2009 and 2011. In any event, Mr. Sarda should not be allowed to use as excuse his failure to receive the statements of account at his previous address because he failed to notify BPI regarding his change of address. Under the terms and conditions of BPI credit card usage and Section 14 of Republic Act (*R.A.*) No. 8484,[14] Mr. Sarda is duty bound to notify the bank/credit card issuer of his whereabouts, as his failure to do so gives rise to a *prima facie* presumption of using his credit card with intent to defraud.[15]

BPI asserts that there was due diligence on its part, as required by law, as well as those of the merchants/establishments where respondents utilized the credit cards, such as at Resorts World

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[13] *Id*. at 65.

[14] "AN ACT REGULATING THE ISSUANCE AND USE OF ACCESS DEVICES, PROHIBITING FRAUDULENT ACTS COMMITTED RELATIVE THERETO, PROVIDING PENALTIES AND FOR OTHER PURPOSES." Approved on February 11, 1998.

[15] *Rollo*, pp. 66-68.

Manila (countless transactions including cash advances), Philippine Airlines, Paras Beach Resort, Del Monte Golf Club, Valley Golf Club Antipolo, S & R membership shopping, Waterfront Hotel Cebu, and even abroad: Hickam Air Force Base Commissary, Walmart, Haley Koa Hotel. It further underscores the admission made by Mr. Sarda, when he testified in court, that he is a retired member of the U.S. Army and confirmed having been to Hickam Air Force Base in Honolulu, as well as all those establishments where transactions using his credit card were duly reflected in the statements of account.[16]

Respondents' Arguments

Respondents contend that BPI raises factual issues before this Court which are not proper in a Rule 45 petition. Notwithstanding this procedural lapse, they stress the fact that based on the statements of account submitted by BPI, all the transactions purportedly effected under Mr. Sarda's name, covering the period September 2009 to July 2011 have all been fully paid, such that there is no longer any outstanding obligation arising from purchases using this primary card.[17]

Notably, the supplementary card issued in the name of Ms. Tandogon was linked to the primary card under the name of Mr. Sarda, but without him applying for it and it being issued without his knowledge or conformity. As reflected in the statements of account beginning August 2011, and as admitted by BPI's witness, substantial amounts of purchases and cash advances were made under this supplementary card. Said witness' testimony further disclosed that the issuance of the supplementary card was irregular, in violation of the terms and conditions for the use of BPI credit cards and which respondents repeatedly denied having applied for. The delivery receipt itself shows that it was highly unlikely for Ms. Tandogon to have applied for a supplementary card in her favor as she is not even a member of respondents' family; being a plain office clerk in Mr. Sarda's place of work. Respondents pray that the Court's ruling in *BPI*

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[16] *Id*. at 71-77.

[17] *Id*. at 344-348.

Express Card Corporation v. Olalia[18] be applied in this case as it also involved noncompliance with the requirements for the issuance of a supplementary card.[19]

Respondents assail the RTC in assuming that Ms. Tandogon had passed on the credit card to Mr. Sarda simply because she received it upon delivery. They maintain that in the absence of the required application form signed by respondents, it is necessary for BPI to present clear evidence to prove that Mr. Sarda actually received the subject credit cards. It is not enough for BPI to insinuate that respondents were the ones who made the payments appearing in the statements of account, as it was never established that they had received those billings to begin with. Moreover, the Court has consistently held that the putative cardholder cannot be made to pay the interests and charges contained in the terms and conditions of the credit card issuer without proof of conformity and acceptance by the cardholder of such stipulations.[20]

THE COURT'S RULING

The petition has no merit.

BPI assails the CA's findings concerning the non-receipt by Mr. Sarda of the credit card and his lack of consent to, or conformity with, the issuance of an extension card to his former employee; the use of both primary and supplementary cards in the alleged purchases and cash advances appearing in the statements of account; and the receipt of the monthly billings and demand letter sent to his office address. Plainly, these are factual matters that the Court cannot entertain in a petition for review on *certiorari* under Rule 45 of the Rules of Court.

In a petition for review on *certiorari* under Rule 45, the Court is generally limited to reviewing only errors of law. Nevertheless, the Court has enumerated several exceptions to this rule, such as when: (1) the conclusion is grounded on speculations, surmises

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[18] 423 Phil. 593 (2001).

[19] *Rollo*, pp. 348-366.

[20] *Id*. at 368-378.

or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[21] It is the eighth exception that is invoked by BPI to reverse the CA decision and to reinstate the RTC judgment in its favor.

After review of the records, the Court finds no cogent reason to deviate from the CA's findings and conclusion.

First, on the question of whether Mr. Sarda actually received the credit card issued to him by BPI without his knowledge and consent, BPI's witness, Mr. Igos, admitted that Mr. Sarda did not apply for nor request to be issued a credit card, he being a pre-qualified client.[22]

When a client is classified as pre-qualified or pre-screened, the usual screening procedures for prospective cardholders, such as filing of an application form and submission of other relevant documents prior to the issuance of a credit card, are dispensed with and the credit card is issued outright. Upon receipt of the card, the pre-screened client has the option to accept or to reject the credit card.[23]

To prove Mr. Sarda's receipt of the credit card, BPI presented the delivery receipt with check marks on both boxes indicating

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[21] *Carbonell v. Carbonnel-Mendes*, 762 Phil. 529, 537 (2015), citing *Republic of the Phils. v. Belmonte*, 719 Phil. 393, 400 (2013).

[22] TSN, April 15, 2015, pp. 16-17.

[23] *Alcaraz v. Court of Appeals, et al.*, 529 Phil. 77, 86 (2006).

"Cardholder" and "Cousin," and signed by Ms. Tandogon who received the card.[24] BPI, however, failed to submit proof that Ms. Tandogon was authorized by Mr. Sarda to receive the credit card in his behalf. Such piece of evidence is self-serving and insufficient to sustain BPI's claim,[25] especially since the respondents denied being related to Ms. Tandogon who was their former office clerk.

In a situation where a pre-approved client was issued a credit card, we have held that such client accepted the credit card by signing a receipt and using the card to purchase goods and services. A contractual relationship was thereby created between the cardholder and the credit card issuer, governed by the terms and conditions found in the card membership agreement.[26]

With the denial of respondents that they received and used the credit card issued to Mr. Sarda, it was incumbent upon BPI to substantiate their claim that Mr. Sarda had used it in various transactions. BPI presented original copies of the statements of account beginning September 21, 2009 to September 22, 2013.[27] All these billings were sent to Mr. Sarda at his office located at Rm. 507 5F Amberland Plaza, Doña J. Vargas Ave., Ortigas Center, Pasig City. However, respondents denied having received any of these monthly billings even as payments were indicated to have been made for those purchases using the primary and supplementary cards.

The submission of statements of account is not enough to establish that the cardholder incurred the obligation to pay the purchases appearing therein. That it was respondents who made those purchases cannot also be inferred from the mere fact that substantial payments had been made on the total/minimum amounts due every month, in the absence of proof of the identity

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[24] Records (Vol. I), p. 29.

[25] See *Spouses Yulo, et al. v. Bank of the Philippine Islands*, G.R. No. 217044, January 16, 2019.

[26] *Id*.

[27] Records (Vol. II), pp. 31-72, (Vol. I), pp. 31-58.

of the person who had actually paid them. BPI relies heavily on the supposed strict policy of the reputable establishments appearing in the statements of account in ascertaining the identity of the person presenting a credit card. However, it failed to present any witness from those establishments or any other evidence of respondents' alleged purchases and cash advances from them using the subject cards.

During the trial, respondents' counsel requested the charge slips covering the billed transactions. The bank's witness explained that BPI has no copy considering that for each transaction, there would only be one copy for the cardholder and another for the merchant (establishment). It is the latter's copy which is electronically transmitted to BPI and reflected in the monthly statements of account.[28] Still, BPI did not offer a credible explanation for the unavailability of electronic or other evidence to prove the alleged purchases and cash advances.

As to the supplementary card under the name of Ms. Tandogon, there is likewise no evidence that Mr. Sarda requested or applied for it. This was clearly admitted by BPI's witness during cross-examination:

ATTY. DANTE DESIERTO:
> Is there an application form submitted to Bank of the Philippine Islands for the issuance of a supplementary credit card to Ms. Melissa Tandogon?

WITNESS:
> I believe there is none sir because this was a pre-qualified account of the bank, sir.

ATTY. DANTE DESIERTO:
> And kindly explain the meaning of a pre-qualified account?

WITNESS:
> Pre-qualified accounts were given to bank clients of Bank of the Philippine Islands who have a business relation with the bank having a deposit or certain loan programs with the bank sir.

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[28] TSN, April 15, 2015, pp. 29-34.

ATTY. DANTE DESIERTO:
Are you trying to tell me, Mr. Witness, that the defendant in this case, Mr. Ram Sarda, did not have to request the plaintiff BPI for the issuance of its supplementary credit card in [favor] of Melissa Tandogon because she is pre-qualified?

WITNESS:
The request is done just through phone call sir.

ATTY. DANTE DESIERTO:
Are you trying to tell me that there was a phone call from plaintiff rather the defendant Ram Sarda to the plaintiff BPI requesting for the issuance of the supplementary card?

WITNESS:
Yes, sir.

ATTY. DANTE DESIERTO:
Do you have the record of that phone call?

WITNESS:
None sir.

ATTY. DANTE DESIERTO:
Did you take that phone call?

WITNESS:
Me, personally? No sir.

ATTY. DANTE DESIERTO:
Then how did you know that there is a phone call?

WITNESS:
Just base[d] on the records of the bank sir.

ATTY. DANTE DESIERTO:
What record?

WITNESS:
During the application, a certain requests (sic) were forwarded to our department.

x x x x x x x x x

ATTY DANTE DESIERTO:
So what you are saying is there is an application form both for the principal card and the supplementary credit card?

WITNESS:
No actual application form but there was a request for application of the credit card.

ATTY. DANTE DESIERTO:
There is no written request?

WITNESS:
Yes, there is no written request.

ATTY. DANTE DESIERTO:
But there is a verbal request?

WITNESS:
Yes.

ATTY. DANTE DESIERTO:
And it was made through phone call?

WITNESS:
Yes sir.

ATTY. DANTE DESIERTO:
Do you know who took the phone (sic)**?**

WITNESS:
No sir.

ATTY. DANTE DESIERTO:
Is there anyone in your company who would probably know the identity of the person who took the call?

WITNESS:
I cannot answer that sir because the issuance is by year 2009 perhaps some of the staffs were already resigned (sic).

ATTY. DANTE DESIERTO:
Mr. Witness, are these phone calls received by call center agents, if you know?

WITNESS:
No sir. There are times that we hire a certain company to make a call to our clients if they are willing to have a credit card or a loan in the bank sir.

ATTY. DANTE DESIERTO:
So there was a phone call from BPI to Mr. Sarda offering the issuance of the supplementary credit card?

WITNESS:

Offering the issuance of the account sir because the account both at the same time of Mr. Ram Sarda and Melissa Tandogon were generated sir.

ATTY. DANTE DESIERTO:

So are those phone calls or phone conversations, are they recorded?

WITNESS:

I cannot answer that sir...I do not have a personal knowledge on that sir.[29] (emphases supplied)

The issuance of a supplementary card without Mr. Sarda having applied for it is significant because the statements of account covering the period September 2011 to November 2012 showed huge amounts of purchases/cash advances using the supplementary card.[30] While payments were made on the single account of Mr. Sarda for both cards, there were penalty charges added (late payment) and the sums paid were insufficient to cover the outstanding obligation which had ballooned to ₱1,213,114.19 as of September 22, 2013.[31] That it was Mr. Sarda who used the supplementary card cannot be inferred solely from the fact that such payments were made, in the absence of proof of his actual receipt of the card and identity of the payor.

The burden of proof rests upon BPI, as plaintiff, to establish its case based on a preponderance of evidence. It is well-settled that in civil cases, the party that alleges a fact has the burden of proving it.[32] BPI failed to prove the material allegations in its complaint that respondents availed of its credit accommodation by using the subject cards.

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[29] TSN, June 10, 2015, pp. 7-12.

[30] Records (Vol. I), pp. 31-40; (Vol. II), pp. 49-72.

[31] Records (Vol. I), p. 58.

[32] *Citibank, N.A. Mastercard v. Teodoro*, 458 Phil. 480, 488 (2003), citing *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals, et al.*, 333 Phil. 597, 621-622 (1996); *Trans-Pacific Industrial Supplies, Inc. v. Court of Appeals, et al.*, 305 Phil. 534, 542 (1994).

Section 1, Rule 133 of the Rules of Court provides:

SECTION 1. *Preponderance of evidence, how determined.* — In civil cases, the party having [the] burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Since BPI clearly failed to present adequate proof that it was respondents who made purchases and cash advances using the cards, the CA did not err in dismissing its complaint.

In relation to the duty imposed on banks to exercise a high degree of diligence in their business transactions, the Bangko Sentral ng Pilipinas (*BSP*) issued Circular No. 702, Series of 2010 pursuant to Monetary Board Resolution No. 1728, dated December 2, 2010, which amended the provisions of the Manual of Regulations for Banks (*MORB*) and the Manual of Regulations for Non-Bank Financial Institutions (*MORNBFI*). Banks, quasi-banks and credit card companies are now prohibited from issuing pre-approved credit cards. Before issuing credit cards, these entities "must exercise proper diligence by ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments."[33]

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[33] BSP Circular No. 702, Sec. 2, series of 2010.

AMENDED REGULATIONS TO ENHANCE CONSUMER PROTECTION IN THE CREDIT CARD OPERATIONS OF BANKS AND THEIR SUBSIDIARY OR AFFILIATE CREDIT CARD COMPANIES

Pursuant to Monetary Board Resolution No. 1728 dated 02 December 2010, the provisions of the Manual Regulations for Banks (MORB) and the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) are hereby amended, as follows:

x x x x x x x x x

Subsequently, on August 15, 2014, the BSP issued Circular No. 845-14, further amending the provisions of the MORB and the MORNBFI by clarifying the meaning of "Pre-Approved Credit Cards" and enhancing the prohibition against issuing such cards. It enumerated acts tantamount to issuing such unsolicited credit cards and stressed that the provisions of the circular shall prevail notwithstanding any contrary stipulations in the contract between the cardholder and the bank/non-bank credit card issuer.[34] On the other hand, the term "application"

Section 2. The provisions of Subsection X320.3 of the MORB, and Subsections 4320Q.3 (2008-4337Q.3) and 4301N.3 of the MORNBFI on the minimum requirements before issuing credit cards are hereby amended to read as follows:

Banks/Quasi-banks and their subsidiary or affiliate credit card companies shall not issue pre-approved credit cards.

Before issuing credit cards, banks/quasi-banks and/or their subsidiary/affiliate credit card companies must exercise, in accordance with the provisions of Subsection X304.1/4304Q.1 (2008-4312Q.1)/4312N.1, proper diligence by ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments.

The net take home pay of applicants who are employed, the net monthly receipts of those engaged in trade or business, or the net worth or cash flow inferred from deposits of those who are neither employed nor engaged in trade or business or the credit behavior exhibited by the applicant from his other existing credit cards, or other lifestyle indicators such as, but not limited to, club memberships, ownership and location of residence and motor vehicle ownership shall be determined and used as basis for setting credit limits. The gross monthly income may also be used provided reasonable deductions are estimated of income taxes, premium contributions, loan amortizations and other deductions.

All credit card applications, specifically those solicited by third party representatives/agents, shall undergo a strict credit risk assessment process and the information stated thereon validated and verified by authorized personnel of the banks/quasi-banks and their subsidiary or affiliate credit card companies, other than those handling marketing.

[34] BSP Circular No. 845, Secs. 2 and 3, series of 2014.

Section 2. Addition of related appendices. Relative to Section 1 of this Circular, the acts tantamount to the act of issuing pre-approved credit cards shall form part of the List of Appendices of MORB and MORNBFI and shall be designated as follows:

x x x x x x x x x

Acts Tantamount to the Act of Issuing Pre-approved Credit Cards

is specifically defined as a "*documented request* of the credit card applicant to a credit card issuer for the availment of a

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i. Sending of credit cards to consumers with no prior application, written request and supporting documents required for prudent credit card evaluation;
ii. Sending of unsolicited supplementary cards and other cards with added features which are not in replacement or substitute to an existing cardholder's initial credit card;
iii. Unsolicited calls by credit card issuers requesting updated information from selected clients in order to be entitled to receive credit card as a reward for his/her continued patronage of the bank's other financial products;
iv. Unsolicited calls by the bank to its depositors informing them that they already have a credit card from the bank's Credit Card Department due to good standing as a depositor;
v. Sending of mails with credit card enclosed which will be deemed accepted upon the receipt of such card by a receiver, whether authorized or not;
vi. Sending to a consumer an unsolicited credit card which is deemed accepted unless a request for termination is promptly instructed by the cardholder to the credit card issuer; and
vii. Sending of credit cards as free offers to consumers who availed themselves of the bank's other financial products.

The acts described above and other similar acts are deemed tantamount to the act of issuing pre-approved credit cards notwithstanding any contrary stipulations in the contract.

Section 3. Enhancement of the regulation that prohibits the issuance of pre-approved credit cards. The prohibition on the issuance of pre-approved credit cards by all BSP supervised financial entities with credit card operations under Subsection X320.3 of the MORB, and Subsections 4320Q.3 and 4301N.3 of the MORNBFI is enhanced by stressing, under said regulations, that the provisions of this Circular shall prevail notwithstanding any contrary stipulations in the contract.

Subsection X3203.3 of the MORB is hereby amended to read as follows:

§ X320.3 Minimum Requirements. *Banks and their subsidiary or affiliate credit cards companies shall not issue pre-approved credit cards as provided under Appendix 103, notwithstanding any contrary stipulations in the contract.*

Subsection X4320Q.3 of the MORNBFI is hereby amended to read as follows:

§ 4320Q.3 Minimum Requirements. *QBs and their subsidiary or affiliate credit cards companies shall not issue pre-approved credit cards as provided under Appendix Q-61, notwithstanding any contrary stipulations in the contract.*

credit card" and it is required that "[T]he intention and consent for the availment of the credit card must be clear and explicit."[35]

Presently, the governing law is R.A. No. 10870,[36] otherwise known as the Philippine Credit Card Industry Regulation Law. Before issuing credit cards, issuers are now mandated to conduct "know-your-client" procedures and to exercise proper diligence in ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments.[37] Further, in the service level agreement between the acquiring[38] banks and their partner merchants, there shall be a provision requiring such merchants to perform due diligence to establish

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Subsection X4301N.3 of the MORNBFI is hereby amended to read as follows:

§ 4301N.3 Minimum Requirements. *NBFIs and their subsidiary or affiliate credit cards companies shall not issue pre-approved credit cards as provided under Appendix N-10, notwithstanding any contrary stipulations in the contract.*

[35] BSP Circular No. 845, Sec. 1, series of 2014.

Section 1. Inclusion under the definition of terms — x x x

x x x x x x x x x

n. *Application* is a documented request of the credit card applicant to a credit card issuer for the availment of a credit card. The intention and consent for the availment of the credit card must be clear and explicit.

[36] Approved on July 17, 2016.

[37] R.A. No. 10870, Sec. 7.

SECTION 7. *Minimum Requirements for the Issuance of Credit Cards*. — Before issuing credit cards. credit card issuers must conduct know-your-client (KYC) procedures and exercise proper diligence in ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments.

[38] R.A. No. 10870, Sec. 5(b).

SECTION 5. *Definition of Terms*. — As used in this Act, the following terms are defined as follows:

x x x x x x x x x

(b) *Acquirer* refers to the institution that accepts and facilitates the processing of the credit card transaction which is initially accepted by the merchant[.]

the identity of the cardholders.[39] Violations of the provisions of the new law, as well as existing rules and regulations issued by the Monetary Board, are penalized with imprisonment or fine, or both.[40]

In view of the foregoing, the Court finds that BPI failed to exercise proper diligence in the issuance of the primary and supplementary cards and should thus bear the resulting loss or damage caused by its own acts and policies. Even assuming that fraud attended the use of said cards, it was incumbent upon BPI to adduce clear and convincing evidence that the respondents connived with Ms. Tandogon. BPI cannot simply rely on bare insinuations and conjectures to establish respondents' liability for the outstanding amounts incurred under the subject credit card account.

WHEREFORE, the petition is **DENIED**. The April 27, 2018 Decision of the Court of Appeals in CA-G.R. CV No. 106788 is hereby **AFFIRMED**.

SO ORDERED.

Bersamin, C.J. (Chairperson), del Castillo, Reyes, J. Jr.,* and *Carandang, JJ.*, concur.

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[39] R.A. No. 10870, Sec. 8.

SECTION 8. *Service Level Agreement*. — There shall be, in the service level agreement between the acquiring banks and their partner merchants, a provision requiring merchants to perform due diligence to establish the identity of the cardholders.

Nothing in this Act shall preclude a card issuer from verifying or seeking confirmation with the cardholder any purchase if in their assessment there is reasonable concern as to the validity of the purchase.

[40] R.A. No. 10870, Sec. 27.

SECTION 27. *Violation of this Act and Other Related Rules, Regulations, Orders or Instructions*. — A person who willfully violates any provision of this Act or any related rules, regulations, order or instructions, issued by the Monetary Board shall be punished by imprisonment of not less than two (2) years nor more than ten (10) years, or by a fine of not less than fifty thousand pesos (₱50,000.00) but not more than two hundred thousand pesos (₱200,000.00), or both, at the discretion of the court.

* Designated as Additional Member in lieu of Associate Justice Francis H. Jardeleza, who takes no part due to association of a family member with a party, per Raffle dated April 10, 2019.

SECOND DIVISION

[G.R. No. 241144. June 26, 2019]

JUANITA E. CAHAPISAN-SANTIAGO, *petitioner, vs.* **JAMES PAUL A. SANTIAGO,** *respondent.*

SYLLABUS

1. **CIVIL LAW; FAMILY CODE; DECLARATION OF NULLITY OF MARRIAGE; PSYCHOLOGICAL INCAPACITY AS A VALID GROUND TO NULLIFY A MARRIAGE, EXPLAINED. —** Under Article 36 of the Family Code, as amended, psychological incapacity is a valid ground to nullify a marriage. However, in deference to the State's policy on marriage, psychological incapacity does not merely pertain to any psychological condition; otherwise, it would be fairly easy to circumvent our laws on marriage so much so that we would be practically condoning a legal subterfuge for divorce. According to case law, psychological incapacity should be confined to the **most serious cases of personality disorders that clearly manifest utter insensitivity or inability to give meaning and significance to the marriage**. It should refer to no less than a mental — not merely physical — incapacity that causes a party to be **truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage**, which, as provided under Article 68 of the Family Code, among others, include their mutual obligations to live together, observe love, respect and fidelity, and render help and support.

2. **ID.; ID.; ID.; ID.; THREE CHARACTERISTICS OF PSYCHOLOGICAL INCAPACITY. —** [P]sychological incapacity must therefore be characterized by three (3) traits: (*a*) gravity, *i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage; (*b*) juridical antecedence, *i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and (*c*) incurability, *i.e.*, it must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved.

3. ID.; ID.; ID.; ID.; TO PROVE THE EXISTENCE OF PSCHOLOGICAL INCAPACITY, A CLEAR AND UNDERSTANDABLE CAUSATION BETWEEN THE PARTY'S CONDITION AND THE PARTY'S INABILITY TO PERFORM THE ESSENTIAL MARITAL COVENANTS MUST BE SHOWN. — [T]he link between respondent's acts to his alleged psychological incapacity was not established. Even if it is assumed that respondent truly had difficulties in making everyday decisions without excessive advice or reassurance coming from other people, such as petitioner and his own mother, the report fails to prove that the said difficulties were tantamount to serious psychological disorder that would render him incapable of performing the essential marital obligations. As case law holds, "**[i]n determining the existence of psychological incapacity, a clear and understandable causation between the party's condition and the party's inability to perform the essential marital covenants must be shown. A psychological report that is essentially comprised of mere platitudes, however speckled with technical jargon, would not cut the marriage tie**."

4. ID.; ID.; ID.; ID.; RESPONDENT'S INFIDELITY IN THIS CASE DOES NOT APPEAR TO BE A SYMPTOM OF A GRAVE AND PERMANENT PSYCHOLOGICAL DISORDER THAT RENDERS HIM INCAPABLE OF PERFORMING HIS SPOUSAL OBLIGATION. — Ms. Montefalcon's evaluation only supports the allegations regarding respondent's infidelity, immaturity, and dependence on his mother and wife, which traits do not, however, rise to the level of the psychological incapacity that would justify the nullification of the parties' marriage. Indeed, while respondent's purported womanizing caused the couple's frequent fights, such was not established to be caused by a psychological illness. In fact, records reveal that when petitioner discovered respondent's affair for the first time, the latter immediately severed it. They would also eventually reconcile and live together after their fights. Thus, respondent's infidelity does not appear to be a symptom of a grave and permanent psychological disorder that renders him incapable of performing his spousal obligations. In a long line of cases, the Court has held that sexual infidelity, by itself, is not sufficient proof that petitioner is suffering from psychological incapacity. It must be shown that the acts of unfaithfulness are manifestations of a disordered personality

which make the spouse completely unable to discharge the essential obligations of marriage. In fine, for failing to sufficiently prove the existence of respondent's psychological incapacity within the contemplation of Article 36 of the Family Code, the petition is granted. The contrary rulings of the courts *a quo* are hence, reversed and set aside.

APPEARANCES OF COUNSEL

Felix Flores III for petitioner.
Rene Antonio Cirio for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 6, 2018 and the Resolution[3] dated August 1, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 109683 affirming the Decision[4] dated January 11, 2017 of the Regional Trial Court of Antipolo City, Branch 72 (RTC) in Civil Case No. 12-9628, which declared the marriage of petitioner Juanita E. Cahapisan-Santiago (petitioner) and respondent James Paul A. Santiago (respondent) null and void on the ground of the latter's psychological incapacity.

The Facts

Sometime in 1999, respondent met petitioner at a car service center along Marcos Highway, Antipolo City. At that time, petitioner was forty (40) years old and respondent was twenty-two (22) years old.[5] Petitioner became respondent's girlfriend, and three (3) months into the relationship, she became pregnant.

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[1] *Rollo*, pp. 8-28.

[2] *Id*. at 30-45. Penned by Associate Justice Franchito N. Diamante with Associate Justices Rodil V. Zalameda and Maria Elisa Sempio Diy, concurring.

[3] *Id*. at 46-47.

[4] *Id*. at 48-59. Penned by Judge Ruth C. Santos.

[5] See *id*. at 31, 49, and 84.

Eventually, or on March 31, 2000, petitioner and respondent got married before the Mayor of Pangil, Laguna. During their marriage, however, instead of experiencing marital bliss, their relationship was fraught with quarrels.[6]

Respondent averred that petitioner was domineering, considering that she was the one earning and he was a high school drop-out. Sometime in 2005, petitioner and respondent separated because they could no longer stand each other. After eleven (11) years of living apart, respondent filed a Petition for Declaration of Nullity of Marriage[7] before the RTC.[8] In support of his petition, respondent presented the report[9] of an expert clinical psychologist, Ms. Shiela Marie O. Montefalcon (Ms. Montefalcon), who assessed him to be suffering from Dependent Personality Disorder (DPD),[10] and petitioner from Narcissistic Personality Disorder (NPD).[11] According to the report, respondent's DPD is a long term chronic condition that manifested itself through his overdependence on petitioner and his own mother to meet his emotional and physical needs. The clinical features of respondent's DPD were likewise exhibited through his: (*a*) difficulty in making everyday decisions without an excessive amount of advice and reassurance from petitioner and his own mother; (*b*) problem in expressing disagreement with others because of fear or loss of support or approval; (*c*) struggle in initiating projects on his own because of lack of self-confidence in judgment or abilities; (*d*) excessive dependence on petitioner and his own mother to obtain nurturance and support; and (*e*) inclination to substance use and abuse.[12] On the other hand, petitioner's NPD was found to be grave, severe, and already ingrained deeply within her adaptive system,

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[6] *Id.* at 31 and 84-85.

[7] Dated March 27, 2012. Records, pp. 1-6.

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

[9] See Psychological Evaluation Report dated February 15, 2012; *id.* at 99-110.

[10] See *id.* at 106-107.

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

[12] See *id.* at 106-107. See also *id.* at 50-51.

as evidenced by her pervasive pattern of grandiosity, need for admiration, and lack of empathy.[13] As both parties were found to be psychologically incapacitated to perform their essential marital obligations, Ms. Montefalcon, therefore, recommended that their marriage be declared null and void.[14]

For her part, petitioner contended that respondent was not psychologically incapacitated, but was merely immature and lacked a sense of responsibility.[15] She also pointed out that respondent's past addictive behavior is not permanent, considering that the latter was able to cope with his drug dependency and was able to change for the better.[16] She added that respondent's alleged DPD is even contrary to his personality, since the report stated that respondent "can present a proposal or lead a group discussion with ease and tact. He is assertive but sometimes impatient. He is best in situations that need sound common sense and practical ability with things. He relies on his ability to improvise instead of preparing in advance."[17] Furthermore, respondent's "common capacities and strengths" are "being friendly, energetic, resourceful, and having negotiating skills."[18] Finally, she claimed that it was respondent's womanizing, and not his purported dependency, that caused their frequent fights.[19]

The RTC Ruling

In a Decision[20] dated January 11, 2017, the RTC granted the petition and declared the marriage of the parties null and void on the ground of respondent's psychological incapacity.[21] The RTC ruled that the totality of evidence sufficiently established

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[13] See *id*. at 107. See also *id*. at 51.

[14] See *id*. at 109.

[15] See *id*. at 16 and 23.

[16] See *id.* at 15-16.

[17] See *id.* at 18 and 106.

[18] See *id*.

[19] See *id*. at 14 and 25. See also *id*. at 31.

[20] *Id*. at 48-59.

[21] *Id*. at 55 and 58-59.

respondent's incapacity to fulfill his marital obligations, as he was shown to have disregarded and abandoned his family after repeated quarrels with petitioner.[22] Moreover, having been diagnosed with DPD, respondent manifested his inability to be cognizant of his familial obligations.[23] *However, as to petitioner's alleged psychological incapacity, the RTC held that there was insufficient evidence to prove its root cause or juridical antecedence*.[24]

Aggrieved, petitioner filed an appeal[25] before the CA.

The CA Ruling

In a Decision[26] dated June 6, 2018, the CA affirmed the RTC Decision.[27] The CA ruled that respondent was able to discharge his burden of proving that his marriage with petitioner was void due to his psychological incapacity.[28] In this regard, it found that the root cause of respondent's psychological incapacity, *i.e.*, DPD, was medically identified, and that the same was present at the inception of his marriage with petitioner, considering that prior to the marriage, he was already irresponsible, drug dependent, and overdependent on his mother.[29] It also found that respondent's DPD was permanent, incurable, and grave, as a result of his upbringing and family background.

Dissatisfied, petitioner filed a motion for reconsideration,[30] which was denied in a Resolution[31] dated August 1, 2018; hence, this petition.

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[22] See *id*. at 56.

[23] See *id*.

[24] See *id*. at 57.

[25] See Brief for the Respondent-Appellant dated December 15, 2017; *id*. at 64-80.

[26] *Id*. at 30-45.

[27] *Id*. at 44.

[28] See *id*. at 38.

[29] See *id*. at 39-40.

[30] Not attached to the *rollo*.

[31] *Rollo*, pp. 46-47.

The Issue Before the Court

The issue for the Court's resolution is whether or not the parties' marriage should be nullified on the ground of respondent's psychological incapacity, *i.e.*, DPD.

The Court's Ruling

The petition is meritorious.

At the outset, it bears stressing that the RTC, as affirmed by the CA, already ruled that there was insufficient evidence to prove the root cause or juridical antecedence of petitioner's alleged NPD. Finding no cogent reason to disturb the same, the resolution of this case shall, thus, revolve on whether or not, on the other hand, respondent's psychological incapacity, *i.e.*, DPD, was proven.

Jurisprudence states that the validity of marriage and the unity of the family are enshrined in our Constitution and statutory laws; hence, any doubts attending the same are to be resolved in favor of the continuance and validity of the marriage and that the burden of proving the nullity of the same rests at all times upon the petitioner. The policy of the Constitution is to protect and strengthen the family as the basic social institution and marriage as the foundation of the family. As such, the Constitution decrees marriage as legally inviolable and protects it from dissolution at the whim of the parties.[32]

Under Article 36[33] of the Family Code, as amended,[34] psychological incapacity is a valid ground to nullify a marriage. However, in deference to the State's policy on marriage, psychological incapacity does not merely pertain to any psychological condition; otherwise, it would be fairly easy to

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[32] See *Republic v. Tecag*, G.R. No. 229272, November 19, 2018.

[33] Article 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

[34] Executive Order No. 227, entitled "AMENDING EXECUTIVE ORDER NO. 209, OTHERWISE KNOWN AS THE 'FAMILY CODE OF THE PHILIPPINES,'" approved on July 17, 1987.

circumvent our laws on marriage so much so that we would be practically condoning a legal subterfuge for divorce.[35]

According to case law, psychological incapacity should be confined to the **most serious cases of personality disorders that clearly manifest utter insensitivity or inability to give meaning and significance to the marriage**.[36] It should refer to no less than a mental — not merely physical — incapacity that causes a party to be **truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage**, which, as provided under Article 68[37] of the Family Code, among others,[38] include their mutual obligations to live together, observe love, respect and fidelity, and render help and support.[39]

In this accord, psychological incapacity must therefore be characterized by three (3) traits: (*a*) gravity, *i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage; (*b*) juridical antecedence, *i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and (*c*) incurability, *i.e.*, it must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved.[40]

Applying the foregoing guidelines, the Court finds that — contrary to the rulings of the courts *a quo* — the totality of

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[35] See *Republic v. Tecag*, *supra* note 32.

[36] See *Republic v. Tobora-Tionglico*, G.R. No. 218630, January 11, 2018.

[37] Article 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

[38] The parties' mutual obligations include those provided under Articles 68 to 71, as regards the husband and wife, and Articles 220, 221, and 225, with regard to parents and their children, all of the Family Code. (See Guideline 6 in *Republic v. CA*, 335 Phil. 664, 678 [1997].)

[39] See *Republic v. Tecag*, *supra* note 32.

[40] See *Republic v. De Gracia*, G.R. No. 171557, February 12, 2014, 716 SCRA 8, 16, citing *Santos v. CA*, 310 Phil. 21, 39 (1995).

evidence presented failed to sufficiently establish respondent's psychological incapacity based on his DPD.

In this case, respondent relied heavily on the testimony of and psychological examination by the clinical psychologist, Ms. Montefalcon, to establish his psychological incapacity. In her report, she enumerated several clinical features indicative of respondent's DPD, to wit: (*a*) difficulty in making everyday decisions without an excessive amount of advice and reassurance from petitioner and his own mother; (*b*) problem in expressing disagreement with others because of fear or loss of support or approval; (*c*) struggle in initiating projects on his own because of lack of self-confidence in judgment or abilities; (*d*) excessive dependence on petitioner and his own mother to obtain nurturance and support; and (*e*) inclination to substance use and abuse.[41] However, the report leaves much to be desired as it did not even identify specific actions or incidents that could amply demonstrate his alleged psychological incapacity. As the petitioner aptly points out, "[i]n the [p]sychological [r]eport, there is nothing in [respondent's] acts that is indicative of his 'chronic condition in which he depends too much on others to meet his emotional and physical needs.' In fact, the report failed to show 'who' are those other that [respondent] depended [on] too much x x x."[42] Also, as petitioner emphasizes, respondent's alleged DPD appears to be even contrary to his personality since the report actually states, among others, that respondent's "common capacities and strengths" are "being friendly, energetic, resourceful, and having negotiating skills."[43] Moreover, the report states that respondent "is best in situations that need sound common sense and practical ability with things [as] he relies on his ability to improvise instead of preparing in advance."[44]

More importantly, the link between respondent's acts to his alleged psychological incapacity was not established. Even if

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[41] See *rollo*, pp. 106-107. See also *id*. at 50-51.

[42] *Id*. at 18 and 106.

[43] *Id*.

[44] *Id*.

it is assumed that respondent truly had difficulties in making everyday decisions without excessive advice or reassurance coming from other people, such as petitioner and his own mother, the report fails to prove that the said difficulties were tantamount to serious psychological disorder that would render him incapable of performing the essential marital obligations. As case law holds, "**[i]n determining the existence of psychological incapacity, a clear and understandable causation between the party's condition and the party's inability to perform the essential marital covenants must be shown. A psychological report that is essentially comprised of mere platitudes, however speckled with technical jargon, would not cut the marriage tie**."[45]

Similarly, Ms. Montefalcon's report merely provided general characterizations of the parties' illnesses as deeply-rooted, grave, and incurable. In her report, she stated that the root cause of the parties' flawed personality patterns was attributable to genetic factors and/or dysfunctional factors involved in their childhood milieu. She also declared that their illnesses were grave, since the parties were not able to carry out the normal and ordinary duties of marriage and family, and incurable, as they have no psychological insight that they have character problems.[46] However, no evidence was presented to substantiate these conclusions. In fact, as petitioner demonstrates, the report seems to contradict the foregoing characterizations since it was observed that respondent "was awaken and decided x x x to fix his life" and that "[h]e admitted that he is weak but he was able to resist drugs and [is now] helping his mother run their business."[47] As such, it cannot be concluded that respondent's DPD is imbued with the required quality of permanence or incurability.

If anything, Ms. Montefalcon's evaluation only supports the allegations regarding respondent's infidelity, immaturity, and dependence on his mother and wife, which traits do not, however,

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[45] See *Republic v. Tecag*, *supra* note 32.

[46] See *rollo*, pp. 108-109.

[47] *Id*. at 19.

rise to the level of the psychological incapacity that would justify the nullification of the parties' marriage. Indeed, while respondent's purported womanizing caused the couple's frequent fights, such was not established to be caused by a psychological illness. In fact, records reveal that when petitioner discovered respondent's affair for the first time, the latter immediately severed it. They would also eventually reconcile and live together after their fights. Thus, respondent's infidelity does not appear to be a symptom of a grave and permanent psychological disorder that renders him incapable of performing his spousal obligations. In a long line of cases, the Court has held that sexual infidelity, by itself, is not sufficient proof that petitioner is suffering from psychological incapacity. It must be shown that the acts of unfaithfulness are manifestations of a disordered personality which make the spouse completely unable to discharge the essential obligations of marriage.[48]

In fine, for failing to sufficiently prove the existence of respondent's psychological incapacity within the contemplation of Article 36 of the Family Code, the petition is granted. The contrary rulings of the courts *a quo* are hence, reversed and set aside.

WHEREFORE, the petition is **GRANTED**. The Decision dated June 6, 2018 and the Resolution dated August 1, 2018 of the Court of Appeals in CA-G.R. CV No. 109683 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Petition for Declaration of Nullity of Marriage filed under Article 36 of the Family Code, as amended, is **DISMISSED**.

SO ORDERED.

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

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[48] *Marable v. Marable*, 654 Phil. 529, 539-540 (2011).

SECOND DIVISION

[G.R. No. 242005. June 26, 2019]

RAMIL A. BAGAOISAN, M.D., Chief of Hospital I, Cortes Municipal Hospital, Cortes, Surigao del Sur, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN FOR MINDANAO, DAVAO CITY,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXECUTIVE ORDER NO. 292 (ADMINISTRATIVE CODE OF 1987); PROHIBITION AGAINST NEPOTISM; AN APPOINTMENT IN THE GOVERNMENT OF A RELATIVE WITHIN THE THIRD CIVIL DEGREE OF CONSANGUINITY OR AFFINITY OF THE APPOINTING AUTHORITY, RECOMMENDING AUTHORITY, CHIEF OF BUREAU OR OFFICE, AND PERSON EXERCISING IMMEDIATE SUPERVISION OVER THE APPOINTEE. — The prohibitory norm against nepotism in the public service is set out in Section 59, Chapter 8, Title I-A, Book V of EO 292. "Nepotism" is defined therein as follows: Section 59. *Nepotism*. — (1) **All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office**, or of the persons exercising immediate supervision over him, are hereby **prohibited**. As used in this Section, the word "relative" and members of the family referred to are those related **within the third degree either of consanguinity or of affinity**. x x x Under the foregoing definition, one is guilty of nepotism if an appointment is issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following: (*a*) appointing authority; (*b*) recommending authority; (*c*) chief of the bureau or office; and (*d*) person exercising immediate supervision over the appointee.

2. ID.; ID.; ID.; ID.; ID.; FOR THE PURPOSE OF DETERMINING NEPOTISM, THERE SHOULD BE NO DISTINCTION BETWEEN APPOINTMENT AND DESIGNATION, RATIONALE. — Jurisprudence has it that for the purpose of determining nepotism, there should be no distinction between *appointment* and *designation*; otherwise, the prohibition on nepotism would be meaningless and toothless. Any appointing authority may circumvent it by merely designating, and not appointing, a relative within the prohibited degree to a vacant position in the career service. Indeed, what cannot be done directly cannot be done indirectly.

3. ID.; ID.; ID.; ID.; ID.; ID.; THE RULE ON NEPOTISM DOES NOT REQUIRE THE EXISTENCE OF A GOVERNMENT POSITION IN THE *PLANTILLA* OF AN ORGANIZATION FOR ITS APPLICATION, NEITHER IS THERE A NEED FOR A BUDGETARY ALLOCATION THEREFOR NOR THAT THE APPOINTEE RECEIVED BENEFITS AS A RESULT OF THE APPOINTMENT; CASE AT BAR. — [T]he rule on nepotism does not require the existence of a government position in the *plantilla* of an organization for its application. Neither is a budgetary allocation therefor or that the appointee received benefits as a result of the appointment required before the rule on nepotism can apply. Instead, Section 59 above-cited is so comprehensive and encompassing that in *Debulgado v. CSC (Debulgado)*, the Court explained: A textual examination of Section 59 at once reveals that the prohibition was cast in **comprehensive and unqualified terms**. Firstly, it explicitly covers "all appointments," without seeking to make any distinction between differing kinds or types of appointments. Secondly, Section 59 covers all appointments to the national, provincial, city and municipal governments, as well as any branch or instrumentality thereof and all government owned or controlled corporations. Thirdly, there is a list of exceptions set out in Section 59 itself, but it is a short list: (a) persons employed in a confidential capacity;(b) teachers;(c) physicians; and (d) members of the Armed Forces of the Philippines. x x x Based on the foregoing disquisitions, it is of no consequence that petitioner appointed/designated Nelita to non-*plantilla* positions in the Cortes Municipal Hospital or that he merely "designated" her to perform "additional functions," as opposed to an existing government position. Neither is it material that Nelita did not receive compensation as a result of said appointments nor that

petitioner acted in good faith in issuing the Office Orders creating the said positions.

4. ID.; ID.; PUBLIC OFFICERS; WHEN GUILTY OF GRAVE MISCONDUCT; IN GRAVE MISCONDUCT, THE ELEMENTS OF CORRUPTION, CLEAR INTENT TO VIOLATE THE LAW, OR FLAGRANT DISREGARD OF AN ESTABLISHED RULE MUST BE EVIDENT; IMPOSABLE PENALTY IN CASE AT BAR. — Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer. The misconduct is considered to be grave if it also involves other elements, such as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule, must be evident. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. In this case, there was a willful intent to violate the law or to disregard established rules, as petitioner knowingly appointed his wife, Nelita, as Administrative Officer and Liaison Officer, and to perform functions as "Internal Control Unit" at the Cortes Municipal Hospital. Accordingly, since a government employee who is found guilty of Grave Misconduct may be dismissed from service even for the first offense under the Revised Rules on Administrative Cases in the Civil Service (RRACCS), the CA aptly meted the penalty of dismissal, with accessory penalties, to petitioner.

APPEARANCES OF COUNSEL

Arao Boiser Camino Law Firm for petitioner.

Office of the Ombudsman, Office of the Legal Affairs for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 28, 2018 and the Resolution[3] dated August 23, 2018 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 08117-MIN, which affirmed *in toto* the Decision[4] dated December 5, 2016 and the Order[5] dated May 2, 2017 of the Office of the Ombudsman (Ombudsman) in OMB-M-A-16-0176 finding petitioner Ramil A. Bagaoisan, M.D. (petitioner) guilty of Grave Misconduct and meting upon him the penalty of dismissal from service, with all its accessory penalties.

The Facts

At the time material to this case, petitioner was the Chief of Hospital I of the Cortes Municipal Hospital in Cortes, Surigao del Sur.[6]

On May 26, 2011, petitioner issued Office Memorandum Order No. 012, series of 2011,[7] designating his wife, Nelita L. Bagaoisan (Nelita), as Administrative Officer and Liaison Officer of the Cortes Municipal Hospital *in addition* to her work as Nutritionist-Dietician I.[8] Thereafter, or on November 5, 2013,

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[1] *Rollo*, pp. 3-25.

[2] *Id*. at 33-36. Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Tita Marilyn Payoyo-Villordon, concurring.

[3] *Id*. at 38-40.

[4] *Id*. at 58-63. Approved by Deputy Ombudsman for Mindanao Rodolfo M. Elman.

[5] *Id*. at 83-86.

[6] See *id*. at 46-47, 51, and 58.

[7] *Id*. at 43.

[8] See Nelita's *Panunumpa sa Katungkulan* dated January 9, 1998; *id*. at 42.

he also issued Office Memorandum Order No. 028, series of 2013[9] directing Nelita to function as "Internal Control Unit" *in addition* to her previous designations.[10]

By virtue of an anonymous letter[11] from a "concerned citizen" alleging acts of nepotism committed by petitioner, the Field Investigation Unit — Office of the Deputy Ombudsman for Mindanao filed a complaint-affidavit[12] criminally and administratively charging petitioner with violation of Section 59,[13]

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[9] *Id*. at 44.

[10] See *id*. at 33-34 and 58-59.

[11] Dated July 17, 2013. *Id*. at 45.

[12] Dated March 22, 2016. *Id*. at 46-50.

[13]
CHAPTER 8
PROHIBITIONS

Section 59. *Nepotism*. – (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

As used in this Section, the word "relative" and members of the family referred to are those related within the third degree either or consanguinity or of affinity.

(2) The following are exempted from the operation of the rules on nepotism: (a) persons employed in a confidential capacity, (b) teachers, (c) physicians, and (d) members of the Armed Forces of the Philippines: Provided, however, That in each particular instance full report of such appointment shall be made to the Commission.

The restriction mentioned in subsection (1) shall not be applicable to the case of a member of any family who, after his or her appointment to any position in an office or bureau, contracts marriage with someone in the same office or bureau, in which event the employment or retention therein of both husband and wife may be allowed.

(3) In order to give immediate effect to these provisions, cases of previous appointments which are in contravention hereof shall be corrected by transfer, and pending such transfer, no promotion or salary increase shall be allowed in favor of the relative or relatives who are appointed in violation of these provisions.

Chapter 8, in relation to Section 67,[14] Chapter 10, Title I-A, Book V of Executive Order No. (EO) 292[15] and Grave Misconduct. The complaint averred that petitioner's acts designating Nelita as Administrative Officer and Liaison Officer, as well as "Internal Control Unit," *in addition* to her position as Nutritionist-Dietician I, violated the rule against nepotism.[16]

In defense,[17] petitioner claimed that the rule of nepotism does not prohibit designation, and that he merely designated his wife to a non-*plantilla* position in good faith. More importantly, he contended that his wife did not receive any additional compensation as a result of such designations.[18]

The Ombudsman's Ruling

In a Decision[19] dated December 5, 2016, the Ombudsman found substantial evidence to hold petitioner guilty of Grave Misconduct, and accordingly, meted the penalty of dismissal from service, including the accessory penalties thereof. Further, in the event that dismissal can no longer be enforced due to separation from service, the penalty shall be converted into a fine in the amount equivalent to his salary for one (1) year, payable to the Ombudsman, which may be deducted from his accrued leave credits or any receivable from the government.[20]

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[14] CHAPTER 9
LEAVE OF ABSENCE

Section 67. *Penal Provision*. — Whoever makes any appointment or employs any person in violation of any provision of this Title or the rules made thereunder or whoever commits fraud, deceit or intentional misrepresentation of material facts concerning other civil service matters, or whoever violates, refuses or neglects to comply with any of such provisions or rules, shall upon conviction be punished by a fine not exceeding one thousand pesos or by imprisonment not exceeding six (6) months, or both such fine and imprisonment in the discretion of the court.

[15] Otherwise known as the "Administrative Code of 1987."

[16] See *rollo*, pp. 34 and 58.

[17] See Counter-Affidavit dated May 20, 2016; *id*. at 51-53.

[18] See *id*. at 34, 52, and 54.

[19] *Id*. at 58-63.

[20] *Id*. at 61.

The Ombudsman found that there was a flagrant disregard of Section 59, Chapter 8, Title I-A, Book V of EO 292, when petitioner designated his wife to other positions in the government, namely, Administrative Officer and Liaison Officer, as well as "Internal Control Unit." Petitioner's argument that the rule on nepotism proscribes only appointment and not designation is misplaced, as there is no distinction between them. The Ombudsman fully explained that if a designation is not to be deemed included in the term "appointed" as provided for in the law, then any appointing authority may circumvent the rule by merely designating, and not appointing, a relative within the prohibited degree to a vacant position in the career service. Finally, petitioner's defense of good faith is immaterial in the determination of his administrative liability.[21]

Aggrieved, petitioner moved for reconsideration,[22] insisting that the positions to which he designated his wife were non-existent.[23] In an Order[24] dated May 2, 2017, the Ombudsman denied his motion. Hence, he appealed[25] to the CA.

The CA's Ruling

In a Decision[26] dated February 28, 2018, the CA denied petitioner's appeal and affirmed *in toto* the Ombudsman's ruling finding him guilty of Grave Misconduct,[27] considering the undisputed facts that Nelita is petitioner's wife and he designated her as Administrative Officer and Liaison Officer, as well as "Internal Control Unit," at the same time that she was holding the position of Nutritionist-Dietician I of the Cortes Municipal Hospital. Echoing the Ombudsman, the CA held that petitioner's

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

[22] See Motion for Reconsideration and Reinvestigation dated January 30, 2017; *id*. at 64-82.

[23] See *id*. at 73-74.

[24] *Id*. at 83-86.

[25] See Petition for Review dated May 25, 2017; *id*. at 105-123.

[26] *Id*. at 33-36.

[27] *Id*. at 36.

defense of good faith, as well as his wife's alleged non-acceptance of additional compensation for the said designations, are immaterial. That there was no budgetary allocation appropriated for the said positions does not detract from the fact that petitioner issued the office memoranda creating the said positions to which he designated his wife. The Ombudsman also stressed that Section 59, Chapter 8, Title I-A, Book V of EO 292 refers to "all appointments," whether original or promotional in nature.[28]

Undaunted, petitioner moved for reconsideration[29] which was denied in a Resolution[30] dated August 23, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding the Ombudsman's finding that petitioner is guilty of Grave Misconduct and in meting upon him the penalty of dismissal from service.

The Court's Ruling

The petition lacks merit.

The prohibitory norm against nepotism in the public service is set out in Section 59, Chapter 8, Title I-A, Book V of EO 292.[31] "Nepotism" is defined therein as follows:

> Section 59. *Nepotism*. — (1) **All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office**, or of the persons exercising immediate supervision over him, are hereby **prohibited**.

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[28] See *id*. at 35-36.

[29] See Motion for Reconsideration dated March 23. 2018; *id*. at 124-137.

[30] *Id*. at 38-40.

[31] See *Debulgado v. Civil Service Commission*, G.R. No. 111471, September 26, 1994, 237 SCRA 184, 191.

As used in this Section, the word "relative" and members of the family referred to are those related **within the third degree either of consanguinity or of affinity**.

(2) The following are exempted from the operation of the rules on nepotism: (a) persons employed in a confidential capacity, (b) teachers, (c) physicians, and (d) members of the Armed Forces of the Philippines: Provided, however, That in each particular instance full report of such appointment shall be made to the Commission.

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(Emphases supplied)

Under the foregoing definition, one is guilty of nepotism if an appointment is issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following: (*a*) appointing authority; (*b*) recommending authority; (*c*) chief of the bureau or office; and (*d*) person exercising immediate supervision over the appointee.[32]

Meanwhile, "designation" is defined as "an appointment or assignment to a particular office," and "to designate" means "to indicate, select, appoint, or set apart for a purpose or duty."[33] In *Binamira v. Garrucho, Jr.*,[34] the Court explained further that:

Designation may also be loosely defined as an appointment because it likewise involves the naming of a particular person to a specified public office. That is the common understanding of the term. However, where the person is merely designated and not appointed, the implication is that he shall hold the office only in a temporary capacity and may be replaced at will by the appointing authority. In this sense, the designation is considered only an acting or temporary appointment, which does not confer security of tenure on the person named.[35]

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[32] *CSC v. Dacoycoy*, 366 Phil. 86, 102-103 (1999).

[33] *Laurel V v. CSC*, 280 Phil. 212, 228 (1991).

[34] 266 Phil. 166 (1990).

[35] *Id*. at 171; underscoring supplied.

In Section 13 (c), Rule IV of Memorandum Circular No. 14,[36] series of 2018 of the Civil Service Commission (CSC), "designation" was defined as follows:

> RULE IV
> EMPLOYMENT STATUS, NATURE OF APPOINTMENT AND OTHER HUMAN RESOURCES
>
> Section 13. Other Human Resource Actions. x x x
>
> c. Designation — movement that involves an imposition of additional and/or higher duties to be performed by a public official/employee which is temporary and can be terminated anytime at the pleasure of the appointing authority officer/ authority. Designation may involve the performance of duties of another position on a concurrent capacity or on full-time basis.
>
> A designation in an acting capacity entails not only the exercise of the ministerial functions attached to the position but also the exercise of discretion since the person designated is deemed to be the incumbent of the position.
>
> x x x x x x x x x

Jurisprudence has it that for the purpose of determining nepotism, there should be no distinction between *appointment* and *designation*;[37] otherwise, the prohibition on nepotism would be meaningless and toothless. Any appointing authority may circumvent it by merely designating, and not appointing, a relative within the prohibited degree to a vacant position in the career service. Indeed, what cannot be done directly cannot be done indirectly.[38]

Here, it is undisputed that Nelita, the appointee, is the wife of petitioner, the appointing authority and Chief of Hospital I of the Cortes Municipal Hospital. By virtue of his position,

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[36] Entitled "2017 OMNIBUS RULES ON APPOINTMENTS AND OTHER HUMAN RESOURCE ACTIONS" (JULY 3, 2018).

[37] See *Laurel V v. CSC*, *supra* note 33, at 227-228.

[38] *Id*. at 228-229.

petitioner appointed Nelita as Administrative Officer and Liaison Officer, as well as "Internal Control Unit," in addition to her position as Nutritionist-Dietician I of the Cortes Municipal Hospital.[39]

Petitioner maintains, however, that he merely "designated" her to perform additional functions, considering that the positions of Administrative Officer and Liaison Officer, as well as "Internal Control Unit," are non-existent positions in the *plantilla* of the Cortes Municipal Hospital. As these positions were non-existent, he explains that there could have been no personnel movement in Nelita's case as there was a mere "designation of additional function" as opposed to "designation to a government position," which would have the same context as "appointment."[40] Claiming good faith, he argues that he could not be held guilty of nepotism, as nepotism presupposes that there is an actual or existing government position to which the public official's relative within the third degree of consanguinity or affinity may be appointed or designated.[41]

The Court is not convinced.

It is true that the *plantilla* positions of the Cortes Municipal Hospital for Fiscal Years 2011,[42] 2012,[43] and 2016,[44] offered in evidence by petitioner, collectively show that the positions of Administrative Officer, Liaison Officer, and "Internal Control Unit" are non-existent positions. This fact is confirmed by the Certifications separately issued by the Provincial Accounting Office,[45] Provincial Budget Office,[46] and the Office of the

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[39] See *rollo*, pp. 33-34 and 58-59.

[40] See *id*. at 17-20.

[41] See *id*. at 19-20.

[42] *Id*. at 159.

[43] *Id*. at 160-161.

[44] *Id*. at 162-163.

[45] *Id*. at 156. Signed by Provincial Accountant Charles B. Tonera.

[46] *Id.* at 157. Signed by Provincial Budget Officer Delia D. Abelardo.

Provincial Administrator,[47] all of the Province of Surigao del Sur. The Certifications issued by the Provincial Accounting Office and the Provincial Budget Office even state that "no budgetary allocation was appropriated for the above-positions and that no appointment exists or is submitted for processing with our office since 2011 until at present."[48]

However, the rule on nepotism does not require the existence of a government position in the *plantilla* of an organization for its application. Neither is a budgetary allocation therefor or that the appointee received benefits as a result of the appointment required before the rule on nepotism can apply. Instead, Section 59 above-cited is so comprehensive and encompassing that in *Debulgado v. CSC (Debulgado)*,[49] the Court explained:

> A textual examination of Section 59 at once reveals that the prohibition was cast in **comprehensive and unqualified terms**. Firstly, it explicitly covers "all appointments," without seeking to make any distinction between differing kinds or types of appointments. Secondly, Section 59 covers all appointments to the national, provincial, city and municipal governments, as well as any branch or instrumentality thereof and all government owned or controlled corporations. Thirdly, there is a list of exceptions set out in Section 59 itself, but it is a short list:
>
> (a) persons employed in a confidential capacity;
> (b) teachers;
> (c) physicians; and
> (d) members of the Armed Forces of the Philippines.
>
> The list has not been added to or subtracted from for the past thirty (30) years. The list does not contain words like "and other similar positions." Thus, the list appears to us to be a closed one, at least closed until lengthened or shortened by Congress.
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> x x x x x x x x x

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[47] *Id.* at 158. Signed by Supervising Administrative Officer Theresa E. Burgos.

[48] *Id*. at 156-157.

[49] *Supra* note 31.

The purpose of Section 59 which shines through the comprehensive and unqualified language in which it was cast and has remained for decades, is precisely to take out of the discretion of the appointing and recommending authority the matter of appointing or recommending for appointment a relative. In other words, Section 59 insures the objectivity of the appointing or recommending official by preventing that objectivity from being in fact tested. The importance of this statutory objective is difficult to overstress in the culture in which we live and work in the Philippines, where family bonds remain, in general, compelling and cohesive.

The conclusion we reach is that Section 59, Book V, E.O. No. 292 means exactly what it says in plain and ordinary language: it refers to "all appointments" whether original or promotional in nature. The public policy embodied in Section 59 is clearly fundamental in importance, and the Court has neither authority nor inclination to dilute that important public policy by introducing a qualification here or a distinction there.[50]

Based on the foregoing disquisitions, it is of no consequence that petitioner appointed/designated Nelita to non-*plantilla* positions in the Cortes Municipal Hospital or that he merely "designated" her to perform "additional functions," as opposed to an existing government position. Neither is it material that Nelita did not receive compensation as a result of said appointments nor that petitioner acted in good faith in issuing the Office Orders creating the said positions. The Ombudsman pointed out that it was rather dubious why petitioner had to designate his wife to perform additional functions notwithstanding its non-existence in the *plantilla*;[51] indeed, there is no reason why said additional functions cannot be performed by other qualified employees who are not relatives of petitioner and thus, insuring his objectivity. It bears to stress that the prohibition applies without regard to the actual merits of the proposed appointee and to the good intentions of the appointing or recommending authority, and that the prohibition against nepotism in appointments, whether original or promotional, is

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[50] *Id*. at 194-198; emphasis and underscoring supplied.

[51] See *id*. at 180.

not intended by the legislative authority to penalize faithful service.[52]

The public policy embodied in Section 59 is clearly fundamental in importance, and the Court has neither authority nor inclination to dilute that important public policy by introducing a qualification here or a distinction there,[53] as petitioner would want the Court to do. In *CSC v. Dacoycoy*,[54] the Court elucidated that:

> Nepotism is one pernicious evil impeding the civil service and the efficiency of its personnel. In *Debulgado*, we stressed that "[t]he basic purpose or objective of the prohibition against nepotism also strongly indicates that the prohibition was intended to be a comprehensive one." "The Court was unwilling to restrict and limit the scope of the prohibition which is textually very broad and comprehensive." If not within the exceptions, it is a form of corruption that must be nipped in the bud or abated whenever or wherever it raises its ugly head. As we said in an earlier case "what we need now is not only to punish the wrongdoers or reward the 'outstanding' civil servants, but also to plug the hidden gaps and potholes of corruption as well as **to insist on strict compliance with existing legal procedures in order to abate any occasion for graft or circumvention of the law**."[55]

In light of the foregoing, the Court finds that petitioner's actions constitute Grave Misconduct.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer. The misconduct is considered to be grave if it also involves other elements, such as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. In grave misconduct, the elements

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[52] *Debulgado v. CSC*, *supra* note 31, at 198.

[53] *Id*.

[54] *Supra* note 32.

[55] *Id*. at 106; emphasis supplied.

of corruption, clear intent to violate the law, or flagrant disregard of an established rule, must be evident.[56] Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[57]

In this case, there was a willful intent to violate the law or to disregard established rules, as petitioner knowingly appointed his wife, Nelita, as Administrative Officer and Liaison Officer, and to perform functions as "Internal Control Unit" at the Cortes Municipal Hospital. Accordingly, since a government employee who is found guilty of Grave Misconduct may be dismissed from service even for the first offense[58] under the Revised Rules on Administrative Cases in the Civil Service (RRACCS),[59] the CA aptly meted the penalty of dismissal, with accessory penalties, to petitioner.

WHEREFORE, the petition is **DENIED**. The Decision dated February 28, 2018 and the Resolution dated August 23, 2018 rendered by the Court of Appeals in CA-G.R. SP No. 08117-MIN, which affirmed *in toto* the Decision dated December 5, 2016 and the Order dated May 2, 2017 of the Office of the Ombudsman in OMB-M-A-16-0176 are **AFFIRMED**.

SO ORDERED.

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

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[56] *Office of the Ombudsman-Mindanao v. Martel*, 806 Phil. 649, 662 (2017), citing *Bureau of Internal Revenue v. Organo*, 468 Phil. 111, 118 (2004) and *Chavez v. Garcia*, 783 Phil. 562, 573 (2016).

[57] *Office of the Ombudsman v. Mallari*, 749 Phil. 224, 249 (2014).

[58] *Ganzon v. Arlos*, 720 Phil. 104, 107 (2013).

[59] See Section 46 (A), Rule 10 of the RRACCS.

SECOND DIVISION

[G.R. No. 242834. June 26, 2019]

RAMON E. MIRANDILLA, RANIL D. ATULI, and EDWIN D. ATULI, *petitioners, vs.* **JOSE CALMA DEVELOPMENT CORP. and JOSE GREGORIO ANTONIO C. CALMA, JR.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; REGULAR EMPLOYEE DISTINGUISHED FROM PROJECT EMPLOYEE; TEST TO DETERMINE THE DISTINCTION BETWEEN REGULAR AND PROJECT EMPLOYEES. — Article 295 (formerly 280) of the Labor Code, as amended, provides that a regular employee is one who has been engaged to perform activities which are usually necessary or desirable in the usual trade or business of the employer, while a project employee is one whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of engagement of the employee[.] x x x According to jurisprudence, the principal test for determining whether particular employees are properly characterized as project employees as distinguished from regular employees, is whether or not: **(*a*) the employees were assigned to carry out a specific project or undertaking**; and **(*b*) the duration and scope of which were specified at the time the employees were engaged for that project.**

2. ID.; ID.; PROJECT EMPLOYMENT; REQUIREMENTS THAT EMPLOYERS MUST COMPLY BEFORE EMPLOYEES MAY BE CONSIDERED AS PROJECT EMPLOYEES. — [C]ase law states that in order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent them from attaining regular status, **employers claiming that their workers are project employees should not only prove that the duration and scope of the employment were specified at the time they were engaged, but also that there was indeed a project**. Furthermore, "[i]t is crucial that the employees were **informed of their status as**

project employees at the time of hiring and that the period of their employment must be knowingly and voluntarily agreed upon by the parties, without any force, duress, or improper pressure being brought to bear upon the employees or any other circumstances vitiating their consent."

3. ID.; ID.; REGULAR EMPLOYMENT; WHERE THE EMPLOYER FAILED TO INFORM EMPLOYEES THAT THEY WERE ENGAGED FOR A SPECIFIC PROJECT WITH ITS DURATION AND SCOPE AT THE TIME THAT THEY WERE ENGAGED, THEY ARE CONSIDERED REGULAR EMPLOYEES; A PATTERN OF REASSIGNMENT FROM ONE PROJECT TO ANOTHER DEMONSTRATES THAT AN EMPLOYEE WAS ACTUALLY TASKED TO PERFORM WORK USUALLY NECESSARY AND DESIRABLE TO EMPLOYER'S BUSINESS. — In this case, records fail to disclose that petitioners were engaged for a specific project and that they were duly informed of its duration and scope at the time that they were engaged. As for Ramon, respondents submitted his WTRs as primary proof of his alleged project employment status. While these WTRs do indicate Ramon's particular assignments for certain weeks starting from November 8, 2013 to May 27, 2015, they do not, however, indicate that he was particularly engaged by JCDC for each of the projects stated therein, and that the duration and scope thereof were made known to him at the time his services were engaged. At best, these records only show that he had worked for such projects. By and of themselves, they do not show that Ramon was made aware of his status as a project employee at the time of hiring, as well as of the period of his employment for a specific project or undertaking. In fact, the WTRs actually show that Ramon was engaged as an all-purpose carpenter who was made to work at JCDC's several project sites on a regular basis, as his working assignments were just re-shuffled from one project to another without any clear showing that his engagement for each project site was constitutive of a particular contract of project employment. x x x [I]t is noteworthy that no project employment contract was shown designating his engagement for each particular undertaking, much more was it demonstrated that he was informed of the scope and duration thereof. Clearly, by virtue of this pattern of re-assignment, Ramon should be deemed as a regular employee, as he was actually tasked to perform

work which is usually necessary and desirable to the trade and business of his employer, and not merely engaged for a specific project or undertaking.

4. ID.; ID.; ID.; EMPLOYER'S FAILURE TO FILE TERMINATION REPORT AFTER EVERY PROJECT COMPLETION PROVES THAT THE EMPLOYEES ARE NOT PROJECT EMPLOYEES; ABSENCE OF EMPLOYMENT CONTRACTS PUTS INTO SERIOUS QUESTION THE ISSUE OF WHETHER THE EMPLOYEES WERE PROPERLY INFORMED OF THEIR EMPLOYMENT STATUS AS PROJECT EMPLOYEES; HENCE, PETITIONERS ARE REGULAR EMPLOYEES. — [I]f Ramon were to be considered as a project employee for each of the project sites indicated in the WTRs, then JCDC should have submitted a report of termination to the nearest public employment office every time his employment was terminated due to completion of each construction project. However, JCDC only submitted one (1) Establishment Employment Report dated October 29, 2015. In *Dacles v. Millenium Erectors, Corp.*, the Court held that "Policy Instruction No. 20 is explicit that employers of project employees are exempted from the clearance requirement but not from the submission of termination report. **[The Court has] consistently held that failure of the employer to file termination reports after every project completion proves that the employees are not project employees**[,]" as in this case. In view of the foregoing, Ramon cannot be considered as a project employee. Hence, he was a regular employee who could only have been terminated for a just or authorized cause. x x x With respect to Ranil and Edwin, the Court finds that respondents also failed to establish their project employment status. x x x [S]ame as in Ramon's case, Ranil and Edwin's project employment contracts for their engagement were not even shown. These contracts would have shed light to what projects or undertakings they were engaged; but all the same, none were submitted. As case law holds, **the absence of the employment contracts puts into serious question the issue of whether the employees were properly informed of their employment status as project employees at the time of their engagement, especially if there were no other evidence offered**. In fine, Ranil and Edwin could not be considered as project employees. As such, they were regular employees who

could only have been dismissed for a just or authorized cause, none of which exists.

5. ID.; ID.; TERMINATION OF EMPLOYMENT; A QUITCLAIM WITH A LOW AND INEQUITABLE CONSIDERATION IS NOT AN OBSTACLE TO AN EMPLOYEE'S LEGITIMATE CLAIM; REASON. — [A] quitclaim in which the consideration is scandalously low and inequitable cannot be an obstacle to the pursuit of a worker's legitimate claim. *This is because an obviously "lowball" consideration in a quitclaim indicates that the employee did not stand on an equal footing with the employer when he seemingly acceded to the waiver of his rights. Indeed, under ordinary circumstances, a reasonable man would not allow himself to be shortchanged into waiving all of his claims, unless he fully comprehends the consequences of such act.* Thus, as case law states, "[u]nless it can be established that the person executing the waiver voluntarily did so, with full understanding of its contents, and with reasonable and credible consideration, the same is not a valid and binding undertaking."

6. ID.; ID.; ID.; ID.; THE QUITCLAIMS SIGNED BY PETITIONERS DO NOT APPEAR TO HAVE BEEN MADE FOR A REASONABLE AND CREDIBLE CONSIDERATION, AND THEREFORE DO NOT CONSTITUTE AN EFFECTIVE WAIVER OF RESPONDENTS' LIABILITY ARISING FROM ILLEGAL TERMINATION OF PETITIONERS. — [T]he quitclaims signed by Ranil and Edwin, in consideration of ₱6,917.47 and ₱7,290.06, respectively, do not appear to have been made for a reasonable and credible consideration, considering that these amounts only pertained to their 13th month pay for the year 2015, and as such, do not approximate any reasonable award (such as backwages and separation pay) that would have been awarded to them should they successfully pursue litigation. Notably, the 13th month pay is a statutory obligation of the employer under the law; hence, its payment is not really constitutive of any reasonable settlement as they are already entitled to the same as a matter of course. According to jurisprudence, "the burden to prove that the waiver or quitclaim was voluntarily executed is with the employer," which the latter failed to discharge. In view of the foregoing circumstances, the Court holds that the quitclaims were not validly executed, and hence, do not constitute an effective waiver

of JCDC's liability arising from its illegal termination of Ranil and Edwin, its regular employees.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Narvaez & Beltran Law Offices for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 28, 2018 and the Resolution[3] dated July 27, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 153206, which affirmed the Resolution[4] dated June 23, 2017 and the Resolution[5] dated August 22, 2017 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 06-001886-17, declaring petitioners Ramon E. Mirandilla (Ramon), Ranil D. Atuli (Ranil), and Edwin D. Atuli (Edwin; collectively, petitioners) as project employees, and thus, were not illegally dismissed.

The Facts

In May 2013, respondent Jose Calma Development Corp. (JCDC), a company engaged in the construction business, allegedly hired Ramon as finishing carpenter for the latter's construction project in Makati City, and later, in October 2014,

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[1] *Rollo*, pp. 3-24.

[2] *Id*. at 26-39. Penned by Associate Justice Ramon R. Garcia with Associate Justices Myra V. Garcia-Fernandez and Germano Francisco D. Legaspi, concurring.

[3] *Id*. at 41-42.

[4] *Id*. at 70-79. Penned by Commissioner Pablo C. Espiritu, Jr. with Presiding Commissioner Alex A. Lopez and Commissioner Cecilio Alejandro C. Villanueva, concurring.

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

also hired Ranil and Edwin as carpenter and finishing carpenter, respectively.[6] **Sometime in October 2015, Ramon was asked by JCDC to sign a document purporting to be a termination of his project employment contract; the following month, Ranil and Edwin were asked to sign a similar document.** Claiming that they were regular employees, petitioners were surprised to learn that their employment had been terminated despite not having violated any company policy.[7] This prompted them to file a complaint[8] for illegal dismissal and other money claims against JCDC and its president and owner, Jose Gregorio Antonio C. Calma, Jr. (Jose Gregorio; collectively, respondents), before the NLRC.[9]

For their part,[10] respondents denied that petitioners were illegally dismissed and asserted that the latter were project employees who were duly apprised of their status as such and whose employments were coterminous with the completion of their projects.[11]

Respondents added that Ramon committed several violations[12] of company rules and regulations, including commission of an offense against superior, non-compliance with the uniform and dress code policy, acts of discourtesy to persons in authority, immoral conduct, insubordination, and going on absence without leave, for which he was served with corresponding memoranda — which he refused to receive — requiring his explanation.[13] On October 29, 2015, JCDC submitted to the Department of Labor and Employment (DOLE) an Establishment Employment

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[6] See *id*. at 71. See also *id*. at 27.

[7] See *id*. See also *id*. at 27.

[8] Dated June 9, 2016. *Id*. at 83-86.

[9] See *id*. at 27.

[10] See Position Paper of respondents dated September 16, 2016; *id*. at 132-141.

[11] See *id*. at 133 and 135.

[12] See Memoranda dated October 8 and 9, 2015; CA *rollo*, pp. 130-131.

[13] See *rollo*, pp. 133-134. See also *id*. at 27-28.

Report[14] indicating the termination of Ramon's employment due to "project completion."[15]

With regard to Ranil and Edwin, respondents claimed that their project was completed in December 2015 and that they were correspondingly informed of the termination of their employment.[16] On December 23, 2015, they each received their 13th month pay[17] for the year 2015 and signed an Employee Clearance and Quit Claim.[18] On January 12, 2016, JCDC submitted to the DOLE an Establishment Termination Report with a List of Permanently Terminated Workers Due to Closure/ Retrenchment,[19] which included the names of Ranil and Edwin among the employees whose employment has been terminated due to "project completion."[20]

To support their claims, respondents presented copies of Weekly Time Records (WTRs),[21] Metrobank Check No. 29134931.41[22] and Cash/Check Vouchers[23] indicating payment of petitioners' 13th month pay for the year 2015, Establishment Employment/Termination Reports,[24] and Employee Clearance and Quit Claims.[25]

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[14] CA *rollo*, pp. 185-186.

[15] See *rollo*, p. 134. See also *id*. at 28.

[16] See *id*. at 135. See also *id*. at 28.

[17] See Cash/Check Vouchers dated December 23, 2015; CA *rollo*, pp. 134 and 136.

[18] *Id*. at 135 and 137.

[19] *Id*. at 187-188.

[20] See *rollo*, p. 28. See also *id*. at 135.

[21] Respondents only provided Ramon's WTRs covering the period from November 8, 2013 to May 27, 2015; however, some of the WTRs do not have the dates indicated. See CA *rollo*, pp. 85-129.

[22] *Id*. at 132.

[23] *Id*. at 133-134 and 136.

[24] *Id*. at 185-188.

[25] *Id*. at 135 and 137.

The Labor Arbiter's Ruling

In a Decision[26] dated April 25, 2017, the Labor Arbiter (LA) declared petitioners as regular employees, and thus, were illegally dismissed. Accordingly, the LA ordered JCDC to pay petitioners their separation pay, backwages, and service incentive leave pay, as well as ten percent (10%) attorney's fees.[27] As for Jose Gregorio, he was absolved from liability since there was no showing that any of the grounds to pierce the veil of JCDV s corporate fiction so as to hold him solidarily liable, exists.[28]

The LA held that petitioners were regular employees, considering that JCDC's evidence failed to show that the former were hired for a specific project or undertaking, which completion or termination had been determined at the time of their engagement. Moreover, the LA observed that while Ramon was assigned to several different project sites, JCDC failed to demonstrate that termination reports were filed after the completion of each project.[29] As to Ranil and Edwin, the list of permanently terminated workers submitted to the DOLE showed that they were terminated due to "closure/retrenchment" and not due to "project completion." Thus, for failure to prove the validity of petitioners' dismissal due to any just or authorized cause, the LA found JCDC liable for illegal dismissal.[30] However, it denied the other money claims for lack of merit.[31]

Aggrieved, respondents appealed[32] to the NLRC.

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[26] *Id*. at 190-209. Penned by Labor Arbiter Thomas T. Que, Jr.

[27] *Id*. at 208-209.

[28] See *id*. at 208.

[29] See *id*. at 197-199.

[30] See *id*. at 200-201.

[31] See *id*. at 204.

[32] See Appeal Memorandum dated May 15, 2017; *id*. at 210-243.

The NLRC Ruling

In a Resolution[33] dated June 23, 2017, the NLRC granted the appeal and modified the LA Decision by deleting the award of backwages, separation pay, and attorney's fees.[34]

The NLRC ruled that petitioners were project employees, considering that: (*a*) petitioners' work as finishing carpenters indicated the specific undertaking for which they were engaged; (*b*) petitioners were free to offer their services as carpenters to other employers while awaiting engagement after the end of each particular project; and (*c*) the submission to the DOLE of establishment termination reports showed that petitioners were project employees.[35] Aside from finding that Ramon was a project employee, it added that he could have been terminated for the series of infractions he committed. On the other hand, it found that Ranil and Edwin no longer had any cause of action against respondents after they executed their respective quitclaims and received their last pay after the completion of their project.[36]

Dissatisfied, petitioners moved for reconsideration[37] but the same was denied in a Resolution[38] dated August 22, 2017. Hence, petitioners elevated the matter to the CA via a petition for *certiorari*.[39]

The CA Ruling

In a Decision[40] dated February 28, 2018, the CA dismissed the petition, finding no grave abuse of discretion on the part of the NLRC.[41]

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[33] *Rollo*, pp. 70-79.

[34] *Id*. at 78.

[35] See *id*. at 75.

[36] See *id*. at 76.

[37] Dated July 10, 2017. CA *rollo*, pp. 163-173.

[38] *Rollo*, pp. 81-82.

[39] Dated October 27, 2017. *Id*. at 43-65.

[40] *Id*. at 26-39.

[41] *Id*. at 38.

The CA observed that as finishing carpenters, petitioners' nature of work clearly indicated the specific undertaking for which they were hired and the specific phase of work that their services were needed. Moreover, it observed that JCDC complied with the submission requirement to the DOLE by filing an Establishment Employment Report for Ramon and an Establishment Termination Report with a List of Permanently Terminated Workers Due to Closure/Retrenchment for Ranil and Edwin. As such, petitioners' employment legally ended upon the completion of their projects, and thus, petitioners were not illegally dismissed.[42]

Besides, the CA pointed out that Ramon could also have been terminated on account of his numerous violations of company policies, including insubordination when he ignored the memoranda issued to him. As to Ranil and Edwin, it found that they voluntarily executed their quitclaims, and thus, were bound by the said transaction.[43]

Petitioners moved for reconsideration[44] but the same was denied in a Resolution[45] dated July 27, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly ruled that petitioners were project employees, and thus, were legally dismissed.

The Court's Ruling

The petition is partly meritorious.

At the outset, it bears stressing that in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's

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[42] See *id*. at 37.

[43] See *id*. at 37-38.

[44] Dated April 17, 2018. *Id*. at 197-228.

[45] *Id*. at 41-42.

Decision.[46] In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[47]

Guided by these considerations, the Court finds that the CA erred in dismissing petitioners' *certiorari* petition before it, since it failed to attribute grave abuse of discretion on the part of the NLRC which erroneously ruled that petitioners were project employees of JCDC despite the latter's failure to establish the former's project employment status through substantial evidence.

To expound, Article 295 (formerly 280) of the Labor Code, as amended, provides that a regular employee is one who has been engaged to perform activities which are usually necessary or desirable in the usual trade or business of the employer, while a project employee is one whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of engagement of the employee, to wit:

> Article 280. *Regular and casual employment*. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking[,] the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
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> (Underscoring supplied)

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[46] See *Maricalum Mining Corporation v. Florentino*, G.R. Nos. 221813 & 222723, July 23, 2018.

[47] See *Dacles v. Millenium Erectors Corporation*, 763 Phil. 550, 557 (2015); citations omitted.

According to jurisprudence, the principal test for determining whether particular employees are properly characterized as project employees as distinguished from regular employees, is whether or not: **(*a*) the employees were assigned to carry out a specific project or undertaking**; and **(*b*) the duration and scope of which were specified at the time the employees were engaged for that project**.[48]

In this relation, case law states that in order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent them from attaining regular status, **employers claiming that their workers are project employees should not only prove that the duration and scope of the employment were specified at the time they were engaged, but also that there was indeed a project**.[49] Furthermore, "[i]t is crucial that the employees were **informed of their status as project employees at the time of hiring and that the period of their employment must be knowingly and voluntarily agreed upon by the parties**, without any force, duress, or improper pressure being brought to bear upon the employees or any other circumstances vitiating their consent."[50]

In this case, records fail to disclose that petitioners were engaged for a specific project and that they were duly informed of its duration and scope at the time that they were engaged.

As for Ramon, respondents submitted his WTRs[51] as primary proof of his alleged project employment status. While these WTRs do indicate Ramon's particular assignments for certain weeks starting from November 8, 2013 to May 27, 2015, they do not, however, indicate that he was particularly engaged by JCDC for each of the projects stated therein, and that the duration and scope thereof were made known to him at the time his services were engaged. At best, these records only show that

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[48] See *Lopez v. Irvine Construction Corp.*, 741 Phil. 728, 737 (2014); emphases and underscoring supplied.

[49] See *Dacles v. Millenium Erectors Corporation*, *supra* note 47, at 558-559; emphasis and underscoring supplied.

[50] *Herma Shipyard, Inc. v. Oliveros*, 808 Phil. 668, 680 (2017); emphasis and underscoring supplied.

he had worked for such projects. By and of themselves, they do not show that Ramon was made aware of his status as a project employee at the time of hiring, as well as of the period of his employment for a specific project or undertaking.

In fact, the WTRs actually show that Ramon was engaged as an all-purpose carpenter who was made to work at JCDC's several project sites on a regular basis, as his working assignments were just re-shuffled from one project to another without any clear showing that his engagement for each project site was constitutive of a particular contract of project employment. For instance, the WTRs show that during the weeks of November 14 to 20, 2013 and November 21 to 27, 2013, Ramon was assigned at the project sites "Friedberg One Serendra East Tower" and "Repetto Shangrila" on various dates.[52] However, the following week (*i.e.*, November 28 to December 4, 2013), he was only assigned at "Repetto Shangrila."[53] Similarly, on April 10 to 14, 2014, he was assigned at the project "Ernest Cu."[54] Then, the week after (*i.e.*, April 17 to 23, 2014), he alternated between the project sites "Yakal" and "Ernest Cu."[55] However, the following week (*i.e.*, April 24 to 30, 2014) he reported back to the project "Ernest Cu" and another called "Repetto Rockwell."[56] In all of these, it is noteworthy that no project employment contract was shown designating his engagement for each particular undertaking, much more was it demonstrated that he was informed of the scope and duration thereof. Clearly, by virtue of this pattern of re-assignment, Ramon should be deemed as a regular employee, as he was actually tasked to perform work which is usually necessary and desirable to the trade and business of his employer, and not merely engaged for a specific project or undertaking. In *GMA Network, Inc. v. Pabriga*,[57] the Court pointed out that if the particular job or

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[51] CA *rollo*, pp. 85-129.

[52] See *id*. at 125-127.

[53] *Id*. at 127.

[54] See *id*. at 104.

[55] See *id*. at 104-105.

[56] See *id*. at 105.

[57] *GMA Network, Inc. v. Pabriga*, 722 Phil. 161 (2013).

undertaking is within the regular or usual business of the employer company and it is not identifiably distinct or separate from the other undertakings of the company such that there is clearly a constant necessity for the performance of the task in question, said job or undertaking should not be considered a project,[58] as in this case.

In addition, if Ramon were to be considered as a project employee for each of the project sites indicated in the WTRs, then JCDC should have submitted a report of termination to the nearest public employment office every time his employment was terminated due to completion of each construction project. However, JCDC only submitted one (1) Establishment Employment Report dated October 29, 2015. In *Dacles v. Millenium Erectors, Corp.*,[59] the Court held that "Policy Instruction No. 20 is explicit that employers of project employees are exempted from the clearance requirement but not from the submission of termination report. **[The Court has] consistently held that failure of the employer to file termination reports after every project completion proves that the employees are not project employees**[,]"[60] as in this case.

In view of the foregoing, Ramon cannot be considered as a project employee. Hence, he was a regular employee who could only have been terminated for a just or authorized cause. However, none of these causes was properly invoked as a ground for dismissal in this case. At this juncture, it should be emphasized that Ramon's termination was by virtue of a document which he was made to sign in October 2015 indicating the termination of his project employment contract. In addition, the Establishment Employment Report dated October 29, 2015 shows that he was terminated for the cause of "project completion" and no other. Thus, insofar as this case is concerned, it would be inappropriate to pass upon JCDC's allegations that Ramon committed other company infractions as grounds to terminate his employment.

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[58] See *id*. at 173.

[59] *Supra* note 47.

[60] *Id*. at 560; citing *Tomas Lao Construction v. NLRC*, 344 Phil. 268, 282 (1997). Emphasis supplied.

With respect to Ranil and Edwin, the Court finds that respondents also failed to establish their project employment status. Primarily, the Court finds it telling that JCDC could not even identify the specific undertakings or projects for which Ranil and Edwin were employed since their alleged hiring in 2014. Without any identifiable project or undertaking, it would necessarily follow that these two could not have been informed, at the time of their engagement, of the duration and scope thereof. Moreover, JCDC submitted an Establishment Termination Report with a List of Permanently Terminated Workers Due to Closure/ Retrenchment which, therefore, makes it unclear if they were indeed dismissed on the ground of "project completion" same as Ramon.

Likewise, same as in Ramon's case, Ranil and Edwin's project employment contracts for their engagement were not even shown. These contracts would have shed light to what projects or undertakings they were engaged; but all the same, none were submitted. As case law holds, **the absence of the employment contracts puts into serious question the issue of whether the employees were properly informed of their employment status as project employees at the time of their engagement, especially if there were no other evidence offered**.[61]

In fine, Ranil and Edwin could not be considered as project employees. As such, they were regular employees who could only have been dismissed for a just or authorized cause, none of which exists. Accordingly, as the LA correctly ruled, they were illegally dismissed. Notably, the foregoing conclusion is not negated by the fact that Ranil and Edwin executed quitclaims for the reasons explained below.

In *Arlo Aluminum, Inc. v. Piñon, Jr.*,[62] the Court explained that:

To be valid, a deed of release, waiver or quitclaim must meet the following requirements: (1) that there was no fraud or deceit on the

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[61] See *Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez*, 578 Phil. 497, 512 (2008).

[62] G.R. No. 215874, July 5, 2017, 830 SCRA 202.

part of any of the parties; (2) that the consideration for the quitclaim is sufficient and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law. Courts have stepped in to invalidate questionable transactions, especially where there is clear proof that a waiver, for instance, was obtained from an unsuspecting or a gullible person, or where the agreement or settlement was unconscionable on its face. A quitclaim is ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel. Moreover, a quitclaim in which the consideration is scandalously low and inequitable cannot be an obstacle to the pursuit of a worker's legitimate claim.

It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of the settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is sufficient and reasonable, the transaction must be recognized as a valid and binding undertaking.[63] (Underscoring supplied)

As above-mentioned, a quitclaim in which the consideration is scandalously low and inequitable cannot be an obstacle to the pursuit of a worker's legitimate claim. *This is because an obviously "lowball" consideration in a quitclaim indicates that the employee did not stand on an equal footing with the employer when he seemingly acceded to the waiver of his rights. Indeed, under ordinary circumstances, a reasonable man would not allow himself to be shortchanged into waiving all of his claims, unless he fully comprehends the consequences of such act.* Thus, as case law states, "[u]nless it can be established that the person executing the waiver voluntarily did so, with full understanding of its contents, and with reasonable and credible consideration, the same is not a valid and binding undertaking."[64]

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[63] *Id*. at 213-214.

[64] *Dagasdas v. Grand Placement and General Services Corporation*, 803 Phil. 463, 479 (2017).

Here, the quitclaims signed by Ranil and Edwin, in consideration of ₱6,917.47[65] and ₱7,290.06,[66] respectively, do not appear to have been made for a reasonable and credible consideration, considering that these amounts only pertained to their 13th month pay for the year 2015, and as such, do not approximate any reasonable award (such as backwages and separation pay) that would have been awarded to them should they successfully pursue litigation. Notably, the 13th month pay is a statutory obligation of the employer under the law;[67] hence, its payment is not really constitutive of any reasonable settlement as they are already entitled to the same as a matter of course. According to jurisprudence, "the burden to prove that the waiver or quitclaim was voluntarily executed is with the employer,"[68] which the latter failed to discharge. In view of the foregoing circumstances, the Court holds that the quitclaims were not validly executed, and hence, do not constitute an effective waiver of JCDC's liability arising from its illegal termination of Ranil and Edwin, its regular employees.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 28, 2018 and the Resolution dated July 27, 2018 of the Court of Appeals in CA-G.R. SP No. 153206 are **REVERSED** and **SET ASIDE**. The Resolution dated June 23, 2017 and the Resolution dated August 22, 2017 of the National Labor Relations Commission in NLRC LAC No. 06-001886-17 are declared **NULL** and **VOID** for having been issued with grave abuse of discretion. Accordingly, the Decision dated April 25, 2017 of the Labor Arbiter in NLRC NCR Case No. NCR-06-06863-16 is hereby **REINSTATED**.

SO ORDERED.

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

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[65] CA *rollo*, p. 135.

[66] *Id*. at 137.

[67] See Presidential Decree No. 851, entitled "REQUIRING ALL EMPLOYERS TO PAY THEIR EMPLOYEES A 13TH Month Pay" (December 16, 1975).

[68] *Dagasdas v. Grand Placement and General Services Corporation*, *supra* note 64; citation omitted.

SECOND DIVISION

[G.R. No. 192366. July 01, 2019]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **GARCIA-LIPANA COMMODITIES, INC.*[*] and TLL REALTY AND MANAGEMENT CORPORATION,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; COMPROMISE AGREEMENT GIVEN JUDICIAL APPROVAL IS A JUDGMENT ON THE MERITS. — It is noteworthy that settlement of cases in court at any stage of the proceeding is not only authorized, but, in fact, encouraged in our jurisdiction; and when a compromise agreement is given judicial approval, it becomes more than just a contract binding upon the parties, it is no less than a judgment on the merits. Verily, there is no more actual substantial relief to which petitioner would be entitled and which would be negated by the dismissal of the petition.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Fernando B. Zuñiga for respondents.

D E C I S I O N

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

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated January 19,

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[*] Also referred to as "Garcia-Lipa Commodities, Inc." in some parts of the *rollo*.

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Elihu A. Ybañez and Amy C. Lazaro-Javier (now a member of the Court), concurring; *rollo*, pp. 26-39.

2010 and the Resolution[2] dated May 27, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 106051.

This case is rooted from a Complaint for Annulment of Extrajudicial Foreclosure of Mortgage, Nullification of Extrajudicial Foreclosure Sale and Damages with Prayer for Issuance of Temporary Restraining Order (TRO) and Writ of Preliminary Injunction[3] filed by the Garcia-Lipana Commodities, Inc. and TLL Realty and Management Corporation (respondents) against Bank of the Philippine Islands (petitioner).

Succinctly, respondents obtained several loans from petitioner, secured by real estate mortgage on 30 parcels of land with improvements. Respondents religiously paid its loan obligations until at some point, they defaulted. This prompted petitioner to initiate foreclosure proceedings on the mortgaged properties, which were later on sold at public auction to petitioner being the highest bidder.[4] Averring lack of demand and irregularities in the foreclosure proceedings, respondents filed the above-said Complaint.[5]

In an Order[6] dated March 24, 2008, the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 22, in Civil Case No. 130-M-2008 granted respondents' application for writ of preliminary injunction, enjoining petitioner from consolidating its ownership over and taking possession of the foreclosed properties, which reads:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, it appearing that the acts complained of would be in violation of [respondents'] right and would work [injustice] to the [respondents] and so as not to render ineffectual whatever judgment may be issued in this case, the application for preliminary injunction is hereby **GRANTED**. Let a Writ of Preliminary Injunction be issued enjoining

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[2] *Id*. at 41.

[3] *Id*. at 43-84.

[4] *Id*. at 10.

[5] *Supra* note 3.

[6] *Id*. at 283-292.

[petitioner] x x x from procuring a writ of possession from the Court; the defendant Office of the Ex-Officio Sheriff of the [RTC] of Malolos City, Bulacan from entering the premises and taking possession of the subject properties; and defendant Register of Deeds for the [P]rovince of Bulacan (Meycauayan Branch) from consolidating title over the subject properties x x x in the name of [petitioner] x x x until further orders from this Court.

This Order shall be effective upon [respondents'] filing of a bond in the amount of Two Hundred Sixty[-]Nine Million One Hundred Eighteen Thousand Five Hundred Twenty[-]Three Pesos and 42/100 (₱269,118,523.42) x x x to answer for any and all damages that [petitioner] may suffer by reason of the issuance of the writ of preliminary injunction.

SO ORDERED.[7]

Petitioner's motion for reconsideration of the said Order was denied by the RTC in its August 26, 2008 Order,[8] which reads:

WHEREFORE, in view of all the foregoing, the Motion for Reconsideration and the Supplemental Motion for Reconsideration filed by the [petitioner] are hereby **DENIED** for lack of merit.

Considering that [petitioner] already filed its Answer With Compulsory Counterclaim and [respondents] filed its Answer to Compulsory Counterclaims and Reply, all issues having been joined, the instant case is now ripe for pre-trial. The resolution of all other motions is hereby held in abeyance pending the pre-trial. The Order of this Court dated July 15, 2008 submitting all motions for resolution is hereby set aside. Set this case for pre-trial on October 10, 2008 at 8:30 in the morning. Notify all parties and counsels.

SO ORDERED.[9]

Petitioner filed a Petition for *Certiorari*[10] before the CA, imputing grave abuse of discretion on the part of the RTC in issuing the said Orders.

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[7] *Id*. at 292.

[8] *Id*. at 319-323.

[9] *Id*. at 323.

[10] *Id*. at 324-345.

The CA dismissed said petition in its assailed Decision dated January 19, 2010, the dispositive thereof reads:

> **WHEREFORE**, the petition is **DISMISSED** for lack of merit.
>
> **SO ORDERED.**[11]

Petitioner's motion for reconsideration[12] was likewise denied in the CA's assailed May 27, 2010 Resolution as follows:

> Considering that the allegations therein are mere rehash of what the movant earlier argued in this case, and finding no cogent reason with which to modify, much less reverse Our assailed Decision dated January 19, 2010, petitioner's Motion for Reconsideration dated February 2, 2010 is hereby **DENIED**.
>
> **SO ORDERED.**[13]

Hence, this petition, essentially raising the sole issue of whether or not the issuance of the writ of preliminary injunction was proper.

While this case was pending, respondents filed a Verified Manifestation and Motion[14] dated January 14, 2016, averring that on May 15, 2015, they, together with the petitioner, submitted to the RTC a "Compromise Agreement with Joint Omnibus Motion 1) To Dismiss with Prejudice and 2) To Lift Annotations."[15] The said Compromise Agreement substantially states that the parties "agreed to forever release, remise, renounce and discharge each other x x x from any and all liabilities, claims, demands, actions, counterclaims[,] and causes of actions of whatever nature and kind," arising from and connected with the Complaint before the RTC, as well as the instant case before this Court.[16] Thus, the parties jointly moved to dismiss with

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[11] *Id*. at 39.

[12] *Id*. at 346-350.

[13] *Id*. at 41.

[14] *Id*. at 1228-1232.

[15] *Id*. at 1233-1238.

[16] *Id*. at 1234-1235.

prejudice the Complaint before the RTC and all claims and counterclaims arising therefrom, which include the case at bar.[17]

The Verified Manifestation and Motion also states that on June 24, 2015, the RTC issued a Judgment Based on the Compromise Agreement,[18] the dispositive thereof reads in part as follows:

> ***WHEREFORE***, the Compromise Agreement submitted by the parties in the above-entitled case is hereby **APPROVED**. Parties are enjoined to faithfully comply with their obligations as set forth in the said agreements. In view of the foregoing, the complaint of [respondents] dated February 25, 2008 against [petitioner] and all the counterclaims of [petitioner] against [respondents] dated March 28, 2008 are **DISMISSED WITH PREJUDICE**.
>
> Further, the Motion to Lift Annotation is hereby **PARTIALLY GRANTED**. Accordingly, [t]he Registry of Deeds is hereby ordered to cancel the Notice of [*Lis Pendens*] inscribed on the following titles: x x x.
>
> x x x x x x x x x
>
> Finally, after the cancellation of the *Lis Pendens*, [petitioner] is hereby allowed to consolidate the titles covering the subject properties in its name at the expense of [petitioner],
>
> **SO ORDERED.**[19]

Respondents attached copies of said Compromise Agreement and Judgment Based on the Compromise Agreement in their Verified Manifestation and Motion, together with a copy of the Entry of Judgment[20] dated July 6, 2015.

In a Resolution[21] dated April 11, 2016, this Court required petitioner to comment on respondents' Verified Manifestation

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[17] *Id*. at 1236.

[18] *Id*. at 1243-1246.

[19] *Id*. at 1246.

[20] *Id*. at 1247.

[21] *Id*. at 1251.

and Motion, which prays for the dismissal of the instant petition with prejudice in view of the finality of said Judgment Based on the Compromise Agreement.

In compliance with this Court's April 11, 2016 Resolution, petitioner filed its Comment[22] dated June 28, 2016, which states that it "interposes **no objection** to the *Verified Manifestation* and *Motion* of the [r]espondents herein praying for the dismissal of the case with prejudice."

In view, therefore, of the final and executory Judgment Based on the Compromise Agreement, which settled any and all claims of the parties against each other in relation to the Complaint before the court of origin, and considering respondents' manifestation and motion to dismiss the instant petition and petitioner's assent thereto, the case at bar has been rendered moot and academic. We find no more necessity and purpose in determining whether or not it was proper to enjoin petitioner to consolidate its ownership over the subject properties and to take possession thereof. Under the terms of the compromise, the respondents already agreed, with judicial *imprimatur*, to relinquish their rights over the subject properties in favor of petitioner. In turn, petitioner agreed to accept said properties and to release respondents from any and all liabilities arising from the loan obligation.

It is noteworthy that settlement of cases in court at any stage of the proceeding is not only authorized, but, in fact, encouraged in our jurisdiction;[23] and when a compromise agreement is given

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[22] *Id*. at 1264-1265.

[23] CIVIL CODE. Art. 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.

Art. 2029. The court shall endeavor to persuade the litigants in a civil case to agree upon some fair compromise.

Art. 2030. Every civil action or proceeding shall be suspended:

(1) If willingness to discuss a possible compromise is expressed by one or both parties; or

(2) If it appears that one of the parties, before the commencement of the

judicial approval, it becomes more than just a contract binding upon the parties, it is no less than a judgment on the merits.[24]

Verily, there is no more actual substantial relief to which petitioner would be entitled and which would be negated by the dismissal of the petition.

In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*,[25] the Court explained:

> A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. **Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.** (Citation omitted, emphasis supplied)

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED** for being moot and academic.

ORDERED.

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

Gesmundo,[**] *J.*, on official leave.

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action or proceeding, offered to discuss a possible compromise but the other party refused the offer.

[24] *Magbanua v. Uy*, 497 Phil. 511, 519 (2005).

[25] 728 Phil. 535, 540 (2014).

[**] Additional member, per Raffle dated June 17, 20019, in lieu of Associate Justice Amy C. Lazaro-Javier, who participated in the CA Decision.

THIRD DIVISION

[G.R. No. 213198. July 1, 2019]

GENEVIEVE ROSAL ARREZA, *a.k.a.* "GENEVIEVE ARREZA TOYO", *petitioner, vs.* **TETSUSHI TOYO, LOCAL CIVIL REGISTRAR OF QUEZON CITY, and THE ADMINISTRATOR AND CIVIL REGISTRAR GENERAL OF THE NATIONAL STATISTICS OFFICE,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; WHEN A FILIPINO AND AN ALIEN GET MARRIED, AND THE ALIEN SPOUSE LATER ACQUIRES A VALID DIVORCE ABROAD, THE FILIPINO SPOUSE SHALL HAVE THE CAPACITY TO REMARRY PROVIDED THAT THE DIVORCE OBTAINED BY THE FOREIGN SPOUSE ENABLES HIM OR HER TO REMARRY; PROOF REQUIRED IS NOT ONLY THE FOREIGN JUDGMENT GRANTING THE DIVORCE BUT ALSO THE ALIEN SPOUSE'S NATIONAL LAW. — [Under the second paragraph of Article 26 of the Family Code,] when a Filipino and an alien get married, and the alien spouse later acquires a valid divorce abroad, the Filipino spouse shall have the capacity to remarry provided that the divorce obtained by the foreign spouse enables him or her to remarry. x x x The second paragraph was introduced as a corrective measure to resolve an absurd situation where the Filipino spouse remains married to the alien spouse even after their marital bond had been severed by the divorce decree obtained abroad. Through this provision, Philippine courts are given the authority "to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage." It bestowed upon the Filipino spouse a substantive right to have his or her marriage considered dissolved, granting him or her the capacity to remarry. Nonetheless, settled is the rule that in actions involving the recognition of a foreign divorce judgment, it is indispensable that the petitioner prove not only the foreign judgment granting the divorce, but also the alien spouse's national law. This rule is rooted in the fundamental theory that Philippine courts do not take judicial notice of foreign judgments and laws.

2. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; PROOF OF OFFICIAL RECORD AND WHAT ATTESTATION OF COPY MUST STATE; COMPLIANCE THEREOF CAN ESTABLISH BOTH FOREIGN DIVORCE DECREE AND THE FOREIGN SPOUSE'S NATIONAL LAW. — Both the foreign divorce decree and the foreign spouse's national law, purported to be official acts of a sovereign authority, can be established by complying with the mandate of Rule 132, Sections 24 and 25 of the Rules of Court: Under Sections 24 and 25 of Rule 132, a writing or document may be proven as a public or official record of a foreign country by either (1) an official publication or (2) a copy thereof attested by the officer having legal custody of the document. If the record is not kept in the Philippines, such copy must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.

3. ID.; ID.; ID.; ID.; ID.; AUTHENTICATION REQUIRED; ENGLISH TRANSLATION (THAT IS NOT AN OFFICIAL PUBLICATION EXEMPTED FROM THE REQUIREMENT OF AUTHENTICATION) OF JAPAN'S LAW ON DIVORCE NOT DULY AUTHENTICATED BY THE PHILIPPINE CONSUL OF JAPAN, THE JAPANESE CONSUL IN MANILA, OR THE DEPARTMENT OF FOREIGN AFFAIRS IS INSUFFICIENT. — [T]he Regional Trial Court ruled that the documents petitioner submitted to prove the divorce decree have complied with the demands of Rule 132, Sections 24 and 25. However, it found the copy of the Japan Civil Code and its English translation insufficient to prove Japan's law on divorce. It noted that these documents were not duly authenticated by the Philippine Consul in Japan, the Japanese Consul in Manila, or the Department of Foreign Affairs. x x x The English translation submitted by petitioner was published by Eibun-Horei-Sha, Inc., a private company in Japan engaged in publishing English translation of Japanese laws, which came to be known as the EHS Law Bulletin Series. However, these translations are "not advertised as a source of official translations of Japanese laws;" rather, it is in the KANPO or the Official Gazette where all official laws and regulations are published, albeit in Japanese. Accordingly, the English translation submitted by petitioner is not an official publication exempted from the requirement of authentication. Neither can the English translation be considered as a learned treatise. Under the Rules of Court, "[a]

witness can testify only to those facts which he knows of his [or her] personal knowledge[.]" The evidence is hearsay when it is "not . . . what the witness knows himself [or herself] but of what he [or she] has heard from others." The rule excluding hearsay evidence is not limited to oral testimony or statements, but also covers written statements. The rule is that hearsay evidence "is devoid of probative value[.]" However, a published treatise may be admitted as tending to prove the truth of its content if: (1) the court takes judicial notice; or (2) an expert witness testifies that the writer is recognized in his or her profession as an expert in the subject. Here, the Regional Trial Court did not take judicial notice of the translator's and advisors' qualifications. Nor was an expert witness presented to testify on this matter. The only evidence of the translator's and advisors' credentials is the inside cover page of the English translation of the Civil Code of Japan. Hence, the Regional Trial Court was correct in not considering the English translation as a learned treatise.

4. **ID.; PROCEDURE IN THE SUPREME COURT; APPEALED CASES; DISPOSITION OF IMPROPER APPEAL; APPEAL TO THE SUPREME COURT FROM THE REGIONAL TRIAL COURT SUBMITTING ISSUES OF FACT MAY BE REFERRED TO THE COURT OF APPEALS.** — [S]ettled is the rule that, generally, this Court only entertains questions of law in a Rule 45 petition. Questions of fact, like the existence of Japan's law on divorce, are not within this Court's ambit to resolve. Nonetheless, in *Medina v. Koike*, this Court ruled that while the Petition raised questions of fact, "substantial ends of justice warrant that the case be referred to the [Court of Appeals] for further appropriate proceedings": x x x [D]espite the procedural restrictions on Rule 45 appeals, the Court may refer the case to the [Court of Appeals] under paragraph 2, Section 6 of Rule 56 of the Rules of Court, which provides: SEC. 6. Disposition of improper appeal. — ... An appeal by *certiorari* taken to the Supreme Court from the Regional Trial Court submitting issues of fact may be referred to the Court of Appeals for decision or appropriate action. The determination of the Supreme Court on whether or not issues of fact are involved shall be final.

APPEARANCES OF COUNSEL

Lorenzo U. Padilla for petitioner.
Office of the Solicitor General for public respondents.

D E C I S I O N

LEONEN, *J.*:

Philippine courts do not take judicial notice of foreign judgments and laws. They must be proven as fact under our rules on evidence. A divorce decree obtained abroad is deemed a foreign judgment, hence the indispensable need to have it pleaded and proved before its legal effects may be extended to the Filipino spouse.[1]

This Court resolves a Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court, praying that the Regional Trial Court's February 14, 2014 Judgment[3] and June 11, 2014 Resolution[4] in SP. PROC. No. Q-12-71339 be reversed and set aside. The Regional Trial Court denied Genevieve Rosal Arreza *a.k.a.* Genevieve Arreza Toyo's (Genevieve) Petition for judicial recognition of foreign divorce and declaration of capacity to remarry.[5]

On April 1, 1991, Genevieve, a Filipino citizen, and Tetsushi Toyo (Tetsushi), a Japanese citizen, were married in Quezon City. They bore a child whom they named Keiichi Toyo.[6]

After 19 years of marriage, the two filed a Notification of Divorce by Agreement, which the Mayor of Konohana-ku, Osaka City, Japan received on February 4, 2011. It was later recorded

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[1] See *Corpuz v. Sto. Tomas*, 642 Phil. 420 (2010) [Per *J.* Brion, Third Division] and *Republic v. Manalo*, G.R. No. 221029, April 24, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64093> [Per *J.* Peralta, *En Banc*].

[2] *Rollo*, pp. 3-53.

[3] *Id*. at 54-59. The Judgment was penned by Judge Angelene Mary W. Quimpo-Sale of Branch 106, Regional Trial Court, Quezon City.

[4] *Id*. at 60-63. The Resolution was penned by Judge Angelene Mary W. Quimpo-Sale of Branch 106, Regional Trial Court, Quezon City.

[5] *Id*. at 66-96.

[6] *Id*. at 55.

in Tetsushi's family register as certified by the Mayor of Toyonaka City, Osaka Fu.[7]

On May 24, 2012, Genevieve filed before the Regional Trial Court a Petition for judicial recognition of foreign divorce and declaration of capacity to remarry.[8]

In support of her Petition, Genevieve submitted a copy of their Divorce Certificate,[9] Tetsushi's Family Register,[10] the Certificate of Acceptance of the Notification of Divorce,[11] and an English translation of the Civil Code of Japan,[12] among others.[13]

After finding the Petition sufficient in form and substance, the Regional Trial Court set the case for hearing on October 16, 2012.[14]

On the day of the hearing, no one appeared to oppose the Petition. After the jurisdictional requirements were established and marked, trial on the merits ensued.[15]

On February 14, 2014, the Regional Trial Court rendered a Judgment[16] denying Genevieve's Petition. It decreed that while the pieces of evidence presented by Genevieve proved that their divorce agreement was accepted by the local government of Japan,[17] she nevertheless failed to prove the copy of Japan's law.[18]

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[7] *Id*.

[8] *Id.* at 66-96.

[9] *Id*. at 100.

[10] *Id*. at 104.

[11] *Id*. at 110.

[12] *Id*. at 113-121.

[13] *Id*. at 113-117.

[14] *Id*. at 161.

[15] *Id*.

[16] *Id*. at 54-59.

[17] *Id*. at 56.

[18] *Id*. at 59.

The Regional Trial Court noted that the copy of the Civil Code of Japan and its English translation submitted by Genevieve were not duly authenticated by the Philippine Consul in Japan, the Japanese Consul in Manila, or the Department of Foreign Affairs.[19]

Aggrieved, Genevieve filed a Motion for Reconsideration, but it was denied in the Regional Trial Court's June 11, 2014 Resolution.[20]

Thus, Genevieve filed before this Court the present Petition for Review on *Certiorari*.[21]

Petitioner argues that the trial court erred in not treating the English translation of the Civil Code of Japan as an official publication in accordance with Rule 131, Section 3(gg) of the Rules of Court. That it is an official publication, she points out, makes it a self-authenticating evidence of Japan's law under Rule 132, Section 25 of the Rules of Court.[22]

Petitioner further contends that the trial court erred in not considering the English translation of the Japan Civil Code as a learned treatise and in refusing to take judicial notice of its authors' credentials.[23]

In its August 13, 2014 Resolution,[24] this Court required respondents to file their comment.

In their Comment,[25] respondents, through the Office of the Solicitor General, maintain that the Regional Trial Court was correct in denying the petition for petitioner's failure to prove respondent Tetsushi's national law.[26] They stress that in proving

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[19] *Id*. at 57.

[20] *Id*. at 60-63.

[21] *Id*. at 3-53.

[22] *Id*. at 17.

[23] *Id.* at 28.

[24] *Id*. at 142.

[25] *Id*. at 160-172.

[26] *Id*. at 166.

a foreign country's law, one must comply with the requirements under Rule 132, Sections 24 and 25 of the Rules of Court.[27]

Respondents similarly claim that what Rule 131, Section 3(gg) of the Rules of Court presumes is "the fact of printing and publication[,]"[28] not that it was an official publication by the government of Japan.[29]

Finally, respondents insist that before the English translation of the Japan Civil Code may be considered as a learned treatise, the trial court must first take judicial notice that the writer is recognized in his or her profession as an expert in the subject.[30]

In its March 25, 2015 Resolution,[31] this Court directed petitioner to file her reply.

In her Reply,[32] petitioner asserts that she submitted in evidence the Civil Code of Japan as an official publication printed "under authorization of the Ministry of Justice[.]"[33] She contends that because it was printed by a public authority, the Civil Code of Japan is deemed to be an official publication under Rule 131, Section 3(gg) of the Rules of Court and, therefore, is a self-authenticating document that need not be certified under Rule 132, Section 24.[34]

In its August 3, 2016 Resolution,[35] this Court resolved to dispense with the filing of respondent Tetsushi's Comment. In addition, the parties were required to file their respective memoranda.

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[27] *Id*. at 168.

[28] *Id*. at 169.

[29] *Id*.

[30] *Id*. at 167.

[31] *Id*. at 173.

[32] *Id*. at 194-203.

[33] *Id*. at 194.

[34] *Id*. at 195-196.

[35] *Id*. at 217-219.

In her Memorandum,[36] petitioner reiterates that the Regional Trial Court erred in not considering the Civil Code of Japan as an official publication and its English translation as a learned treatise.[37]

On September 23, 2016, respondents manifested that they are adopting their Comment as their memorandum.[38]

The issue for this Court's resolution is whether or not the Regional Trial Court erred in denying the petition for judicial recognition of foreign divorce and declaration of capacity to remarry filed by petitioner Genevieve Rosal Arreza *a.k.a.* Genevieve Arreza Toyo.

When a Filipino and an alien get married, and the alien spouse later acquires a valid divorce abroad, the Filipino spouse shall have the capacity to remarry provided that the divorce obtained by the foreign spouse enables him or her to remarry. Article 26 of the Family Code, as amended,[39] provides:

> ARTICLE 26. All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), 36, 37 and 38.
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> *Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.* (Emphasis supplied)

The second paragraph was introduced as a corrective measure to resolve an absurd situation where the Filipino spouse remains married to the alien spouse even after their marital bond had

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[36] *Id*. at 223-274.

[37] *Id*. at 233-234.

[38] *Id*. at 220-222.

[39] Executive Order No. 227 (1987), Sec. 1.

been severed by the divorce decree obtained abroad.[40] Through this provision, Philippine courts are given the authority "to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage."[41] It bestowed upon the Filipino spouse a substantive right to have his or her marriage considered dissolved, granting him or her the capacity to remarry.[42]

Nonetheless, settled is the rule that in actions involving the recognition of a foreign divorce judgment, it is indispensable that the petitioner prove not only the foreign judgment granting the divorce, but also the alien spouse's national law. This rule is rooted in the fundamental theory that Philippine courts do not take judicial notice of foreign judgments and laws. As explained in *Corpuz v. Sto. Tomas*:[43]

> The starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. Justice Herrera explained that, as a rule, "no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country." This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself. The recognition may be made in an action instituted specifically for the purpose or in another action where a party invokes the foreign decree as an integral aspect of his [or her] claim or defense.[44] (Citations omitted)

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[40] *Corpuz v. Sto. Tomas*, 642 Phil. 420 (2010) [Per *J.* Brion, Third Division] and *Republic v. Manalo*, G.R No. 221029, April 24, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64093> [Per *J.* Peralta, *En Banc*].

[41] *Republic v. Manalo*, G.R. No. 221029, April 24, 2018 <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64093> [Per *J.* Peralta, *En Banc*].

[42] See *Corpuz v. Sto. Tomas*, 642 Phil. 420 (2010) [Per *J.* Brion, Third Division].

[43] *Id*.

[44] *Id*. at 432-433.

Both the foreign divorce decree and the foreign spouse's national law, purported to be official acts of a sovereign authority, can be established by complying with the mandate of Rule 132, Sections 24[45] and 25[46] of the Rules of Court:

> Under Sections 24 and 25 of Rule 132, on the other hand, a writing or document may be proven as a public or official record of a foreign country by either (1) an official publication or (2) a copy thereof attested by the officer having legal custody of the document. If the record is not kept in the Philippines, such copy must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.[47] (Citations omitted)

Here, the Regional Trial Court ruled that the documents petitioner submitted to prove the divorce decree have complied with the demands of Rule 132, Sections 24 and 25.[48] However, it found the copy of the Japan Civil Code and its English translation insufficient to prove Japan's law on divorce. It noted that these documents were not duly authenticated by the

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[45] RULES OF COURT, Rule 132, Sec. 24 provides:

> SECTION 24. Proof of official record. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

[46] RULES OF COURT, Rule 132, Sec. 25 provides:

> SECTION 25. What attestation of copy must state. — Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

[47] *Garcia v. Recio*, 418 Phil. 723, 732-733 (2001) [Per *J.* Panganiban, Third Division].

[48] *Rollo*, p. 57.

Philippine Consul in Japan, the Japanese Consul in Manila, or the Department of Foreign Affairs.[49]

Notwithstanding, petitioner argues that the English translation of the Japan Civil Code is an official publication having been published under the authorization of the Ministry of Justice[50] and, therefore, is considered a self-authenticating document.[51]

Petitioner is mistaken.

In *Patula v. People*,[52] this Court explained the nature of a self-authenticating document:

> The nature of documents as either public or private determines how the documents may be presented as evidence in court. *A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self authenticating and requires no further authentication in order to be presented as evidence in court*. In contrast, a private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court. The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.[53] (Emphasis supplied, citations omitted)

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[49] *Id*.

[50] *Id*. at 114.

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

[52] 685 Phil. 376 [Per *J*. Bersamin, First Division].

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

The English translation submitted by petitioner was published by Eibun-Horei-Sha, Inc.,[54] a private company in Japan engaged in publishing English translation of Japanese laws, which came to be known as the EHS Law Bulletin Series.[55] However, these translations are "not advertised as a source of official translations of Japanese laws;"[56] rather, it is in the KANPO or the Official Gazette where all official laws and regulations are published, albeit in Japanese.[57]

Accordingly, the English translation submitted by petitioner is not an official publication exempted from the requirement of authentication.

Neither can the English translation be considered as a learned treatise. Under the Rules of Court, "[a] witness can testify only to those facts which he knows of his [or her] personal knowledge[.]"[58] The evidence is hearsay when it is "not . . . what the witness knows himself [or herself] but of what he [or she] has heard from others."[59] The rule excluding hearsay evidence is not limited to oral testimony or statements, but also covers written statements.[60]

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[54] *Rollo*, p. 114.

[55] Eibun-Horei-Sha, Inc., *Introduction* <https://www.eibun-horei-sha.co.jp/english/introduction> (last visited on July 1, 2019).

[56] *Id*.

[57] US Law Library of Congress, Japan, *Translation of National Legislation into English* <https://www.loc.gov/law/find/pdfs/2012-007612_JP_RPT.pdf> (last visited on July 1, 2019).

[58] RULES OF COURT, Rule 130, Sec. 36 provides:

> 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.

[59] *People v. Manhuyod, Jr.*, 352 Phil. 866, 880 (1998) [Per *J.* Davide, Jr., *En Banc*].

[60] See *D.M. Consunji, Inc. v. Court of Appeals*, 409 Phil. 275 (2001) [Per *J.* Kapunan, First Division].

The rule is that hearsay evidence "is devoid of probative value[.]"[61] However, a published treatise may be admitted as tending to prove the truth of its content if: (1) the court takes judicial notice; or (2) an expert witness testifies that the writer is recognized in his or her profession as an expert in the subject.[62]

Here, the Regional Trial Court did not take judicial notice of the translator's and advisors' qualifications. Nor was an expert witness presented to testify on this matter. The only evidence of the translator's and advisors' credentials is the inside cover page of the English translation of the Civil Code of Japan.[63] Hence, the Regional Trial Court was correct in not considering the English translation as a learned treatise.

Finally, settled is the rule that, generally, this Court only entertains questions of law in a Rule 45 petition.[64] Questions of fact, like the existence of Japan's law on divorce,[65] are not within this Court's ambit to resolve.[66]

Nonetheless, in *Medina v. Koike*,[67] this Court ruled that while the Petition raised questions of fact, "substantial ends of justice

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[61] *People v. Estibal*, 748 Phil. 850, 876 (2014) [Per *J.* Reyes, Third Division].

[62] RULES OF COURT, Rule 130, Sec. 46 provides:

> SECTION 46. Learned treatises. — A published treatise, periodical or pamphlet on a subject of history, law, science or art is admissible as tending to prove the truth of a matter stated therein if the court takes judicial notice, or a witness expert in the subject testifies, that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject.

[63] *Rollo*, pp. 114 and 119.

[64] *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017, 842 SCRA 602, 609 [Per *J.* Leonardo-De Castro, First Division].

[65] See *Medina v. Koike*, 791 Phil. 645 (2016) [Per *J.* Perlas-Bernabe, First Division].

[66] *Racho v. Tanaka*, G.R. No. 199515, June 25, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64459> [Per *J.* Leonen, Third Division].

[67] 791 Phil. 645 (2016) [Per *J.* Perlas-Bernabe, First Division].

warrant that the case be referred to the [Court of Appeals] for further appropriate proceedings":

> Considering that the validity of the divorce decree between Doreen and Michiyuki, as well as the existence of pertinent laws of Japan on the matter are essentially factual that calls for a re-evaluation of the evidence presented before the RTC, the issue raised in the instant appeal is obviously a question of fact that is beyond the ambit of a Rule 45 petition for review.
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> . . . . . .
>
> Nonetheless, despite the procedural restrictions on Rule 45 appeals as above-adverted, the Court may refer the case to the [Court of Appeals] under paragraph 2, Section 6 of Rule 56 of the Rules of Court, which provides:
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> SEC. 6. Disposition of improper appeal. — ...
>
> > An appeal by certiorari taken to the Supreme Court from the Regional Trial Court submitting issues of fact may be referred to the Court of Appeals for decision or appropriate action. The determination of the Supreme Court on whether or not issues of fact are involved shall be final.
>
> This, notwithstanding the express provision under Section 5 (f) thereof that an appeal likewise "may" be dismissed when there is error in the choice or mode of appeal.
>
> Since the said Rules denote discretion on the part of the Court to either dismiss the appeal or refer the case to the [Court of Appeals], the question of fact involved in the instant appeal and substantial ends of justice warrant that the case be referred to the [Court of Appeals] for further appropriate proceedings. It bears to stress that procedural rules were intended to ensure proper administration of law and justice. The rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice. A deviation from its rigid enforcement may thus be allowed to attain its prime objective, for after all, the dispensation of justice is the core reason for the existence of the courts.[68] (Citations omitted)

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[68] *Id*. at 652-653.

WHEREFORE, in the interest of orderly procedure and substantial justice, the case is hereby **REFERRED** to the Court of Appeals for appropriate action, including the reception of evidence, to **DETERMINE** and **RESOLVE** the pertinent factual issues in accordance with this Decision.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 213760. July 1, 2019]

REYNALDO SANTIAGO, JR. *y* SANTOS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF TRIAL COURTS, RESPECTED. — This Court accords great respect to the trial court's findings, especially when affirmed by the Court of Appeals. "The trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses, their demeanor, conduct and attitude on the witness stand." The exception is when either or both lower courts have "overlooked or misconstrued substantial facts which could have affected the outcome of the case." Here, nothing warrants a reversal of the Court of Appeals' and the Regional Trial Court's Decisions. This Court sustains petitioner's conviction.

2. CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT (RA 9208); TRAFFICKING IN PERSONS; ELEMENTS. — Section 3(a) of Republic Act No. 9208, or the Anti-Trafficking in Persons Act, defines the crime of trafficking in persons:

x x x In *People v. Casio*, we enumerated the elements of trafficking in persons [as] derived from its definition under Section 3 (a) of Republic Act No. 9208, thus: (1) The act of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders." (2) The means used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another["]; and (3) The purpose of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."

3. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; WHAT CONTROLS IS NOT THE DESIGNATION OF THE OFFENSE BUT ITS DESCRIPTION IN THE COMPLAINT OR INFORMATION; CASE AT BAR. — The Information charged petitioner with violation of Section 4(c), in relation to Section 6(c) of [RA No. 9208]. Section 4(c) punishes the act of "[offering] or [contracting] marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage[.]" However, a perusal of the allegations in the Information reveals that petitioner was sufficiently charged with the crime of trafficking in persons under Section 4(a). x x x The trial court correctly convicted petitioner for violation of Section 4(a), instead of Section 4(c) of Republic Act No. 9208. The Information sufficiently averred [the elements] that: (1) petitioner committed an act of qualified trafficking in persons by offering AAA to David for sex or exploitation; (2) the act was done for a fee; and (3) for prostitution, sexual exploitation, forced labor, slavery, involuntary servitude, or debt bondage. The rule is settled that "what controls is not the designation of the offense but its description in the complaint or information[.]"

4. ID.; EVIDENCE; THE CORROBORATING TESTIMONIES OF THE ARRESTING OFFICER AND THE MINOR VICTIM WERE SUFFICIENT TO SUSTAIN A CONVICTION OF TRAFFICKING IN PERSONS. — *People v. Ramirez* held that the accused may not use the trafficked person's consent as a valid defense. It also discussed relevant jurisprudence: This

Court in *People v. Rodriguez* acknowledged that as with *Casio*, the corroborating testimonies of the arresting officer and the minor victims were sufficient to sustain a conviction under the law. In *People v. Spouses Ybañez, et al.*, this Court likewise affirmed the conviction of traffickers arrested based on a surveillance report on the prostitution of minors within the area. . . . *Casio* also recognizes that the crime is considered consummated even if no sexual intercourse had taken place since the mere transaction consummates the crime. Here, the trafficked person, AAA, clearly recounted in her testimony how petitioner engaged her for the illicit transaction: x x x In *People v. Rodriquez*, this Court held that the trafficked victim's testimony that she had been sexually exploited was "material to the cause of the prosecution." Here, AAA's testimony was corroborated by the testimonies of the police officers who conducted the entrapment operation. They recalled in detail the steps they had taken to verify the surveillance report and ensure that petitioner was the same person with whom the confidential informant transacted. Contrary to petitioner's contention, the testimony of the confidential informant is not indispensable in the crime of trafficking in persons. Neither is his identity relevant. "It is sufficient that the accused has lured, enticed[,] or engaged its victims or transported them for the established purpose of exploitation," which was sufficiently shown by the trafficked person's testimony alone.

5. CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT (RA 9208); TRAFFICKING IN PERSONS UNDER SECTION 4(A); PENALTY AND DAMAGES. — [W]e affirm the lower courts' conviction of petitioner for violation of Republic Act No. 9208, Section 4(a), as punished under Section 10(a). [S]ince this Court cannot impose an indeterminate sentence due to the straight penalty imposed by law, the trial court correctly imposed the penalty of 20 years of imprisonment and the fine of ₱1,000,000.00. [D]amages in favor of AAA must be awarded. x x x [M]oral damages of ₱500,000.00 and exemplary damages of ₱100,000.00 are imposed, with interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

Human beings are not chattels whose sexual favors are bought or sold by greedy pimps. Those who profit in this way by recruiting minors are rightfully, by law, labeled as criminals. They should be the subject of aggressive law enforcement, prosecuted, tried, and when proof beyond reasonable doubt exists, punished.

In the prosecution of the crime of trafficking in persons, the confidential asset or the informant's testimony is not indispensable. It is enough that there is proof that "the accused has lured, enticed[,] or engaged its victims or transported them for the established purpose of exploitation."[1]

For this Court's resolution is a Petition for Review on *Certiorari*[2] challenging the May 30, 2013 Decision[3] and July 31, 2014 Resolution[4] of the Court of Appeals in CA-G.R. CR No. 34942. The Court of Appeals affirmed with modification the May 15, 2012 Decision[5] of the Regional Trial Court, Branch 42, Manila.[6]

In an October 7, 2011 Information, Reynaldo Santiago, Jr. *y* Santos (Santiago), Ramil Castillo *y* Merano (Castillo), and

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[1] *People v. Aguirre*, G.R. No. 219952, November 20, 2017, 845 SCRA 227, 244 [Per *J.* Tijam, First Division].

[2] *Rollo*, pp. 13-30.

[3] *Id*. at 76-89. The Decision was penned by Associate Justice Priscilla J. Baltazar-Padilla, and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Agnes Reyes-Carpio of the Eighth Division, Court of Appeals, Manila.

[4] *Id*. at 107-108. The Resolution was penned by Associate Justice Priscilla J. Baltazar-Padilla, and concurred in by Associate Justices Agnes Reyes-Carpio and Eduardo B. Peralta, Jr. of the Special Former Eighth Division, Court of Appeals, Manila.

[5] *Id*. at 46-55. The Decision was penned by Presiding Judge Dinnah C. Aguila-Topacio of Branch 42, Regional Trial Court, Manila.

[6] *Id*.

Rebecca Legazpi *y* Adriano (Legazpi) were charged with committing acts of trafficking in persons under Section 4(c), in relation to Section 6(c) of Republic Act No. 9208, or the Anti-Trafficking in Persons Act of 2003.[7] The Information read:

> That on or about September 30, 2011 in the City of Manila, Philippines, the said accused, being a group consisting of three (3) persons and therefore acting as a syndicate, did then and there willfully, unlawfully, feloniously, knowingly and jointly commit act of qualified trafficking in person for purposes of prostitution, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage upon a (*sic*) person of AAA, by then and there, for a fee, offering her for sexual intercourse or exploitation to Romeo S. David, a police asset.
>
> CONTRARY TO LAW.[8]

On arraignment, Santiago and the other two (2) accused pleaded not guilty to the crime charged. Trial then ensued.[9]

The prosecution, through witnesses Police Officer 1 Jayboy Nonato (PO1 Nonato), PO1 Mark Anthony Ballesteros (PO1 Ballesteros), Melvin Espenida (Espenida), and AAA,[10] established the following:

On September 26 and 27, 2011, TV5 segment producer Espenida and his crew went to Plaza Morga and Plaza Moriones in Tondo, Manila to investigate the alleged prostitution operations in the area.[11] They had earlier designated a confidential asset, *alias* "Romeo David"[12] (David), on whom a lapel microphone was clipped, to pose as a customer and transact with the alleged pimps for a night with a minor.[13] During the transaction, the

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[7] *Id*. at 76.

[8] *Id*. at 46.

[9] *Id*. at 77.

[10] *Id*.

[11] *Id*. at 79.

[12] *Id*. at 78.

[13] *Id*. at 79.

pimps allegedly asked for ₱500.00.[14] Espenida, who was on board a TV5 vehicle located about a hundred meters away from where David and the pimps were, heard the transaction through the microphone.[15]

On September 29, 2011, Espenida and his crew filed a Complaint before the Regional Police Intelligence Operations Unit, Regional Intelligence Division, Camp Bagong Diwa,[16] reporting about the rampant human trafficking in Plaza Morga and Plaza Moriones. Acting on the Complaint, Police Senior Inspector Pablo Quejada, PO1 Nonato, PO1 Mabel Catuiran (PO1 Catuiran), PO1 Ballesteros, and other police operatives conducted an entrapment operation in those areas.[17]

Later, at around 11:00 p.m., the team and David arrived at Plaza Morga. After surveying the area, David pointed to the pimps, who, upon seeing the police, ran away but were eventually caught and arrested. During trial, they were positively identified by the police officers in court as the same people apprehended that night.[18]

After the arrest, the team proceeded to the hotel where the trafficked person, AAA, had been waiting. The officers took her into custody and brought her to the Regional Intelligence Division at Camp Bagong Diwa.[19]

According to AAA, at around 1:30 a.m. on September 30, 2011, she was about to buy coffee at Plaza Moriones when Santiago called her, offering to pay her to spend a night with a customer. He allegedly promised to pay AAA ₱350.00 out of the ₱500.00 that the customer would pay for the transaction.

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[14] *Id*. at 80.

[15] *Id*. at 79.

[16] *Rollo*, p. 77, n.b. The Court of Appeals at times stated NCRPO instead. A perusal of the records reveals it should be its Regional counterpart.

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

[18] *Id*. at 78.

[19] *Id*.

Later, she and Santiago went to the hotel, which was 15 meters away from Plaza Moriones.[20] There, the police came and took them both into custody. AAA later confirmed during trial that Santiago was the pimp, but said that she only saw Castillo and Legazpi for the first time upon getting into the van bound for the police station.[21]

Santiago solely testified in his defense. He alleged that at around midnight of September 29, 2011, while he was selling coffee at Plaza Morga, around 25 meters away from Plaza Moriones, he was approached by David, who said that he was looking for a woman. Santiago said that he ignored the man.[22]

Then, Santiago allegedly saw AAA approach David, though he did not hear what the two had talked about. AAA later waved at Santiago and invited him to accompany her. AAA brought Santiago to a hotel, but as they were nearing it, the police arrived and arrested him.[23]

In its May 15, 2012 Decision,[24] the Regional Trial Court convicted Santiago of committing trafficking in persons punished under Section 4(a) of Republic Act No. 9208, or the Anti-Trafficking in Persons Act. It gave credence to AAA's testimony that Santiago recruited her to have sex with David for ₱500.00. Santiago was sentenced to 20 years of imprisonment and was fined ₱1 million. Castillo and Legazpi were acquitted for the prosecution's failure to prove their guilt beyond reasonable doubt.[25] The dispositive portion of the Decision read:

WHEREFORE, in view of all the foregoing, this Court finds the accused REYNALDO SANTIAGO, JR. y SANTOS @ "REY" guilty beyond reasonable doubt of violating Section 4 (a) of Republic Act 9208 otherwise known as "Anti-Trafficking in Persons Act of

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[20] *Id*.

[21] *Id*. at 80.

[22] *Id*. at 81.

[23] *Id*.

[24] *Id*. at 46-55.

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

2003" and he is hereby sentenced to suffer the penalty of TWENTY YEARS IMPRISONMENT AND A FINE OF ONE MILLION (Php 1,000,000.00) PESOS.

Accused RAMIL CASTILLO y MERANO and REBECCA LEGAZPI y ADRIANO are hereby acquitted for failure of the prosecution to prove their guilt beyond reasonable doubt.

SO ORDERED.[26]

In its May 30, 2013 Decision,[27] the Court of Appeals affirmed Santiago's conviction. It found that all the elements to establish that an accused had committed trafficking in persons, which were the act, the means, and the exploitative purpose as provided under the Manual on Law Enforcement and Prosecution of Trafficking in Persons Cases, were present.[28] The dispositive portion of the Decision read:

WHEREFORE, in view of the foregoing, the impugned Decision of the court a quo is hereby **AFFIRMED**.

SO ORDERED.[29] (Emphasis in the original)

Santiago's Motion for Reconsideration[30] was denied in the Court of Appeals' July 31, 2014 Resolution.[31]

Santiago later filed a Motion for Extension of Time to File Petition for Review on *Certiorari*,[32] which this Court granted in its September 8, 2014 Resolution.[33] Subsequently, he filed this Petition for Review on *Certiorari*.[34]

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[26] *Id*. at 55.

[27] *Id*. at 76-89.

[28] *Id*. at 84-86.

[29] *Id*. at 88.

[30] *Id*. at 90-97.

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

[32] *Id*. at 3-10.

[33] *Id*. at 11.

[34] *Id*. at 13-30.

In its January 12, 2015 Resolution,[35] this Court required respondent People of the Philippines, represented by the Office of the Solicitor General, to file its comment on the Petition within 10 days from notice.

The Office of the Solicitor General filed nine (9) Motions for Extension to File Comment totaling 130 days which this Court granted in its August 17, 2015[36] and January 13, 2016[37] Resolutions. It eventually filed its Comment.[38]

This Court noted the Comment in its January 13, 2016 Resolution[39] and required Santiago to file his reply within 10 days from notice, with which Santiago complied.[40]

In its September 21, 2016 Resolution,[41] this Court gave due course to the Petition and required the parties to submit their respective memoranda within 30 days from notice.

Both parties initially filed their respective Motions for Extension, and subsequently, their respective Memoranda.[42]

Arguing that the prosecution failed to prove his guilt beyond reasonable doubt, petitioner points out that the lack of testimony from the confidential informant, David, raises doubts on whether "petitioner truly offered AAA to him[.]"[43] He adds that the witnesses were allegedly inconsistent on David's identity.[44]

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[35] *Id*. at 109.

[36] *Id*. at 154.

[37] *Id*. at 179.

[38] *Id*. at 158-177.

[39] *Id*. at 179.

[40] *Id*. at 187-193.

[41] *Id*. at 195.

[42] *Id*. at 215-236, OSG's Memorandum, and 238-250, petitioner's Memorandum.

[43] *Id*. at 20 and 243.

[44] *Id*. at 243.

Petitioner also points out that AAA testified that she had not received the alleged consideration for the transaction, dispelling the prosecution's claim that he was engaged in trafficking. Thus, his defense of denial should not be dismissed since the evidence is insufficient to sustain his conviction.[45]

Respondent counters that the Petition should be denied as petitioner raises questions of fact, which are beyond the scope of a Rule 45 petition.[46] Nonetheless, it maintains that the prosecution has established petitioner's guilt beyond reasonable doubt for violating Section 4(a) of the Anti-Trafficking in Persons Act.[47] It points out that the witnesses have proved the elements of the crime,[48] and the testimony of the confidential informant is not needed.[49]

For this Court's resolution is the lone issue of whether or not petitioner Reynaldo Santiago, Jr. *y* Santos is guilty of violating Section 4(a) of the Anti-Trafficking in Persons Act.

This Court denies the Petition.

This Court accords great respect to the trial court's findings,[50] especially when affirmed by the Court of Appeals.[51] "The trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses, their demeanor, conduct and attitude

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[45] *Id*. at 244.

[46] *Id*. at 223.

[47] *Id*. at 226.

[48] *Id*. at 228-234.

[49] *Id*. at 227.

[50] *People v. Montinola*, 567 Phil. 387, 404 (2008) [Per *J*. Carpio, Second Division] citing *People v. Fernandez*, 561 Phil. 287 (2007) [Per *J*. Carpio, Second Division]; *People v. Abulon*, 557 Phil. 428 (2007) [Per *J*. Tinga, *En Banc*]; and *People v. Bejic*, 552 Phil. 555 (2007) [Per *J*. Chico-Nazario, *En Banc*].

[51] *People v. Baraoil*, 690 Phil. 368, 377 (2012) [Per *J*. Reyes, Second Division].

on the witness stand."[52] The exception is when either or both lower courts have "overlooked or misconstrued substantial facts which could have affected the outcome of the case."[53]

Here, nothing warrants a reversal of the Court of Appeals' and the Regional Trial Court's Decisions. This Court sustains petitioner's conviction.

Section 3(a) of Republic Act No. 9208, or the Anti-Trafficking in Persons Act, defines the crime of trafficking in persons:

> SECTION 3. Definition of Terms. — As used in this Act:
>
> (a) Trafficking in Persons — refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the persons, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

In *People v. Casio*,[54] we enumerated the elements of the crime:

> The elements of trafficking in persons can be derived from its definition under Section 3 (a) of Republic Act No. 9208, thus:
>
> (1) The act of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders."

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[52] *Ditche v. Court of Appeals,* 384 Phil. 35, 46 (2000) [Per *J.* De Leon, Jr., Second Division].

[53] *People v. Montinola*, 567 Phil. 387, 404 (2008) [Per *J.* Carpio, Second Division] citing *People v. Fernandez*, 561 Phil. 287 (2007) [Per *J.* Carpio, Second Division]; *People v. Abulon,* 557 Phil. 428 (2007) [Per *J.* Tinga, *En Banc*]; and *People v. Bejic*, 552 Phil. 555 (2007) [Per *J.* Chico-Nazario, *En Banc*].

[54] 749 Phil. 458 (2014) [Per *J.* Leonen, Third Division].

(2) The means used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another["]; and

(3) The purpose of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."[55]

On February 6, 2013, the law was amended by Republic Act No. 10364.[56] *Casio*, likewise, enumerated the elements of the crime under the expanded definition:

Under Republic Act No. 10364, the elements of trafficking in persons have been expanded to include the following acts:

(1) The act of "recruitment, *obtaining, hiring, providing, offering*, transportation, transfer, *maintaining*, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders[";]

(2) The means used include "by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"[;]

(3) The purpose of trafficking includes "the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs[.]"[57]

Here, the offense was committed on September 30, 2011,[58] prior to the amendment. Thus, the original provisions of Republic Act No. 9208 are applicable.

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[55] *Id*. at 472-473 citing Republic Act No. 9208 (2003), Sec. 3(a).

[56] Expanded Anti-Trafficking in Persons Act of 2012.

[57] *People v. Casio*, 749 Phil. 458, 474 (2014) [Per *J*. Leonen, Third Division].

[58] *Rollo*, p. 46.

The Information charged petitioner with violation of Section 4(c), in relation to Section 6(c) of the law. Section 4(c) punishes the act of "[offering] or [contracting] marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage[.]"

However, a perusal of the allegations in the Information reveals that petitioner was sufficiently charged with the crime of trafficking in persons under Section 4(a). The provision does not allow any person:

> (a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage.

The trial court correctly convicted petitioner for violation of Section 4(a), instead of Section 4(c) of Republic Act No. 9208. The Information sufficiently averred that: (1) petitioner committed an act of qualified trafficking in persons by offering AAA to David for sex or exploitation; (2) the act was done for a fee; and (3) for prostitution, sexual exploitation, forced labor, slavery, involuntary servitude, or debt bondage.[59]

The rule is settled that "what controls is not the designation of the offense but its description in the complaint or information[.]"[60]

People v. Ramirez[61] held that the accused may not use the trafficked person's consent as a valid defense. It also discussed relevant jurisprudence:

> This Court in *People v. Rodriguez* acknowledged that as with *Casio*, the corroborating testimonies of the arresting officer and the minor victims were sufficient to sustain a conviction under the law. In *People*

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[59] *Id*.

[60] *People v. Maravilla*, 247-A Phil. 475, 482 (1988) [Per *J*. Cruz, First Division].

[61] G.R. No. 217978, January 30, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65006 > [Per *J*. Leonen, Third Division].

v. Spouses Ybañez, et al., this Court likewise affirmed the conviction of traffickers arrested based on a surveillance report on the prostitution of minors within the area. . . . *Casio* also recognizes that the crime is considered consummated even if no sexual intercourse had taken place since the mere transaction consummates the crime.[62] (Citations omitted)

Here, the trafficked person, AAA, clearly recounted in her testimony how petitioner engaged her for the illicit transaction:

Q: Where were you on September 30, 2011 at around 1:30 in the morning?
A: I was going to Plaza Moriones to buy coffee.

Q: And while you were going to Plaza Moriones to buy coffee, is there anything unusual that happened?
A: Yes, Sir.

Q: Can you tell us what was that unusual [thing] that happened?
A: I was called [up] by Reynaldo Santiago, Sir.

Q: And what happened after you were called by Reynaldo Santiago?
A: There was someone asking in looking for a woman, Sir, and then I was called.

Q: And what did you do after Reynaldo Santiago told you that someone was looking for a woman? What did you do then?
A: I went with him, Sir.

Q: You went with whom?
A: Reynaldo Santiago, Sir, to go to the man.

Q: Did you go to the man?
A: No, I went ahead to the hotel, Sir.

Q: Did you reach the hotel?
A: Yes, Sir, I was able to reach the hotel and at the hotel that's the place where everything happened. "Nagkahulihan na po."

Q: Before going to the hotel and you were asked by Reynaldo to go to the hotel, aside from telling you to go to the hotel, what else did you talk about?

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[62] *Id*.

A: "Nilalakad niya po ako ng five hundred."

. . . . . .

Q: You mentioned earlier of a five hundred, that will be the amount of the transaction, in that five hundred, how much will you receive?
A: Three hundred fifty, Sir.

Q: One hundred fifty will go to the person who facilitated?
A: Yes, Sir.[63]

In *People v. Rodriquez*,[64] this Court held that the trafficked victim's testimony that she had been sexually exploited was "material to the cause of the prosecution."[65] Here, AAA's testimony was corroborated by the testimonies of the police officers who conducted the entrapment operation. They recalled in detail the steps they had taken to verify the surveillance report and ensure that petitioner was the same person with whom the confidential informant transacted.[66]

Contrary to petitioner's contention, the testimony of the confidential informant is not indispensable in the crime of trafficking in persons. Neither is his identity relevant. "It is sufficient that the accused has lured, enticed[,] or engaged its victims or transported them for the established purpose of exploitation,"[67] which was sufficiently shown by the trafficked person's testimony alone. As explained by the Court of Appeals:

Jurisprudence consistently holds that there are compelling considerations why confidential informants are usually not presented by the prosecution. One is the need to hide their identity and preserve their invaluable service to the police. Another is the necessity to

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[63] *Rollo*, pp. 168-169.

[64] G.R. No. 211721, September 20, 2017, 840 SCRA 388 [Per *J.* Martires, Third Division].

[65] *Id.* at 401.

[66] *Rollo*, pp. 77-81.

[67] *People v. Aguirre*, G.R. No. 219952, November 20, 2017, 845 SCRA 227, 244 [Per *J.* Tijam, First Division].

protect them from being objects or targets of revenge by the criminals they implicate once they become known. The testimony of the confidential asset is not relevant for conviction nor is it indispensable for a successful prosecution of this case because his testimony would merely be corroborative and cumulative. The testimonies of the trafficked person, AAA, clearly narrating what transpired on the trafficking incident and the police officers regarding the entrapment operation were sufficient to prove appellant's guilt of the crime charged.[68] (Citation omitted)

Thus, we affirm the lower courts' conviction of petitioner for violation of Republic Act No. 9208, Section 4(a), as punished under Section 10(a).[69] Moreover, since this Court cannot impose an indeterminate sentence due to the straight penalty imposed by law, the trial court correctly imposed the penalty of 20 years of imprisonment and the fine of ₱1,000,000.00.

However, damages in favor of AAA must be awarded. In *People v. Lalli*:[70]

> The Civil Code describes moral damages in Article 2217:
>
> > Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act for omission.
>
> Exemplary damages, on the other hand, are awarded in addition to the payment of moral damages, by way of example or correction for the public good, as stated in the Civil Code:

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[68] *Rollo*, p. 87.

[69] Republic Act No. 9208, Sec. 10(a) provides:

SECTION 10. *Penalties and Sanctions*. — The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

(a) Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (₱1,000,000.00) but not more than Two million pesos (₱2,000,000.00).

[70] 675 Phil. 126 (2011) [Per *J.* Carpio, Second Division]

> Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.
>
> Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

The payment of ₱500,000 as moral damages and ₱100,000 as exemplary damages for the crime of Trafficking in Persons as a Prostitute finds basis in Article 2219 of the Civil Code, which states:

> Art. 2219. Moral damages may be recovered in the following and analogous cases:
>
> (1) A criminal offense resulting in physical injuries;
> (2) Quasi-delicts causing physical injuries;
> (3) Seduction, abduction, rape, or other lascivious acts;
> (4) Adultery or concubinage;
> (5) Illegal or arbitrary detention or arrest;
> (6) Illegal search;
> (7) Libel, slander or any other form of defamation;
> (8) Malicious prosecution;
> (9) Acts mentioned in Article 309;
> (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.
>
> The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.
>
> The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

The criminal case of Trafficking in Persons as a Prostitute is an analogous case to the crimes of seduction, abduction, rape, or other lascivious acts. In fact, it is worse.[71]

Thus, moral damages of ₱500,000.00 and exemplary damages of ₱100,000.00 are imposed, with interest at the rate of six

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[71] *Id*. at 158-159.

percent (6%) per annum from the finality of this Decision until fully paid.[72]

WHEREFORE, the Petition is **DENIED**. The Court of Appeals' May 30, 2013 Decision and July 31, 2014 Resolution in CA-G.R. CR No. 34942 are **AFFIRMED with MODIFICATION**.

Petitioner Reynaldo Santiago, Jr. *y* Santos is found **GUILTY** beyond reasonable doubt of violating Section 4(a) of Republic Act No. 9208. He is sentenced to suffer the penalty of imprisonment of twenty (20) years and to pay the victim, AAA: (1) a fine of One Million Pesos (₱1,000,000.00); (2) moral damages of Five Hundred Thousand Pesos (₱500,000.00); and (3) exemplary damages of One Hundred Thousand Pesos (₱100,000.00).

All damages awarded shall be subject to the rate of six percent (6%) per annum from the finality of this Decision until its full satisfaction.

SO ORDERED.

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

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

THIRD DIVISION

[G.R. No. 214163. July 1, 2019]

RONALD GERALINO M. LIM and THE PEOPLE OF THE PHILIPPINES, *petitioners, vs.* **EDWIN M. LIM,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHERE A PETITION FOR *CERTIORARI* UNDER RULE 65 WAS FOUND SUFFICIENT, THE COURT SHALL NOT ISSUE A SUMMON BUT AN ORDER REQUIRING THE RESPONDENTS TO COMMENT THEREON. — [S]ummons need not be issued in a petition for *certiorari* under Rule 65 of the Rules of Court. Under the Rules of Court, there are two (2) types of civil actions: (1) ordinary civil actions; and (2) special civil actions. Both are governed by the rules for ordinary civil actions. However, special civil actions, such as petitions for *certiorari*, are further subject to certain specific rules. Rule 65, Section 6 of the Rules of Court states that the court, upon the filing of a petition for *certiorari*, shall determine if it is sufficient in form and substance. Once it finds the petition to be sufficient, it shall issue an order requiring the respondents to comment on the petition: x x x Compared with an ordinary civil action, where summons must be issued upon the filing of the complaint, the court need only issue an order requiring the respondents to comment on the petition for *certiorari*. "Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto."

2. ID.; ID.; BY ACTIVELY PARTICIPATING IN THE PROCEEDINGS, PETITIONERS ARE DEEMED TO HAVE MADE A VOLUNTARY APPEARANCE AND THE COURT ACQUIRED JURISDICTION OVER THEM. — [I]n *People's General Insurance Corporation v. Guansing*, this Court reasoned that when a party participates in a proceeding despite improper service of summons, he or she is deemed to have voluntarily submitted to the court's jurisdiction. Here, petitioners filed before the Regional Trial Court a Comment/Opposition to the prayer for the issuance of a temporary restraining order on January

30, 2014 and a Comment/Opposition to the Petition on February 10, 2014. By actively participating in the proceedings, petitioners are deemed to have made a voluntary appearance and cannot argue that the Regional Trial Court did not acquire jurisdiction over them. x x x

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; IN A PETITION ASSAILING AN ACT OF A JUDGE, THE PETITIONER IN THE MAIN ACTION IS PRIVATE RESPONDENT MANDATED TO APPEAR BOTH ON HIS/HER OWN BEHALF AND THAT OF THE AFFECTED PUBLIC RESPONDENT. — [P]etitioners argue that the Office of the Solicitor General should have been served with a copy of the Petition for *Certiorari* and Prohibition. However, under the Rules of Court (Rule 65, Section 5), when a petition for *certiorari* is filed assailing an act of a judge, the petitioner in the main action shall be included as a private respondent, and is then mandated to appear and defend both on his or her own behalf and on behalf of the public respondent affected by the proceedings. The public respondent shall not be required to comment on the petition unless required by the court.

4. ID.; ID.; ID.; THE REMEDIES OF APPEAL AND *CERTIORARI* ARE MUTUALLY EXCLUSIVE AND NOT ALTERNATIVE OR SUCCESSIVE. — Settled is the rule that "the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive." When the remedy of appeal is available to a litigant, a petition for *certiorari* shall not be entertained and should be dismissed for being an improper remedy. Under the Rules of Court, an appeal is a remedy directed against 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." It cannot be availed of against an interlocutory order. x x x In contrast, a petition for *certiorari* is a remedy directed not only to correct errors of jurisdiction, "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[.]"

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner People of the Philippines.

Arungayan & Dapiton for petitioner Lim.
Go Silla & Associates Law Office for respondent.

D E C I S I O N

LEONEN, *J.*:

The trial court's noncompliance with procedural rules constitutes grave abuse of discretion, which may be remedied by a petition for *certiorari* under Rule 65 of the Rules of Court.[1]

This Court resolves a Petition for Review on *Certiorari*[2] assailing the June 6, 2014 Decision[3] and August 27, 2014 Order[4] of the Regional Trial Court in Special Civil Action No. 14-32157. The Regional Trial Court decreed that the Municipal Trial Court in Cities committed grave abuse of discretion when it allowed the belated submission of the Judicial Affidavits of the prosecution's witnesses.

Ronald Geralino M. Lim (Ronald) filed before the Office of the City Prosecutor a Complaint[5] for grave threats against his brother Edwin M. Lim (Edwin). Acting favorably on the Complaint, the Office of the City Prosecutor filed an Information[6] against Edwin before the Municipal Trial Court in Cities, Branch 5, Iloilo City.[7] It read:

That on or about November 11, 2012, in the City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, said

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[1] *Cruz v. People*, 812 Phil. 166, 174 (2017) [Per *J.* Leonen, Second Division].

[2] *Rollo*, pp. 4-27.

[3] *Id*. at 197-204. The Decision was penned by Judge Loida J. Diestro-Maputol of Branch 28, Regional Trial Court, Iloilo City.

[4] *Id*. at 229-232. The Order was penned by Presiding Judge Loida J. Diestro-Maputol of Branch 28, Regional Trial Court, Iloilo City.

[5] *Id*. at 29.

[6] *Id.* at 103.

[7] *Id*. at 198.

accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and feloniously threaten to kill Ronald Geralino Lim, by uttering threatening words, to wit, "*Puson ko ulo mo!*" and "*Patyon ta ikaw*" (I will smash your head!"..., (*sic*) I will kill you) having persisted in said threats.

CONTRARY TO LAW.[8]

On arraignment, Edwin pleaded not guilty to the crime charged.[9]

The case was then referred to the Philippine Mediation Center for mediation. But due to the parties' failure to reach a settlement, the case was referred back to the court.[10]

On August 12, 2013, the case was set for pre-trial. However, because of Ronald's and his counsel's absence, pre-trial was reset to September 5, 2013.[11]

After Edwin's counsel had filed a Motion for time to submit a counter-affidavit, pre-trial was again reset to October 17, 2013.[12]

On October 17, 2013, the defense counsel moved that the hearing be set at 10:00 a.m. However, because the private prosecutor was unavailable and the prosecution needed time to submit their judicial affidavits, pre-trial was reset to November 21, 2013 at 8:30 a.m.[13]

At the pre-trial on November 21, 2013, the prosecution, among others, moved that they be allowed to submit the Judicial Affidavits of Ronald and their witnesses later that day. It explained that it had completed the Judicial Affidavits earlier, but "for whatever reason,"[14] was not able to submit them.[15]

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[8] *Id*. at 103.

[9] *Id*. at 198.

[10] *Id.*

[11] *Id*.

[12] *Id*.

[13] *Id.* at 199.

[14] *Id*. at 68.

[15] *Id*.

Despite the defense counsel's insistent opposition, the Municipal Trial Court in Cities granted the Motion and gave the prosecution until 5:00 p.m. that day to submit the judicial affidavits.[16]

Aggrieved, Edwin moved for reconsideration.[17] He argued that the prosecution was deemed to have waived its right to submit its Judicial Affidavits when it failed to submit them at least five (5) days before pre-trial.[18]

In its December 20, 2013 Order,[19] the Municipal Trial Court in Cities denied Edwin's Motion. It reasoned that since it had already received the Judicial Affidavits and in the interest of justice, its November 21, 2013 Order stands. Nevertheless, it ordered the prosecution to pay a fine of ₱1,000.00 for its failure to file the Judicial Affidavits within the period prescribed by the Judicial Affidavit Rule.[20]

On January 29, 2014, Edwin filed before the Regional Trial Court a Petition for *Certiorari* and Prohibition with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction.[21] He contended that the Municipal Trial Court in Cities committed grave abuse of discretion when it allowed the belated filing of the Judicial Affidavits.[22]

In its Comment,[23] the prosecution argued that the Regional Trial Court did not acquire jurisdiction over them since no summons had been served upon Ronald and the Office of the Solicitor General.[24] In addition, they contended that a resort to

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[16] *Id*. at 199.

[17] *Id*. at 118-127.

[18] *Id*. at 121.

[19] *Id*. at 117. The Order was penned by Judge Ofelia M. Artuz of Branch 5, Municipal Trial Court in Cities, Iloilo City.

[20] *Id*.

[21] *Id*. at 87-102.

[22] *Id*. at 94.

[23] *Id*. at 135-144.

[24] *Id*. at 132-133.

a petition for *certiorari* was improper since the remedy of appeal was still available to them.[25]

In its June 6, 2014 Decision,[26] the Regional Trial Court ruled that the Municipal Trial Court in Cities committed grave abuse of discretion when it allowed the belated submission of the Judicial Affidavits.[27] The dispositive portion of the Decision read:

> WHEREFORE, premises considered, judgment is hereby rendered, as follows:
>
> 1) the orders of the Hon. Ofelia M. Artuz dated November 21, 2013 and December 20, 2013 allowing submission of the Judicial Affidavits belatedly filed by respondents People of the Philippines and Ronald Geralino M. Lim in Crim. Case No. S-140-13 pending before the Municipal Trial Court in Cities, Branch 5, Iloilo City are hereby ordered SET ASIDE; and
>
> 2) the Judicial Affidavits filed by respondents People of the Philippines and Ronald Geralino M. Lim are hereby ordered EXPUNGE[D] from the records of Crim. Case No. S-140-13.
>
> Furnish parties copy of this order.
>
> SO ORDERED.[28]

The Regional Trial Court emphasized that under the Judicial Affidavit Rule, the prosecution is required to submit the Judicial Affidavits of its witnesses not later than five (5) days before pre-trial. However, despite several postponements of the pre-trial, the prosecution still failed to comply with the express provision of the Judicial Affidavit Rule.[29]

The Regional Trial Court further decreed that while the Rule allows late submissions of judicial affidavits for valid reasons,

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[25] *Id*. at 131.

[26] *Id*. at 197-204.

[27] *Id*. at 203.

[28] *Id*. at 203-204.

[29] *Id*. at 202.

the prosecution's justification—"for whatever reason"—was not a valid ground.[30]

Dissatisfied with the Decision, the prosecution and Ronald moved for reconsideration,[31] but the Motion was denied in the Regional Trial Court's August 27, 2014 Order.[32]

On September 29, 2014, petitioners filed before this Court a Petition for Review on *Certiorari*. They argue that the Regional Trial Court did not acquire jurisdiction over them as it had failed to serve the summons and copies of the Petition on *Certiorari* and Prohibition personally on petitioners. They maintain that under the Rules of Court, summons shall be served upon respondent himself, not his counsel.[33]

Petitioners, likewise, argue that since the Office of the Solicitor General is regarded in criminal cases as the appellate counsel of the People of the Philippines, it should have been given an opportunity to be heard on behalf of the People.[34]

Petitioners similarly contend that the filing of a Petition for *Certiorari* was improper since the remedy of appeal was available to respondent. They insist that since the prosecution has yet to present its witnesses in the criminal case, any question in the proceedings before the Municipal Trial Court in Cities should have been raised on appeal.[35]

Petitioners also maintain that the determination of a valid reason for the belated submission of the Judicial Affidavits depends upon the trial court judge's discretion.[36]

Finally, petitioners insist that respondent's failure to attach to his Petition for *Certiorari* and Prohibition a copy of the pre-

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[30] *Id*. at 203.

[31] *Id*. at 206-216.

[32] *Id*. at 229-232.

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

[34] *Id*.

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

[36] *Id*. at 18.

trial's stenographic notes should have prompted the Regional Trial Court to dismiss his Petition outright.[37]

In its October 15, 2014 Resolution,[38] this Court required respondent to file a comment.

In his Comment,[39] respondent argues that the Petition for Review should have been instituted by the Office of the Solicitor General as the only party authorized to represent the People of the Philippines in cases brought before the Court of Appeals or this Court.[40] He stresses that the Petition was not even verified by the People, which is the main party in this case.[41]

As to the alleged non-acquisition of jurisdiction over petitioner Ronald, respondent contends that nowhere in the Rules of Court does it require that the summons be served on the respondents in a petition for *certiorari*. He insists that Rule 65 only states that if the court finds the petition for *certiorari* to be sufficient in form and substance, it shall issue an order requiring the respondents to comment on it.[42]

Respondent maintains that contrary to petitioners' assertion, a petition for *certiorari* is the proper remedy to assail the November 21, 2013 Order of the Municipal Trial Court in Cities. He claims that it is an interlocutory order from which no appeal may be taken.[43]

Moreover, respondent insists that the Municipal Trial Court in Cities committed grave abuse of discretion in allowing the Judicial Affidavits' belated submission. He asserts that while the Judicial Affidavit Rule allows their belated submission,

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[37] *Id*. at 21-23.

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

[39] *Id*. at 243-268.

[40] *Id*. at 243.

[41] *Id*. at 244.

[42] *Id*. at 254.

[43] *Id*. at 260.

the delay must be for a valid reason. He contends that the excuse offered—"for whatever reason"—does not constitute a valid justification warranting the relaxation of the rules.[44]

Finally, respondent claims that his failure to attach the stenographic notes was not a fatal error meriting the dismissal of his Petition for *Certiorari* and Prohibition. He maintains that his belated submission still constitutes substantial compliance with the rules.[45]

In its February 9, 2015 Order,[46] this Court required petitioners to file their reply.

In his Reply,[47] petitioner Ronald reiterates that the Judicial Affidavit Rule does not prohibit the belated submission of judicial affidavits. He insists that the Municipal Trial Court in Cities had the judicial discretion to admit the Judicial Affidavits submitted by petitioners.[48]

In its Reply,[49] the Office of the Solicitor General, on behalf of petitioner People of the Philippines, argues that while the Petition for Review was defective for petitioner Ronald's failure to secure its conformity, such defect was cured when it manifested its conformity and adopted the Petition as its own.[50]

Additionally, the Office of the Solicitor General argues that the Regional Trial Court erred in taking cognizance of the Petition for *Certiorari* and Prohibition, maintaining that it is a prohibited pleading under the Rules of Summary Procedure.[51]

Thus, for this Court's resolution are the following issues:

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[44] *Id*. at 262-264.

[45] *Id*. at 266.

[46] *Id*. at 274.

[47] *Id*. at 292-297.

[48] *Id*. at 294.

[49] *Id*. at 319-333.

[50] *Id*. at 321.

[51] *Id*. at 325-326.

First, whether or not the Regional Trial Court acquired jurisdiction over petitioners Ronald Geralino M. Lim and People of the Philippines;

Second, whether or not the Petition for *Certiorari* and Prohibition was the proper remedy to question the November 21, 2013 Order of the Municipal Trial Court in Cities; and

Finally, whether or not the Municipal Trial Court in Cities committed grave abuse of discretion in allowing the belated submission of the Judicial Affidavits.

Petitioners' arguments lack merit.

I

Petitioners mainly argue that since no summons had been served upon them, the Regional Trial Court failed to acquire jurisdiction over them. As a result, they insist that the Regional Trial Court's June 6, 2014 Decision is void.

Contrary to petitioners' postulation, summons need not be issued in a petition for *certiorari* under Rule 65 of the Rules of Court.

Under the Rules of Court, there are two (2) types of civil actions: (1) ordinary civil actions; and (2) special civil actions. Both are governed by the rules for ordinary civil actions. However, special civil actions, such as petitions for *certiorari*, are further subject to certain specific rules.[52]

Rule 65, Section 6 of the Rules of Court states that the court, upon the filing of a petition for *certiorari*, shall determine if it is sufficient in form and substance. Once it finds the petition

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[52] RULES OF COURT, Rule 1, Sec. 3 provides:

SECTION 3. *Cases Governed*. — These Rules shall govern the procedure to be observed in actions, civil or criminal, and special proceedings.

(a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.

A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to the specific rules prescribed for a special civil action.

to be sufficient, it shall issue an order requiring the respondents to comment on the petition:

> SECTION 6. Order to Comment. — If the petition is sufficient in form and substance to justify such process, the court shall issue an order requiring the respondent or respondents to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.
>
> In petitions for certiorari before the Supreme Court and the Court of Appeals, the provisions of Section 2, Rule 56, shall be observed. Before giving due course thereto, the court may require the respondents to file their comment to, and not a motion to dismiss, the petition. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper.

Compared with an ordinary civil action, where summons must be issued upon the filing of the complaint,[53] the court need only issue an order requiring the respondents to comment on the petition for *certiorari*. "Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto."[54]

In any case, despite petitioners' insistence that they were not served with summons, it must be noted that on January 29, 2014, the Regional Trial Court served the summons and a copy of the Petition on petitioner Ronald, through his counsel Attorney Alfredo Arungayan III (Atty. Arungayan).[55]

Similarly, the People of the Philippines, as represented by the City Prosecutor of Iloilo City, and Judge Ofelia M. Artuz, through her Branch Clerk of Court, were served with summons and copies of the Petition on January 30, 2014.[56]

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[53] RULES OF COURT, Rule 14, Sec. 1 provides:

> SECTION 1. Clerk to Issue Summons. — Upon the filing of the complaint and the payment of the requisite legal fees, the clerk of court shall forthwith issue the corresponding summons to the defendants.

[54] RULES OF COURT, Rule 65, Sec. 6.

[55] *Rollo*, p. 269.

[56] *Id*.

Furthermore, it must be stressed that in *People's General Insurance Corporation v. Guansing*,[57] this Court reasoned that when a party participates in a proceeding despite improper service of summons, he or she is deemed to have voluntarily submitted to the court's jurisdiction.

Here, petitioners filed before the Regional Trial Court a Comment/Opposition to the prayer for the issuance of a temporary restraining order[58] on January 30, 2014 and a Comment/ Opposition to the Petition[59] on February 10, 2014. By actively participating in the proceedings, petitioners are deemed to have made a voluntary appearance and cannot argue that the Regional Trial Court did not acquire jurisdiction over them.

Finally, petitioners argue that the Office of the Solicitor General should have been served with a copy of the Petition for *Certiorari* and Prohibition. However, under the Rules of Court, when a petition for *certiorari* is filed assailing an act of a judge, the petitioner in the main action shall be included as a private respondent, and is then mandated to appear and defend both on his or her own behalf and on behalf of the public respondent affected by the proceedings. The public respondent shall not be required to comment on the petition unless required by the court. Rule 65, Section 5 of the Rules of Court provides:

> SECTION 5. Respondents and Costs in Certain Cases. — *When the petition filed relates to the acts or omissions of a judge*, court, quasi-judicial agency, tribunal, corporation, board, officer or person, *the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings*, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents

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[57] G.R. No. 204759, November 14, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64769> [Per *J.* Leonen, Third Division].

[58] *Rollo*, pp. 128-134.

[59] *Id*. at 135-144.

only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein. (Emphasis supplied)

II

This Court shall discuss the second and third issues simultaneously as they are interrelated with each other.

Settled is the rule that "the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive."[60] When the remedy of appeal is available to a litigant, a petition for certiorari shall not be entertained and should be dismissed for being an improper remedy.[61]

Under the Rules of Court, an appeal is a remedy directed against 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."[62] It cannot be availed of against an interlocutory order.[63]

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[60] *Rigor v. Court of Appeals*, 526 Phil. 852, 858 (2006) [Per *J.* Garcia, Second Division].

[61] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 782 (2004) [Per *J.* Panganiban, Third Division].

[62] RULES OF COURT, Rule 41, Sec. 1 provides:

SECTION 1. Subject of Appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

[63] RULES OF COURT, Rule 41, Sec. 1 provides:

SECTION 1. Subject of Appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

In *Denso (Philippines), Inc. v. The Intermediate Appellate Court*,[64] this Court distinguished a final order or judgment from an interlocutory order:

> The concept of 'final' judgment, as distinguished from one which has 'become final' (or 'executory' as of right [final and executory]), is definite and settled. A 'final' judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes 'final' or, to use the established and more distinctive term, 'final and executory.'
>
> . . . . . .
>
> Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is 'interlocutory,' e.g., an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting

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> No appeal may be taken from:
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> (a) An order denying a motion for new trial or reconsideration;
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> (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
>
> (c) An interlocutory order;
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> . . . . . .
>
> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

[64] 232 Phil. 256 (1987) [Per *J.* Narvasa, First Division].

or denying applications for postponement, or production or inspection of documents or things, etc. 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.[65] (Citation omitted)

In contrast, a petition for *certiorari* is a remedy directed not only to correct errors of jurisdiction, "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[.]"[66] As ruled in *Cruz v. People*:[67]

> The writ of certiorari is not issued to correct every error that may have been committed by lower courts and tribunals. It is a remedy specifically to keep lower courts and tribunals within the bounds of their jurisdiction. In our judicial system, the writ is issued to prevent lower courts and tribunals from committing grave abuse of discretion in excess of their jurisdiction. Further, the writ requires that there is no appeal or other plain, speedy, and adequate remedy available to correct the error. Thus, certiorari may not be issued if the error can be the subject of an ordinary appeal. . . .
>
> . . . . . .
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> An essential requisite for filing a petition for certiorari is the allegation that the judicial tribunal acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion has been defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law."[68] (Citations omitted)

In *Cruz*, the petitioners filed before the Court of Appeals a Petition for *Certiorari* assailing the Regional Trial Court Order.

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[65] *Id*. at 263-264.

[66] *Araullo v. Aquino III*, 737 Phil. 457, 531 (2014) [Per *J.* Bersamin, *En Banc*].

[67] 812 Phil. 166 (2017) [Per *J.* Leonen, Second Division].

[68] *Id*. at 171-173.

The trial court denied their Motion to release cash bond after the case was dismissed due to the private complainant's desistance. The Court of Appeals eventually dismissed the Petition on the ground that it was an improper remedy.[69]

There, this Court reversed the Court of Appeals Decision and ruled that the Regional Trial Court's noncompliance with the Rules of Court constituted grave abuse of discretion, the proper remedy against which is a petition for *certiorari* under Rule 65 of the Rules of Court.[70]

Similarly, here, the Municipal Trial Court in Cities committed grave abuse of discretion in blatantly disregarding the clear wording of A.M. No. 12-8-8-SC, or the Judicial Affidavit Rule. The Rule is explicit: the prosecution is mandated to submit the judicial affidavits of its witnesses not later than five (5) days before pre-trial. Should they fail to submit them within the time prescribed, they shall be deemed to have waived their submission. Section 9 of the Judicial Affidavit Rule provides:

> SECTION 9. Application of Rule to Criminal Actions. — (a) This rule shall apply to all criminal actions:
>
> . . . .
>
> (b) *The prosecution shall submit the judicial affidavits of its witnesses not later than five days before the pre-trial, serving copies of the same upon the accused*. The complainant or public prosecutor shall attach to the affidavits such documentary or object evidence as he may have marking them as Exhibits A, B, C, and so on. No further judicial affidavit, documentary, or object evidence shall be admitted at the trial.
>
> . . . .
>
> SECTION 10. Effect of Non-Compliance with the Judicial Affidavit Rule. — (a) *A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission*.

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[69] See *Cruz v. People*, 812 Phil. 166 (2017) [Per *J.* Leonen, Second Division].

[70] *Id*.

The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00, at the discretion of the court.

Nevertheless, if the belated submission of judicial affidavits has a valid reason, the court may allow the delay once as long as it "would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00, at the discretion of the court."[71]

Here, the Municipal Trial Court in Cities allowed the prosecution's belated submission of their Judicial Affidavits despite the repeated postponements of the scheduled pre-trial. To recall, the pre-trial was reset thrice: from August 12, 2013 to September 5, 2013, then to October 17, 2013, and finally, to November 21, 2013. In spite of that, the prosecution failed to submit their Judicial Affidavits within the time prescribed by the Rule. Its excuse — "for whatever reason"— cannot be considered sufficient to allow the belated submission of the Judicial Affidavits.

WHEREFORE, the Petition is **DENIED**. The June 6, 2014 Decision and August 27, 2014 Order of the Regional Trial Court in Special Civil Action No. 14-32157 are **AFFIRMED**.

SO ORDERED.

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

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[71] JUDICIAL AFFIDAVIT RULE, Sec. 10(b).

SECOND DIVISION

[G.R. No. 227482. July 1, 2019]

JOAQUIN BERBANO, TRINIDAD BERBANO, and MELCHOR BERBANO, *petitioners, vs.* **HEIRS OF ROMAN TAPULAO, namely: ALBERT D. TAPULAO,[*] DANILO D. TAPULAO,[**] MARIETA TAPULAO-REYES, LINDA TAPULAO-RAMIREZ, and JOSEFINA TAPULAO-DACANAY, represented by Attorney-in-fact JOSEFINA TAPULAO-DACANAY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER IS DETERMINED BY EXAMINING THE MATERIAL ALLEGATIONS OF THE COMPLAINT AND THE RELIEF SOUGHT. — Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. Jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it 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. Section 19 of *Batas Pambansa* 129, as amended by Republic Act No. 7691 (RA 7691), enumerates the cases falling within the jurisdiction of the RTCs, x x x On the other hand, Section 33 of BP 129 enumerates the cases falling within the jurisdiction of the MTCs, Metropolitan Trial Courts (MeTCs), and Municipal Circuit Trial Courts (MCTCs), x x x **The Court has repeatedly held that jurisdiction over the subject matter is determined by examining the material allegations of the complaint and the relief sought.**

2. ID.; ID.; ID.; ID.; REGIONAL TRIAL COURT HAS JURISDICTION WHERE THE VALUE OF THE SUBJECT

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[*] Also referred to as "Albert T. Tapulao" in some parts of the *Rollo*.

[**] Also referred to as "Danny D. Tapulao" in some parts of the *Rollo*.

MATTER EXCEEDS ₱20,000.00; CASE AT BAR. — [T]he Complaint clearly alleged that the assessed value of the lot subject of the case is ₱22,070.00. In accordance with BP 129, as amended by RA 7691, since the value of the subject matter exceeds ₱20,000.00, the same falls within the jurisdiction of the RTCs. Hence, the RTC-Branch 1, Tuguegarao City, Cagayan had jurisdiction over the subject matter of the case. Too, petitioners' claim that the property in dispute is only a specific portion of the lot or only 6,804 square meters, which supposedly carries the proportional assessed value of ₱8,111.72, is irrelevant. It does not alter what is actually alleged in the complaint. Besides, it is not for petitioners to define the allegations in their adversaries' complaint. That is the respondents' prerogative as plaintiffs below. Additionally, petitioners cannot limit the dispute to the alleged area actually being contested. This is because the rest of the contiguous portion of the lot could be relevant to the remedy or remedies flowing therefrom. For example, who bears the burden of paying for improvements; what are the indicators of good and bad faith by petitioners? The point is this: respondents' allegations in their complaint cannot be at once deemed to be a case of bad and false pleading. Lastly, but no less important, petitioners never questioned the trial court's jurisdiction in the proceedings before it. In fact, petitioners even filed their Answer and sought affirmative relief therein.

APPEARANCES OF COUNSEL

Santos M. Baculi for petitioners.
Bonifacio Albino Pattaguan, Jr. for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari*[1] assails the Decision dated September 30, 2016[2] of the Court of Appeals in CA-G.R.

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[1] *Rollo*, pp. 18-27.

[2] Penned by Presiding Justice Romeo F. Barza and concurred in by Associate Justice Agnes Reyes-Carpio and now Supreme Court Associate Justice Andres B. Reyes, Jr., *id*. at 37-47.

CV No. 104126 affirming the Judgment dated August 1, 2014[3] of the Regional Trial Court (RTC) – Branch 1, Tuguegarao City, Cagayan in Civil Case No. 7899, which granted the complaint for Recovery of Possession and Damages, declared respondents as the rightful owners of the subject property, and ordered petitioners to vacate the specific portion of the property they occupy.

The Proceedings Before the Trial Court

Respondents Heirs of Roman Tapulao, namely: Albert D. Tapulao, Danilo D. Tapulao, Marieta Tapulao-Reyes, Linda Tapulao-Ramirez, and Josefina Tapulao-Dacanay filed a Complaint for Recovery of Possession and Damages against petitioners Joaquin Berbano, Trinidad Berbano, and Melchor Berbano.

In their Complaint, respondents averred that their father Roman Tapulao was the registered owner of a lot located in Taguing, Baggao, Cagayan covered by Original Certificate of Title (OCT) No. P-9331. They paid the realty taxes thereon.[4]

After the death of Roman Tapulao and his wife Catalina Casabar-Tapulao, respondents caused the relocation survey of the lot. It revealed that petitioners occupied portions of the lot. Despite several demands, however, petitioners refused to vacate and return the lot to respondents.[5]

In their Answer, petitioners argued that the original owner of the lot was Felipe Peña. Sometime in 1954, Felipe Peña ceded his possession over half hectare of the lot in favor of Joaquin Berbano. From that time on, Joaquin had been in open and exclusive possession of the lot.

Subsequently, Felipe Peña sold the adjacent lot to Roman Tapulao. When Roman Tapulao caused its registration, the survey mistakenly included therein the adjacent lot belonging to Joaquin.

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[3] Penned by Presiding Judge Raymond Reynold R. Lauigan, *id*. at 28-34.

[4] *Id.* at 28.

[5] *Id*. at 28.

As a result, OCT No. P-9331 (in the name of Roman Tapulao) also covered Joaquin's lot. Roman and Catalina Tapulao acknowledged this error through their Affidavit dated April 2, 1976. They promised to respect Joaquin's ownership of that specific portion.[6]

The case was then called for pre-trial which for one reason or another got reset for eight (8) consecutive times. During the pre-trial on January 30, 2014, petitioners and counsel failed to appear. Thus, respondents moved to present evidence *ex-parte* which the trial court granted.[7]

The Trial Court's Ruling

After due proceedings, the trial court rendered its Judgment dated August 1, 2014[8] in respondents' favor, *viz*:

WHEREFORE, the evidence preponderates in favor of the plaintiffs and against the defendants and hereby renders judgment as follows:

1. Declaring the plaintiffs as the rightful and legal owners of the subject property covered by OCT No. P-9331 located in Taguing, Baggao, Cagayan with an area of 18,512 square meters;

2. Ordering the defendants to vacate the portion occupied by them and surrender possession thereof to the plaintiffs; and,

3. Ordering the defendants to pay the plaintiffs ₱4,131.00 as and by way of actual damages representing the expenses incurred by the plaintiffs in filing this case.

No pronouncement as to costs.

SO DECIDED.[9]

In their motion for reconsideration, for the first time, petitioners raised the issue of jurisdiction. They asserted that

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[6] *Id*. at 29.

[7] *Id*. at 38.

[8] Penned by Judge Raymond Reynold R. Lauigan, *id*. at 28-34.

[9] *Id*. at 33-34.

since the value of the lot (less than ₱20,000.00), the case fell within the jurisdiction of the first level courts.

Under Resolution dated January 5, 2015,[10] the trial court denied petitioners' motion for reconsideration in view of the clear allegation in the complaint itself that the lot had an assessed value of ₱22,070.00, hence, within the court's jurisdiction.

The Proceedings Before the Court of Appeals

On appeal, petitioners, again for the first time, justified their failure to appear at the pre-trial. They claimed they were allegedly not notified of the pre-trial. They also insisted that the RTC had no jurisdiction over the case. According to them, the assessed value of the whole lot should not be taken into consideration considering that only a portion thereof was in dispute. Hence, only the value of the specific portion they were occupying must be the determining jurisdictional factor.

The Court of Appeals' Ruling

By its assailed Decision dated September 30, 2016[11] the Court of Appeals affirmed. It held that respondents sufficiently proved their ownership of the lot including the specific portion which petitioners were physically occupying. The trial court acquired jurisdiction over the case because properties with assessed value of more than ₱20,000.00 fell within the jurisdiction of the RTCs.

The Present Petition

Petitioners now ask the Court to exercise its discretionary appellate jurisdiction to review and reverse the aforesaid decision of the Court of Appeals.

Petitioners reiterate their argument that the trial court had no jurisdiction over the case because although the entire lot has a total area of 18,512 square meters and an assessed value of ₱22,070.00 (18,512 x ₱1.19219965 per square meter), the

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[10] *Id*. at 35-36.

[11] *Id*. at 37-47.

real subject matter of the case is only a small part thereof, *i.e.* 6,804 square meters which, by simple computation, carried an assessed value of ₱8,111.72 (6,804 x ₱1.19219965 per square meter). This amount is within the jurisdiction of the Municipal Trial Courts (MTCs) and not the RTCs. The trial court and the Court of Appeals, therefore, erred in holding that the trial court had jurisdiction over the subject matter of the complaint.[12]

In their Comment dated February 10, 2017,[13] respondents riposte that the nature of the action and/or value of the subject matter are determined by the allegations of the complaint. Here, the complaint alleged that the assessed value of the lot was ₱22,070.00, an amount well within the jurisdiction of the RTCs.

In their Reply dated December 3, 2017,[14] petitioners simply assert anew their argument against the trial court's jurisdiction over the subject matter of the case.

Issue

Is petitioners' challenge against the trial court's jurisdiction tenable?

Ruling

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. Jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it 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.[15]

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[12] See Petition for Review dated November 24, 2016, *id*. at 18-27.

[13] *Rollo*, pp. 51-58.

[14] *Id*. at 62-66.

[15] *Glynna Foronda-Crystal v. Aniana Lawas Son*, G.R. No. 221815, November 29, 2017.

Section 19 of *Batas Pambansa* 129, as amended by Republic Act No. 7691 (RA 7691),[16] enumerates the cases falling within the jurisdiction of the RTCs, *viz*:

> Sec. 19. Jurisdiction in civil cases. — Regional Trial Courts shall exercise exclusive original jurisdiction:
>
> 1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;
>
> 2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty Thousand Pesos (₱20,000.00) or, for civil actions in Metro Manila, where such value exceeds Fifty Thousand Pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts.

On the other hand, Section 33 of BP 129 enumerates the cases falling within the jurisdiction of the MTCs, Metropolitan Trial Courts (MeTCs), and Municipal Circuit Trial Courts (MCTCs), *viz*:

> Sec. 33. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in civil cases. — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:
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> x x x x x x x x x
>
> 3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty Thousand Pesos (₱950,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: Provided, That in cases

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[16] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose Batas Pambansa Blg. 129, otherwise Known as The "Judiciary Reorganization Act of 1980."

of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots.

The Court has repeatedly held that jurisdiction over the subject matter is determined by examining the material allegations of the complaint and the relief sought.[17]

Here, the Complaint reads:

x x x x x x x x x

3. Plaintiffs are the children of deceased spouses Roman Tapulao and Catalina Casabar, who both died intestate;

4. Deceased Roman Tapulao is the registered owner of a parcel of land denominated as Lot No. 1072, Pls-492-D located at Taguing, Baggao, Cagayan, and embraced under Original Certificate of Title No. P-9331 x x x

x x x x x x x x x

5. The above-described parcel of land is declared for taxation purposes and with an assessed value of Twenty Two Thousand and Seventy Pesos (Php22,070.00) as evidenced by Tax Declaration No. 03-06042-00175 issued by the Municipal Assessor of Baggao, Cagayan x x x[18]

x x x x x x x x x

Indeed, the Complaint clearly alleged that the assessed value of the lot subject of the case is ₱22,070.00. In accordance with BP 129, as amended by RA 7691, since the value of the subject matter exceeds ₱20,000.00, the same falls within the jurisdiction of the RTCs. Hence, the RTC-Branch 1, Tuguegarao City, Cagayan had jurisdiction over the subject matter of the case.

Too, petitioners' claim that the property in dispute is only a specific portion of the lot or only 6,804 square meters, which supposedly carries the proportional assessed value of ₱8,111.72, is irrelevant. It does not alter what is actually alleged in the

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[17] *Editha Padlan v. Elenita Dinglasan, et al.,* 707 Phil. 83, 91 (2013).

[18] *Rollo*, p. 21.

complaint. Besides, it is not for petitioners to define the allegations in their adversaries' complaint. That is the respondents' prerogative as plaintiffs below. Additionally, petitioners cannot limit the dispute to the alleged area actually being contested. This is because the rest of the contiguous portion of the lot could be relevant to the remedy or remedies flowing therefrom. For example, who bears the burden of paying for improvements; what are the indicators of good and bad faith by petitioners? The point is this: respondents' allegations in their complaint cannot be at once deemed to be a case of bad and false pleading.

Lastly, but no less important, petitioners never questioned the trial court's jurisdiction in the proceedings before it. In fact, petitioners even filed their Answer and sought affirmative relief therein. The trial court summarized petitioners' prayer in their Answer, to wit:

> Because of the groundless filing of the case, the defendants suffered mental anguish, wounded feelings, social humiliation and they also incurred actual damages. They were likewise compelled to engage the services of a counsel and incurred actual damages. Thus, defendants pray for the dismissal of the case, that the plaintiffs be ordered to execute the necessary documents to cause the transfer and registration of the lot in suit in the name of the defendants and the award of actual, moral and exemplary damages.[19]

It is only after the case was decided against them that they challenged it for the first time via their motion for reconsideration. In ***Tijam, et al. v. Sibonghanoy, et al.***,[20] the Court held that a party cannot invoke the jurisdiction of a court and ask for affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction. So must it be.

All told, the Court of Appeals did not err in affirming the trial court's jurisdiction over the case below.

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[19] *Id*. at 29.

[20] See 131 Phil. 556, 564 (1968).

WHEREFORE, the petition is **DENIED**, and the Decision dated September 30, 2016 of the Court of Appeals in CA-G.R. CV No. 104126, **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 230645. July 1, 2019]

TONDO MEDICAL CENTER, represented by DR. MARIA ISABELITA M. ESTRELLA, *petitioner, vs.* **ROLANDO RANTE, doing business under the name and style of JADEROCK BUILDERS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CONSTRUCTION INDUSTRY ARBITRATION LAW (EO NO. 1008); CONSTRUCTION INDUSTRY AND ARBITRATION COMMISSION (CIAC); JURISDICTION OVER DISPUTES ARISING FROM, OR CONNECTED WITH, CONTRACTS ENTERED INTO BY THE PARTIES INVOLVED IN CONSTRUCTION IN THE PHILIPPINES; DECISION OF CIAC ACCORDED GREAT WEIGHT, RESPECT AND FINALITY. — "Executive Order No. 1008 entitled, 'Construction Industry Arbitration Law' provided for an arbitration mechanism for the speedy resolution of construction disputes other than by court litigation." x x x [It] created the CIAC and vests upon it original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by the parties involved in construction in the Philippines. The competence of the CIAC to handle construction disputes was expressly recognized by

Republic Act (R.A.) No. 9184 or the Government Procurement Reform Act, specifically Section 59 of the said law and was formally incorporated into the general statutory framework on alternative dispute resolution through R.A. No. 9285, the Alternative Dispute Resolution Act of 2004 (ADR Law), specifically Chapter 6, Sections 34 and 35. The CIAC has a two-pronged purpose: (a) to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts, and, (b) to provide authoritative dispute resolution which emanates from its technical expertise. x x x [T]he Courts accord CIAC's decision with great weight, respect and finality especially if it involves factual matters. Section 19 of EO No. 1008 provides: Sec. 19. *Finality of Awards*. — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court. x x x Despite the clarity of the wordings of E.O. No. 1008 on the finality of awards – x x x it has evolved, such that even questions of fact and mixed questions of fact and law can be subject to judicial review. x x x Thus, questions on whether the CIAC arbitral tribunals conducted their affairs in a haphazard and immodest manner that the most basic integrity of the arbitral process was imperiled are not insulated from judicial review. [Here] owing to the CIAC's technical expertise on the matter, the CA cannot be faulted for deferring to CIAC's factual findings of mutual breach of contract committed by both parties. Then again, settled is the rule that the findings of fact of quasi-judicial bodies, which have acquired expertise on specific matters within their jurisdiction, are generally accorded respect and finality, especially when affirmed by the CA. As such, in this case, we see no reason to deviate from the factual findings of the CIAC, which has acquired technical competence in resolving construction disputes.

2. ID.; ID.; ID.; ID.; ID.; RULING ON THE MONETARY AWARDS; THE CIAC IS JUSTIFIED IN ORDERING THE PAYMENT OF MONETARY AWARDS (TO RESPONDENT) TO PREVENT UNJUST ENRICHMENT IN LIGHT OF THE FINDINGS THAT BOTH PARTIES COMMITTED BREACH ON THEIR RESPECTIVE

OBLIGATIONS UNDER THE CONTRACT. — As to the main issue of monetary awards, while the same at first blush appears to be a question of fact, determination of the propriety of monetary awards can be reviewed by the Courts. x x x [I]n ruling on the monetary awards, two guiding principles steered the CIAC Arbitral Tribunal in going about its task. First, was the basic matter of fairness. Second, was effective dispute resolution or the overarching principle of arbitration as a mechanism relieved of the encumbrances of litigation. In keeping with these principles, CIAC opted to mitigate the damages of the parties and determine what is equitable under the circumstances. Just like Courts of law, CIAC may equitably mitigate the damages [when the plaintiff himself has contravened the terms of the contract] pursuant to the provision of Article 2215 of the Civil Code. x x x The enumeration mentioned in Article 2215 is not exclusive for the law uses the phrase "as in the following instances." Hence, it can be applied to an analogous case where petitioner is equally guilty of breach just like in the instant case. Indeed, the foregoing provision does not take into account who the first infractor is. On this score, CIAC is justified in ordering the payment of monetary awards in favor of respondent just so to prevent unjust enrichment in light of the findings that both parties committed breach on their respective obligations under the contract.

3. **ID.; ID.; ID.; ID.; ID.; ID.; ID.; RULING AS TO RETENTION FEES, COST OF THE VARIATION ORDERS AND PERFORMANCE CASH BOND; DISCUSSED. —** As to Retention fees. "In the construction industry, the 10 percent retention money is a portion of the contract price automatically deducted from the contractor's billings, as security for the execution of corrective work — if any — becomes necessary." It was likewise clear that under 42.3 of the parties' Construction Contract, the purpose of retaining 10% of every progress billing of the contractor is to hold the same as payment or security to cover uncorrected discovered defects and third party liabilities. x x x Thus, to prevent unjust enrichment to TMC, the CA is correct in upholding CIAC which deemed it proper to release the remaining balance of ₱33,127.64 (retention fee less the defective works) to respondent. As to costs of the Variation Orders. It was established (and not disputed by TMC) that respondent had already completed 80% of the scope of work in the variation orders as contained in his proposal. Again, to

prevent unjust enrichment, the CIAC correctly ordered TMC to pay the 80% of the completed additional works. x x x As to the Performance Cash Bond. It must be noted that the said bond amounting to ₱1,180,000.00 given by respondent to TMC is to guarantee the performance of its contractual obligations. As a cash bond, it can either be returned to respondent as owner thereof or be forfeited in favor of TMC in case respondent is in default in the performance of his obligation. The CIAC ruled that the forfeiture of the said cash bond is not proper and, hence, it must be returned to respondent.

4. **ID.; ID.; ID.; ID.; ID.; ID.; RULING AS TO COMPENSATORY DAMAGES, COSTS OF ARBITRATION AND ATTORNEY'S FEES; DISCUSSED. —** [A]s to the tools that were not allowed by TMC to be removed from the project site left by respondent (consisting of a welding machine and a jackhammer), we agree with the CIAC's findings that the same should be returned to the owners thereof or to the respondent, not as part of compensatory damage but as a necessary consequence of the termination of the parties' contract. Compensatory or actual damages, to be recoverable, must be duly proved with reasonable degree of certainty. x x x Since respondent failed to ascertain with reasonable degree of certainty the exact compensatory damage he sustained for the alleged wrongful termination of contract, it was erroneous for the CIAC to speculate that the tools with the value of ₱96,606.00 was just enough as compensation for the termination of the contract. As to the Costs of Arbitration. We agree with CIAC's ruling as affirmed by the CA that the costs of arbitration shall be shouldered by both parties. Based on the Final Award of the CIAC, the total cost of arbitration is ₱319,590.08. Consistent with the finding that both parties breached their contract, the costs of arbitration must be equally divided between TMC and respondent. Consequently, each party must pay 1/2 of the costs amounting to ₱159,795.04. We, however, take exception to the ruling that Attorney's fees must be paid by TMC to respondent. Again, on the ground that TMC and respondent committed a mutual breach of their contract, each must bear his own damage with respect to the payment of the professional fees of their respective lawyers. "No damages shall be awarded to any party in accordance with the rule under Article 1192 of the Civil Code that in case of mutual breach and the first infractor of the

contract cannot exactly be determined, each party shall bear his own damages."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Gerardo A. Yulo for respondent.

D E C I S I O N

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

This resolves the Petition for Review on *Certiorari* filed pursuant to Rule 45 of the 1997 Rules of Court which seeks to nullify and set aside the October 20, 2016 Decision[1] and the March 16, 2017 Resolution[2] of the Court of Appeals (CA), affirming the June 20, 2016 Final Award of the Construction Industry Arbitration Commission (CIAC) denying petitioner's Motion for Reconsideration, in CA-G.R. SP No. 146476.

On August 27, 2013, petitioner Tondo Medical Center (TMC), through its then Medical Center Chief II, Dr. Victor J. Dela Cruz, entered into a Contract Agreement[3] with Jaderock Builders, represented by Rolando Rante (respondent), for the construction project (project) involving the renovation of its OB-Gyne wards, elevation of linen building, elevation of hospital ground, elevation of dormitory and improvement of perimeter fence. The project was funded by the Department of Health (DOH) under the Health Facilities Enhancement Program.[4]

The contract provides that the construction should be completed within 240 days from September 4, 2013, with a

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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. 60-77.

[2] *Id.* at 79-84.

[3] *Id.* at 242-244.

[4] *Id.* at 242.

proposed contract price of ₱11,799,602.83.[5] To secure the performance of the project, respondent posted a performance bond in the amount of ₱1,180,000.00.

TMC claims that respondent incurred delays in the project. This prompted the newly appointed officer-in-charge Dr. Cristina V. Acuesta (Dr. Acuesta) to write respondent a letter informing the latter of the delays and directed him to deploy sufficient work force to cover the delays incurred.

TMC requested respondent to prioritize the OB-Gyne ward. Respondent acceded and allegedly promised Dr. Acuesta that he will finish the OB-Gyne ward by December 2013. However, in December 2013, the OB-Gyne ward remained unfinished. On March 31, 2014, and May 27, 2014, Dr. Acuesta met with respondent and conveyed her observation on the slow pace of work and the lack of manpower. Due to these delays, Dr. Acuesta granted respondent an extension of up to June 27, 2014 to complete the project. Dr. Acuesta even issued a change order deleting the construction of the area for persons with disability (PWD) from respondent's scope of work just to meet his deadline.

On June 27, 2014, the project was still unfinished. TMC sent respondent another letter informing him that no further extensions would be given to him. Respondent took exception to the action undertaken by TMC. In reply, TMC informed respondent that there was nothing to terminate because the contract automatically ceased to exist after June 27, 2014.

Upon the assumption of Dr. Maria Isabelita M. Estrella (Dr. Estrella) as Medical Center Chief II of TMC, she conducted her own investigation and required Dr. Acuesta and Engr. Ramon T. Alfonso to submit verified reports about the project. The reports she received allegedly revealed that respondent had committed several violations that caused inordinate delays in completing the project. As a consequence, Dr. Estrella issued a Notice to Terminate and required respondent to submit his position paper.

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[5] *Id*.

Dr. Estrella created the Contract Termination Review Committee (CTRC) to assist her in the disposition of the case. On the basis of the recommendation made by the CTRC, Dr. Estrella rendered a decision dated November 14, 2014, the decretal portion of which reads as follows:

> **WHEREFORE**, in view of the foregoing, the contract of Jaderock Builders with TMC for the renovation of its OB-Gyne wards, elevation of linen building, elevation of hospital ground, elevation of dormitory, and improvement of perimeter fence is hereby TERMINATED due to the said contractor's unjustified default. Upon termination thereof, a Blacklisting Order is likewise issued to disqualify Jaderock Builders from participating in the bidding of all government projects. Consequently, the performance security of Jaderock Builders is hereby declared forfeited.[6]

Respondent filed a Motion for Reconsideration but was denied in a Resolution[7] dated November 24, 2014.

On January 21, 2015, respondent filed an appeal with the DOH. The DOH, in a letter dated July 6, 2015, informed respondent that it could not rule on the appeal since it is Dr. Estrella who has direct supervision or administration over the implementation of the subject contract.

On August 28, 2015, respondent filed a Request for Arbitration with the CIAC for the resolution of his claim against TMC. Respondent's claims comprised of unpaid retention fee, return of performance cash bond, unpaid variation orders, damages arising from wrongful termination of the contract, damages arising from the blacklisting and attorney's fees.

On June 20, 2016, the CIAC through a three-member Arbitral Tribunal issued the Final Award[8] wherein it upheld the validity of TCM's termination of the contract, but ruled that respondent is still entitled to monetary claims representing a portion of the Retention Fee, the entire Performance Bond, a portion of

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[6] *Id*. at 477.

[7] *Id*. at 479.

[8] *Id*. at 158-212.

the cost of Variation Orders Nos. 1 and 2, Compensatory Damages equivalent to the value of unreturned tools, Attorney's Fees, and half of the Arbitration Fees, totaling ₱2,840,323.95.

Aggrieved by the findings of the CIAC, TMC filed a petition for review with the CA. Respondent filed its comment on the petition.

On October 20, 2016, the CA rendered the assailed Decision denying TMC's Petition for Review and affirming the CIAC's Final Award. TMC filed a Motion for Reconsideration. However, pending resolution of the said Motion for Reconsideration before the CA, the CIAC and the respondent proceeded to execute and garnish TMC's public funds. TMC was constrained to file a petition for *certiorari* under Rule 65 of the Rules of Court with application for a Temporary Restraining Order and/or Writ of Preliminary Injunction before the CA questioning the said post-award proceedings, docketed as CA-G.R. SP No. 149187. To date, this petition is still pending with the CA.

In the assailed Resolution dated March 16, 2017, the CA denied TMC's Motion for Reconsideration. Hence, the instant petition anchored on the lone ground, that:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE CIAC'S MONETARY AWARDS TO RESPONDENT DESPITE ITS PARALLEL FINDING AND CONFIRMATION THAT THE TERMINATION OF THE SUBJECT CONTRACT BY THE PETITIONER WAS VALID AND JUSTIFIED.[9]

The issue, in other words, revolves on the propriety of CIAC's act of awarding the following monetary awards in favor of respondent despite the alleged finding of breach (on respondent's part) of the Contract Agreement, thus: (a) a portion of the retention fee amounting to ₱33,127.64; (b) the entire performance bond amounting to ₱1,180,000.00; (c) a portion of the cost of variation orders numbers 1 and 2 amounting to ₱1,152,795.26; (d) compensatory damages equivalent to the value of unreturned tools amounting to ₱96,606.00; (e) attorney's fees amounting to ₱220,000.00 and (f) 50% of the arbitration fees amounting to ₱159,795.04.

[9] *Id*. at 23.

"Executive Order No. 1008 entitled, 'Construction Industry Arbitration Law' provided for an arbitration mechanism for the speedy resolution of construction disputes other than by court litigation."[10] Realizing that delays in the resolution of construction industry disputes would also hold up the development of the country, Executive Order No. 1008 created the CIAC and vests upon it original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by the parties involved in construction in the Philippines.[11]

The competence of the CIAC to handle construction disputes was expressly recognized by Republic Act (R.A.) No. 9184 or the Government Procurement Reform Act, specifically Section 59[12] of the said law and was formally incorporated into the general statutory framework on alternative dispute resolution through R.A. No. 9285, the Alternative Dispute Resolution Act of 2004 (ADR Law),[13] specifically Chapter 6, Sections 34[14] and 35.[15]

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[10] *Spouses David v. Construction Industry and Arbitration Commission*, 479 Phil. 578, 583 (2004).

[11] *HUTAMA-RSEA Joint Operations, Inc. v. Citra Metro Manila Tollways Corp.*, 604 Phil. 631, 646-647 (2009).

[12] Section 59. Arbitration. — Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": *Provided, however, **That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto***. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act: *Provided*, That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution. (Emphasis supplied).

[13] *CE Construction Corp. v. Araneta Center, Inc.*, G.R. No. 192725, August 9, 2017, 836 SCRA 181, 211.

[14] **Section 34.** ***Arbitration of Construction Disputes: Governing Law.*** — The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.

[15] **Section 35.** ***Coverage of the Law.*** — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement,

The CIAC has a two-pronged purpose: (a) to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts,[16] and, (b) to provide authoritative dispute resolution which emanates from its technical expertise.[17] As explained by the Court:

> x x x The creation of a special adjudicatory body for construction disputes presupposes distinctive and nuanced competence on matters that are conceded to be outside the innate expertise of regular courts and adjudicatory bodies concerned with other specialized fields. The CIAC has the state's confidence concerning the entire technical expanse of construction, defined in jurisprudence as "referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment."[18] (Citation omitted)

Consistent with the foregoing purposes, the Courts accord CIAC's decision with great weight, respect and finality especially if it involves factual matters.[19]

Section 19 of Executive Order (E.O.) No. 1008, CREATING AN ARBITRATION MACHINERY FOR THE PHILIPPINE CONSTRUCTION INDUSTRY, approved on February 4, 1985, provides:

> Sec. 19. *Finality of Awards*. — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court.

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directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project. The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

[16] *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*, 298-A Phil. 361, 372 (1993).

[17] *Supra* note 13, at 212.

[18] *Id*. at 212-213.

[19] *Id*. at 220-221.

It is clear from the foregoing that questions of fact cannot be raised in proceedings before the Supreme Court — which is not a trier of facts — in respect of an arbitral award rendered under the CIAC.[20] The Court explained the rationale for limiting appeal to legal questions in construction cases resolved through arbitration, thus:

> Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. x x x Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.[21] (Citation omitted)

Despite the clarity of the wordings of E.O. No. 1008 on the finality of awards — which state that the arbitral awards shall be final and inappealable except on questions of law which shall be appealable to the Courts — the said provision has evolved, such that even questions of fact and mixed questions of fact and law can be subject to judicial review. As explained by the Court:

> x x x Later, however, the Court, in Revised Administrative Circular (RAC) No. 1-95, modified this rule, directing that the appeals from the arbitral award of the CIAC be first brought to the CA on "questions

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[20] *Supra* note 16.

[21] *Id*. at 373-374.

of fact, law or mixed questions of fact and law." This amendment was eventually transposed into the present CIAC Revised Rules which direct that "a petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court." Notably, the current provision is in harmony with the Court's pronouncement that "despite statutory provisions making the decisions of certain administrative agencies 'final,' [the Court] still takes cognizance of petitions showing want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice or erroneous interpretation of the law" and that, in particular, "voluntary arbitrators, by the nature of their functions, act in a quasi-judicial capacity, such that their decisions are within the scope of judicial review."[22]

Thus, questions on whether the CIAC arbitral tribunals conducted their affairs in a haphazard and immodest manner that the most basic integrity of the arbitral process was imperiled[23] are not insulated from judicial review. Thus:

> x x x We reiterate the rule that factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made. x x x[24] (Citation omitted).

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[22] *Asian Construction and Development Corp. v. Sumitomo Corporation*, 716 Phil. 788, 802-803 (2013).

[23] *CE Construction Corporation v. Araneta Center, Inc.*, *supra* note 13, at 222.

[24] *Spouses David v. Construction Industry and Arbitration Commission*, *supra* note 10, at 590-591.

TMC failed to show that any of these exceptions exist in the instant case. Rather, TMC sought review of the CA's affirmance of the CIAC's Decision with respect to the monetary awards it granted in favor of the respondent despite the latter's alleged breach of contract. Thus, two issues need to be probed — the issue of breach and, the issue on monetary awards.

There is no problem with the issue of breach as this is essentially a factual matter. Relying mainly on the findings and conclusion of the CIAC, the CA affirmed the ruling of the CIAC that respondent committed a breach of the "Contract Agreement." Hence, there was a justifiable ground for TMC to terminate the said contract. The CA ruled that by respondent's own admission, he only accomplished 74.27%[25] of the entire project which means that there was indeed a negative slippage of more than 10% in the completion of the work. This is clearly a ground for the termination of the contract pursuant to the provisions of paragraph III (A)(2) of the Guidelines on termination of Contracts under the Revised Implementing Rules and Regulations of Republic Act No. 9184. The CA also considered as ground to terminate the contract the failure of respondent to comply with the valid instructions of TMC resulting in the former's failure to complete the project, such as: (a) instruction to augment its workforce in order to expedite the project; (b) instruction to provide warning signs and barricades at the project sites; (c) to stockpile in proper places and removal from project site, of waste and excess materials; and (d) instruction to deploy the committed equipment, facilities, support staff and manpower in accordance with approved plans and specifications and contract provisions.

While there were indeed factual and legal bases for TMC to terminate the Contract Agreement, the CIAC did not say that TMC was entirely faultless. A cursory reading of CIAC's Final

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[25] CIAC found that respondent only finished 65.48% completion of work which comprise of the ff: OB Gyne Ward-52.46%; improvement of the perimeter fence — 6.6% and the drainage portion — 6.42%, assuming that respondent was able to accomplish 100% of these 3 components of the project.

Award would reveal its findings of breach of contract on the part of TMC, thus:

(a) TMC is guilty of sectional delivery of the project area. From the five areas to be delivered, only two sites were turned over to respondent. CIAC ruled that it was deemed to have delayed the start of the construction and thus, respondent has the right to demand contract time extension. CIAC's finding of breach is anchored on the following General Conditions of Contract (GCC) of the "Contract Agreement:"

> 5.1 On the date specified in the SCC, the procuring Entity shall grant the contractor possession of so much of the site as may be required to enable it to proceed with the execution of the works; If the Contractor suffers delay or incurs cost from failure on the part of the Procuring Entity to give possession in accordance with the terms of this clause, the Procuring Entity's Representative shall give the contractor a Contract Time Extension and certify such sum as fair to cover the cost incurred, which sum shall be paid by Procuring Entity.
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> 5.2 If possession of a portion is not given by the date stated in the SCC clause 5.1, the Procuring Entity will be deemed to have delayed the start of the relevant activities. The resulting adjustments in contract time to address such delay shall be in accordance with GCC Clause 47.[26]

GCC Clause 47 provides for the need of the contractor to send written notice to the procuring entity in order for the latter to investigate and determine the amount of time extension. Failure to do this shall constitute a waiver on the part of the contractor of any claim for an extension of time. While respondent failed to send a written notice to TMC, it is deemed to be a waiver of his right to claim an extension. Notwithstanding such waiver, CIAC ruled that it did not change the fact that TMC at the onset committed a breach by failure to deliver all project sites.

(b) TMC is guilty of inaction as to Variation Orders. The CIAC concluded that TMC was in bad faith, as it has the obligation to approve it within thirty (30) days. This obligation was

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[26] *Rollo*, p. 250.

expressly provided under GCC 43.5 (d) and (e) of the Contract Agreement, as follows:

> 43.5. (d) If, after review of the plans, quantities and estimated unit cost of the items of work involved, the proper office of the procuring entity empowered to review and evaluate, Change Orders or Extra Work Orders recommends approval thereof, Head of the procuring Entity or his duly authorized representative, believing the change Order or Extra Work Order to be in order, shall approve the same.
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> 43.5 (e) The timeframe for the processing of Variation Orders from the preparation up to the approval by the Head of the Procuring Entity concerned shall not exceed thirty (30) calendar days.

As correctly found by the CIAC, while TMC did in fact not approve, neither did it deny or disapprove the proposal estimates for the additional works. If TMC had intended to disapprove the additional works, it should have made a timely disapproval of respondent's proposals. While the progress of the additional works was on-going, no one from TMC ever told respondent to stop working on it. The CIAC concludes that TMC was in bad faith when it required respondent to conduct additional works, giving a promise of payment, allow performance of the additional works and later on disavowing all these orders.

(c) TMC is guilty of failure to address the illegal settlers issue which hampers respondent's work progress. This again pertains to the obligation of TMC to deliver the site to respondent in order for the latter to perform his work free from obstructions. The CIAC ruled that while the ejectment of illegal settlers is the concern of the Local Government Unit, TMC should have referred the matter to the Barangay or if not, should have deleted the same in respondent's scope of work on the ground that performance of work had become impossible.

Owing to the CIAC's technical expertise on the matter, the CA cannot be faulted for deferring to CIAC's factual findings of mutual breach of contract committed by both parties. Then again, settled is the rule that the findings of fact of quasi-judicial

bodies, which have acquired expertise on specific matters within their jurisdiction, are generally accorded respect and finality, especially when affirmed by the CA.[27] As such, in this case, we see no reason to deviate from the factual findings of the CIAC, which has acquired technical competence in resolving construction disputes.

As to the main issue of monetary awards, while the same at first blush appears to be a question of fact, determination of the propriety of monetary awards can likewise be reviewed by the Courts. The case of *Philrock, Inc. v. Construction Industry Arbitration Commission*,[28] instructs:

> Petitioner assails the monetary awards given by the arbitral tribunal for alleged lack of basis in fact and in law. The [S]olicitor [G]eneral counters that the basis for petitioner's assigned errors with regard to the monetary awards is purely factual and beyond the review of this Court. Besides, Section 19, EO 1008, expressly provides that monetary awards by the CIAC are final and unappealable.
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> We disagree with the solicitor general. As pointed out earlier, factual findings of quasi-judicial bodies that have acquired expertise are generally accorded great respect and even finality, if they are supported by substantial evidence. The Court, however, has consistently held that despite statutory provisions making the decisions of certain administrative agencies "final," it still takes cognizance of petitions showing want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice or erroneous interpretation of the law. Voluntary arbitrators, by the nature of their functions, act in a quasi-judicial capacity, such that their decisions are within the scope of judicial review.[29] (Citations omitted)

At any rate, in ruling on the monetary awards, two guiding principles steered the CIAC Arbitral Tribunal in going about its task. First, was the basic matter of fairness. Second, was effective dispute resolution or the overarching principle of

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[27] *Philippine Science High School-Cagayan Valley Campus v. Pirra Construction Enterprises*, 795 Phil. 268, 284 (2016).

[28] 412 Phil. 236 (2001).

[29] *Id*. at 248.

arbitration as a mechanism relieved of the encumbrances of litigation.[30] In keeping with these principles, CIAC opted to mitigate the damages of the parties and determine what is equitable under the circumstances. Just like Courts of law, CIAC may equitably mitigate the damages pursuant to the following provision of Article 2215 of the Civil Code, to wit:

> Art. 2215. In contracts, quasi-contracts, and quasi-delicts, the court ***may*** equitably mitigate the damages under circumstances other than the case referred to in the preceding article, as in the following instances: (Emphasis supplied)
>
> (1) That the plaintiff himself has contravened the terms of the contract.
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> x x x x x x x x x

The enumeration mentioned in Article 2215 is not exclusive for the law uses the phrase "as in the following instances." Hence, it can be applied to an analogous case where petitioner is equally guilty of breach just like in the instant case. Indeed, the foregoing provision does not take into account who the first infractor is.[31]

On this score, CIAC is justified in ordering the payment of monetary awards in favor of respondent just so to prevent unjust enrichment in light of the findings that both parties committed breach on their respective obligations under the contract. Thus, we will discuss only the gist of the monetary awards questioned by TMC.

As to Retention fees. "In the construction industry, the 10 percent retention money is a portion of the contract price automatically deducted from the contractor's billings, as security for the execution of corrective work — if any — becomes necessary."[32] It was likewise clear that under 42.3 of the parties' Construction Contract, the purpose of retaining 10% of every

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[30] *CE Construction Corporation v. Araneta Center, Inc.*, *supra* note 13, at 234.

[31] *Ong v. Bogñalbal*, 533 Phil. 139, 164 (2006).

[32] *H.L. Carlos Construction Inc. v. Marina Properties Corporation*, 466 Phil. 182, 199-200 (2004).

progress billing of the contractor is to hold the same as payment or security to cover uncorrected discovered defects and third party liabilities. Upon inspection, TMC discovered defects particularly the improperly installed tiles. It was established that the total amount retained by TMC (from the four billing progress) was ₱495,229.53 and the total cost of the defective tiling works amounts to ₱462,101.89. Thus, to prevent unjust enrichment to TMC, the CA is correct in upholding CIAC which deemed it proper to release the remaining balance of ₱33,127.64 (retention fee less the defective works) to respondent.

As to costs of the Variation Orders. It was established (and not disputed by TMC) that respondent had already completed 80% of the scope of work in the variation orders as contained in his proposal. Again, to prevent unjust enrichment, the CIAC correctly ordered TMC to pay the 80% of the completed additional works. Since the total costs of Variation Orders Nos. 1 and 2 amounts to ₱1,440,994.08, we agree with the CA to uphold the payment by TMC of the amount of ₱1,152,795.26 in favor of respondent representing the 80% of the total costs of the additional works covered by Variation Orders Nos. 1 and 2.

As to the Performance Cash Bond. It must be noted that the said bond amounting to ₱1,180,000.00 given by respondent to TMC is to guarantee the performance of its contractual obligations. As a cash bond, it can either be returned to respondent as owner thereof or be forfeited in favor of TMC in case respondent is in default in the performance of his obligation.[33] The CIAC ruled that the forfeiture of the said cash bond is not proper and, hence, it must be returned to respondent. In sustaining the CIAC, the CA ruled:

> x x x It is worthy to note, however, that the reason for the failure of respondent to complete the project was TMC's failure to deliver all five sites to respondent as agreed upon in the contract, it did not act on the proposed additional works and did not remove the shanties built by illegal settlers or at least remove the same from the scope of respondent's work.[34]

[33] *Rollo*, p. 251.

[34] *Id*. at 73.

We sustain the rulings of both the CIAC and the CA as they are consistent with their factual findings that both parties were guilty of breach of their respective obligations in the contract.

However, as to the tools that were not allowed by TMC to be removed from the project site left by respondent (consisting of a welding machine and a jackhammer), we agree with the CIAC's findings that the same should be returned to the owners thereof or to the respondent, not as part of compensatory damage but as a necessary consequence of the termination of the parties' contract. Compensatory or actual damages, to be recoverable, must be duly proved with reasonable degree of certainty. In *Public Estates Authority v. Ganac Chu*,[35] the Court held:

> x x x A court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have suffered and on evidence of the actual amount thereof. The party alleging a fact has the burden of proving it and a mere allegation is not evidence.[36] (Citation omitted)

Since respondent failed to ascertain with reasonable degree of certainty the exact compensatory damage he sustained for the alleged wrongful termination of contract, it was erroneous for the CIAC to speculate that the tools with the value of ₱96,606.00 was just enough as compensation for the termination of the contract.

As to the Costs of Arbitration. We agree with CIAC's ruling as affirmed by the CA that the costs of arbitration shall be shouldered by both parties. Based on the Final Award of the CIAC, the total cost of arbitration is ₱319,590.08. Consistent with the finding that both parties breached their contract, the costs of arbitration must be equally divided between TMC and respondent.[37] Consequently, each party must pay 1/2 of the costs amounting to ₱159,795.04.

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[35] 507 Phil. 472 (2005).

[36] *Id*. at 483.

[37] *Engr. Cayetano-Abaño v. Colegio de San Juan de Letran - Calamba*, 690 Phil. 554, 619 (2012).

We, however, take exception to the ruling that Attorney's fees must be paid by TMC to respondent. Again, on the ground that TMC and respondent committed a mutual breach of their contract, each must bear his own damage with respect to the payment of the professional fees of their respective lawyers.[38] "No damages shall be awarded to any party in accordance with the rule under Article 1192 of the Civil Code that in case of mutual breach and the first infractor of the contract cannot exactly be determined, each party shall bear his own damages."[39]

All the other rulings of the CIAC Arbitral Tribunal, particularly the denial of respondent's claim against TMC for the payment of the 4th billing as well as the denial of respondent's claimed compensatory damage for his blacklisting, were all factual matters which deserved our concurrence.

As held by the Court:

> We need only to emphasize in closing that arbitration proceedings are designed to level the playing field among the parties in pursuit of a mutually acceptable solution to their conflicting claims. Any arrangement or scheme that would give undue advantage to a party in the negotiating table is anathema to the very purpose of arbitration and should, therefore, be resisted.[40]

WHEREFORE, the Petition is **PARTLY GRANTED**. In view of the foregoing, the Decision dated October 20, 2016 and the Resolution dated March 16, 2017 of the Court of Appeals in CA-G.R. SP No. 146476 are **AFFIRMED with MODIFICATION** such that the award of attorney's fees is **DELETED**.

SO ORDERED.

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

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[38] *Id*.

[39] *Fong v. Dueñas*, 759 Phil. 373, 390 (2015).

[40] *Magellan Capital Management Coporation v. Zosa*, 407 Phil. 445, 460 (2001).

SECOND DIVISION

[G.R. No. 231007. July 1, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTONIO MARTIN *y* ISON,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; EACH LINK IN THE CHAIN MUST BE ACCOUNTED FOR TO ENSURE THE INTEGRITY OF THE SEIZED DRUG ITEM. —** 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 enumerates the **links** in the chain of custody that must be shown for the successful prosecution of illegal sale of dangerous drugs, i.e. ***first,*** the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; ***second,*** the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third,*** the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth,*** the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. 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.

2. **ID.; ID.; ID.; ID.; THE CHAIN OF CUSTODY WAS BREACHED MANY TIMES OVER IN CASE AT BAR. —** The first link speaks of seizure and marking which should be done immediately at the place of arrest and seizure. It also includes the physical inventory and photograph of the seized or confiscated drugs which should be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected public official. x x x PO3 Gavino'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 Investigating officer PO3 Sevilla only marked the drug item after it was turned over to him at the police station. x x x PO3 Gavino did not offer any justification for this procedural lapse. Notably, PO3 Gavino flip-flopped on who supposedly marked the seized item. x x x **Second.** None of the prosecution witnesses testified that a photograph of the seized drug was taken at all. x x x Again, no explanation was offered for this omission. Even the photo allegedly taken of appellant together with the witnesses was not presented nor offered as documentary evidence. x x x **Third.** No DOJ representative was present during the inventory. x x x **[Fourth,]** there was absolutely no showing how the alleged seized item was stored after it was examined by PCI Timario. x x x Consequently, the identity and integrity of the seized drug item were not deemed to have been preserved. Perforce, appellant 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 sufficiently overturned by compelling evidence on record of the repeated breach of the chain of custody rule.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal seeks to reverse the Decision dated September 23, 2016[1] of the Court of Appeals in CA-G.R. CR-HC No. 06912,

[1] Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justice Eduardo B. Peralta, Jr. and then Court of Appeals, now retired Supreme Court Associate Justice Noel G. Tijam, CA *rollo*, pp. 120-130.

affirming the conviction of appellant Antonio Martin *y* Ison for violation of Section 5, Article II of Republic Act 9165 (RA 9165)[2] and imposing on him life imprisonment and ₱500,000.00 fine.

The Proceedings Before the Trial Court

Appellant Antonio I. Martin was charged with violation of Section 5, Article II, RA 9165 under the following Information:

> That on or about the 17th day of February 2010 in the Municipality/ City of San Leonardo, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously have in his control and custody one (1) piec(e) of plastic sachet of Methamphetamine Hydrochloride ("shabu"), and sell the same to a civilian asset, without the necessary permit and/or license having been issued to him by the proper government agency, to the damage and prejudice of the Government.
>
> CONTRARY TO LAW.[3]

On arraignment, appellant pleaded not guilty.[4] Trial ensued.

Members of the Philippine National Police (PNP), namely: PO3 Alfredo Gavino, PO2 Jherome Songalia, and Forensic Chemist Jebie C. Timario testified for the prosecution. On the other hand, appellant and Emilio Portugal testified for the defense.

The Prosecution's Version

On February 17, 2010, around 4:30 o'clock in the afternoon, PO3 Alfredo Gavino received a report from a confidential informant that appellant was involved in the illegal sale of dangerous drugs and that he (confidential informant) could buy these drugs from appellant later in the day. PO3 Gavino relayed this information to his superior Police Chief Inspector (PCI) Francisco Mateo II. PCI Mateo then directed PO3 Gavino to verify the information and launch a buy bust operation. PCI

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

[3] Record, p. 1.

[4] *Id.* at 18-19.

Mateo handed two (2) pieces of ₱100.00 bill to PO1 Jonathan Manuel for ultraviolet dusting.[5]

Around 6 o'clock in the evening, PO1 Manuel handed to PO3 Gavino the two pieces ₱100.00 bill dusted with ultraviolet powder. PCI Mateo called his men to firm up the buy bust operation on appellant. The confidential informant was tasked as poseur buyer, and PO3 Gavino and PO2 Jherome Songalia as arresting officers.[6] PO3 Gavino gave the ₱100.00 bills to the confidential informant.[7]

Thirty (30) minutes later, PO3 Gavino and PO2 Songalia proceeded to Lacson Colleges, Barangay Castellano, San Leonardo, Nueva Ecija. The confidential informant who arrived there earlier was already talking with appellant. PO3 Gavino and PO2 Songalia positioned themselves about eight (8) meters away. Although they could not hear the conversation between the confidential informant and appellant, they could clearly see what was happening. After a while, they saw the confidential informant scratch his head indicating that the sale was already consummated.[8] PO3 Gavino and PO2 Songalia immediately closed in.

PO3 Gavino frisked appellant and recovered from the latter the buy bust money. He also recovered from the confidential informant a small plastic sachet containing white crystalline substance. Thereafter, PO3 Gavino arrested appellant, informed him of his constitutional rights, and brought him to the police station.[9]

At the police station, PO3 Gavino turned over appellant and the seized items to the investigation officer PO3 Freddie Sevilla. In appellant's presence, they marked the plastic sachet with "ANG-1," representing PO3 Gavino's initials. They also conducted

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[5] TSN, July 16, 2010, pp. 6-8.

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

[7] TSN, December 6, 2011, pp. 5-6.

[8] TSN, December 7, 2010, pp. 2-3; TSN, October 11, 2011, p. 3.

[9] TSN, December 7, 2010, pp. 3-4.

a physical inventory of the seized items in the presence of appellant, media representatives Cris Yambot and Melvin Yambot, Barangay Councilor Venancio M. Castillo, and the Acting Clerk of Court of the Municipal Trial Court of San Leonardo. Cris Yambot took photos of appellant together with the other witnesses.[10]

Thereafter, the investigating officer prepared a request for laboratory examination of the contents of the plastic sachet and another request for appellant's drug test and ultraviolet fluorescent powder test. PO3 Gavino took appellant and the plastic sachet to the crime laboratory. It was Forensic Chemist Jebie Timario who personally received the plastic sachet and appellant's urine sample.[11]

Per Chemistry Report No. D-019-2010 (NEPCLO), Forensic Chemist Timario found the contents of the plastic sachet positive for methamphetamine hydrochloride (*shabu*), a dangerous drug.[12]

The prosecution offered the following exhibits: Exhibits "A" to "B" — two pieces of ₱100.00 bills with serial numbers NF004283 and VX564757, respectively;[13] Exhibits "D" to "D-2" — Request for Laboratory Examination on Seized Evidence;[14] Exhibits "F" to "F-1" — Request for Ultraviolet Powder Examination;[15] Exhibits "G" to "G-3" – Chemistry Report No. D-019-2010 (NEPCLO);[16] Exhibits "H" to "H-3" — Chemistry Report No. PI-010-2010 (NEPCLO) [ultraviolet powder];[17] Exhibits "I" to "I-5" — Receipt of Property Seized;[18] Exhibits

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[10] TSN, December 7, 2010, pp. 4 and 8-10; TSN, March 27, 2012, pp. 8-9; Also see *Pinagsamang Sinumpaang Salaysay* dated February 17, 2010, Record, pp. 4-5.

[11] TSN, February 12, 2013, pp. 6-10.

[12] *Id.* at pp. 6-7.

[13] Record, p. 12.

[14] *Id*. at 38.

[15] *Id*. at 40.

[16] *Id*. at 41.

[17] *Id*. at 42.

[18] *Id*. at 37.

"J" to "J-2" — one heat sealed transparent plastic sachet marked "ANG-1A" containing 0.01 gram of methamphetamine hydrochloride/"*shabu*").

The Defense's Version

Appellant testified that on February 17, 2010, he was urinating outside his residence fronting Lacson Colleges at Barangay Castellano, San Leonardo, Nueva Ecija. When he turned his head, he saw a man looking at him. He later learned that the man was Manuel Pangilinan. When he asked Pangilinan what he could do for him, the latter replied by also asking him if he was "Juanito." He said he was "Tony." Pangilinan then opened his palm and showed him a plastic containing "*bubog*." Pangilinan asked him to admit that he bought it from a certain "Paolo." Pangilinan also asked for the current location of "Paolo." He replied: "*dala po ninyo yan, sir.*" To this, Pangilinan snapped at him: "*ayaw eh di tutuluyan ka namin*," then, Pangilinan handcuffed him.[19]

Pangilinan dragged him toward PO3 Gavino. Together, the two boarded him into an owner type jeep to bring him to the police station. While in transit, Pangilinan told him they would set him free so long as he tells them where "Paolo" was. When he declined, Pangilinan elbowed him and threatened, "*tutuluyan ka na namin*."[20]

At the police station, Pangilinan and PO3 Gavino frisked him. They took his wallet containing ₱710.00 and a photocopy of his tricycle's official registration. After detaining him inside the cell, Pangilinan and PO3 Gavino left. When they came back, they already had Paolo Ramos whom they also detained.[21]

Emilio Portugal confirmed that a police officer went to their area looking for Juanito. He later learned that it was appellant who got arrested.[22]

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[19] TSN, November 22, 2013, pp. 3-6.

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

[21] *Id*. at 9.

[22] TSN, January 28, 2014, pp. 3-6.

The defense did not offer any documentary evidence.

The Trial Court's Ruling

By Decision dated March 11, 2014,[23] the trial court found appellant guilty as charged, *viz*:

> WHEREFORE, premises considered, the court finds the accused Antonio Martin y Ison GUILTY BEYOND REASONABLE DOUBT of the Crime of violation of Section 5, Article II of the Republic Act No. 9165 and imposes upon him the penalty of life imprisonment and to pay a fine of ₱500,000.00.
>
> SO ORDERED.[24]

Through Order dated April 24, 2014,[25] the trial court denied appellant's motion for reconsideration.

The Proceedings Before the Court of Appeals

Appellant's Argument

On appeal, appellant faulted[26] the trial court for rendering a verdict of conviction against him. He argued that PO3 Gavino and PO2 Songalia both failed to categorically show that a sale of illegal drugs actually took place between appellant and the confidential informant. They, in fact, only testified that they could not hear the conversation between them.

Too, the testimonies of the prosecution witnesses were replete with inconsistencies, *i.e.*: (1) PO2 Songalia initially testified that he was the one who acted as poseur buyer, contrary to PO3 Gavino's testimony that it was the confidential informant who acted as poseur buyer; (2) PO3 Gavino testified that he was the one who brought the seized items to the crime laboratory while PO2 Songalia testified that it was PO1 Bruno; (4) PO3

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[23] Penned by Judge Celso O. Baguio, CA *rollo*, pp. 63-72; Record, pp. 133-142.

[24] CA *rollo*, p. 72; Record, p. 142.

[25] Record, pp. 155-157.

[26] See Appellant's Brief dated July 31, 2015, CA *rollo*, pp. 39-61.

Gavino testified the plastic sachet was marked with "ANG-1," but Forensic Chemist Timario testified the sachet she examined was marked "ANG-1 A"; (5) PO3 Gavino initially testified he marked the sachet but later said that it was PO3 Sevilla who did.

The arresting officers failed to comply with the chain of custody rule. For one, the prosecution failed to present the confidential informant who acted as poseur buyer, PO3 Sevilla, and the evidence custodian from the crime laboratory. For another, the seized items were not marked *immediately* after seizure. Non-compliance with the procedures under the Implementing Rules and Regulations (IRR) of RA 9165 may be excused only when there are justifiable grounds and when the identity and integrity of the alleged drug were preserved, which was not the case here.

The People's Arguments

The Office of the Solicitor General (OSG) through Senior State Solicitor Ma. Zorayda V. Tejones-Zuñiga and Associate Solicitor Princess Jazmine C. Logroño, countered in the main: (a) the prosecution had sufficiently established all the elements of illegal sale of dangerous drug; (b) the police officers' failure to hear the conversation between the seller and the poseur buyer is not fatal to the cause of the prosecution considering that PO2 Songalia testified that he saw appellant hand the sachet to the confidential informant. The important aspect of the modus operandi is not hearing, but seeing the appellant sell dangerous drugs to the poseur buyer; (c) minor inconsistencies in the testimonies of the prosecution witnesses do not impair their credibility; (d) the witnesses had shown the unbroken chain of custody of the seized item from the time it was sold to the confidential informant up to the time it was presented in court; (e) non-presentation of the poseur buyer is not fatal; and (f) substantial compliance with the procedure under Section 21, IRR of RA 9165 is sufficient so long as the integrity and evidentiary value of the seized item were preserved.[27]

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[27] See the Appellee's Brief dated December 3, 2015, CA *rollo*, pp. 78-106.

The Court of Appeals' Ruling

By its assailed Decision dated September 23, 2016,[28] the Court of Appeals affirmed in this wise:

> **WHEREFORE**, premises considered, the instant Appeal is **DENIED**. Accordingly, the Decision of the Regional Trial Court, Third Judicial Region, Branch 34, Gapan City, Nueva Ecija, in Criminal Case No. 14180-10, dated 11 March 2014 is hereby **AFFIRMED**.
>
> **SO ORDERED**.[29]

The Present Petition

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal.

For the purpose of this appeal, both appellant and the People manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[30]

Issue

Did the Court of Appeals err when it affirmed appellant's conviction for violation of Section 5, Article II, RA 9165 (illegal sale of dangerous drugs)?

Ruling

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.[31]

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody enumerates the **links** in the chain of custody that must be shown for the successful prosecution of illegal sale of dangerous drugs, *i.e.*

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[28] CA *rollo*, pp. 120-130.

[29] *Id*. at 129.

[30] *Rollo*, pp. 20-22 and 25-28.

[31] See *People v. Barte*, 806 Phil. 533, 542 (2017).

first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[32]

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.[33]

Appellant was charged with illegal sale of dangerous drugs allegedly committed on February 17, 2010. The applicable law is RA 9165 before its amendment in 2014.

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 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)

x x x x x x x x x

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[32] *People of the Philippines v. Myrna Gayoso*, 808 Phil. 19, 31 (2017).

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

The IRR 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: x x x Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; (Underscoring supplied)

x x x x x x x x x

The first link speaks of seizure and marking which should be done immediately at the place of arrest and seizure. It also includes the physical inventory and photograph of the seized or confiscated drugs which should be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected public official.

On this score, PO3 Gavino testified:

x x x x x x x x x

Q: What did you do with that shabu?
A: We brought it to the police station and gave it to the police investigator for purposes of examination, sir.

Q: Did you do anything to the shabu while you were still in that place where you arrested the suspect?
A: We did not do anything, sir.[34]

x x x x x x x x x

Q: Mr. Witness, where did you put the markings?
A: Inside the investigation office of the police station of San Leonardo, Nueva Ecija.[35]

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[34] TSN, December 7, 2010, p. 4.

[35] TSN, March 27, 2012, p. 3.

x x x x x x x x x

Q: What happened to the police station, you said you conducted an inventory?

A: There is (a) representative from the media, court and barangay.[36]

x x x x x x x x x

PO3 Gavino'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***[37] 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, appellant was arrested at the Lacson Colleges, Barangay Castellano, San Leonardo, Nueva Ecija. The arresting officers then boarded him into an owner type jeep to be taken to the police station. En route, the seized item remained unmarked. It was exposed to switching, planting, and contamination during the entire trip. Investigating officer PO3 Sevilla only marked the drug item after it was turned over to him at the police station. By that time, it was no longer certain that what was shown to him was the same item seized from appellant. PO3 Gavino did not offer any justification for this procedural lapse.

Notably, PO3 Gavino flip-flopped on who supposedly marked the seized item. He initially testified it was PO3 Sevilla, thus:

x x x x x x x x x

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

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

Q: Before he made that request, did you see what he did with that plastic sachet?
A: The police investigator placed a marking on it, sir.[38]

x x x x x x x x x

But later, he claimed that he did the marking himself, thus:

x x x x x x x x x

Q: Submitted before this Court is a heat sealed transparent plastic sachet with markings ANG-1, written in blue pentel pen ink, now I am showing the same to you will you please examine and tell us what is the relation of this transparent plastic sachet containing white crystalline substance to the transparent sachet that was delivered by the accused through your civilian asset during the buy bust operation?
A: This is the same plastic sachet that was brought by our police asset from the accused Antonio Martin and **I personally placed the markings on it.**[39] (Emphasis supplied)

x x x x x x x x x

This patent inconsistency on the issue of "marking" creates serious doubt whether a sachet was in fact confiscated or seized, let alone, marked.

More, PO3 Gavino gave contradicting statements regarding the inventory. On December 7, 2010, PO3 Gavino testified that the item purportedly seized from appellant was brought to the crime laboratory after it was submitted to PO3 Sevilla.[40] But when he later returned to the witness stand on March 27, 2012, he gave a different testimony, *viz*:

x x x x x x x x x

Q: What did you do with that plastic sachet that your asset showed you?
A: I got it, sir.

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[38] TSN, December 7, 2010, p. 4.

[39] TSN, March 27, 2012, pp. 2-3.

[40] TSN, December 7, 2010, p. 12.

Q: What else did you do?
A: I gave it to the chief of police.

Q: Do you know what your chief of police did with that?
A: None, sir.

Q: You do not know that it was submitted to the PNP Crime Laboratory Office?
A: No, sir.[41]

x x x x x x x x x

What then really happened after the alleged buy bust operation? Was the seized item brought immediately to the crime laboratory after the alleged inventory or not?

Second. None of the prosecution witnesses testified that a photograph of the seized drug was taken at all. What was photographed was appellant together with the alleged witnesses to the inventory.[42] But the sachet purportedly seized from appellant was not photographed. Again, no explanation was offered for this omission. Even the photo allegedly taken of appellant together with the witnesses was not presented nor offered as documentary evidence.

In ***People v. Arposeple***,[43] 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.

Third. No DOJ representative was present during the inventory. PO3 Gavino's testimony reveals that the persons who witnessed the inventory were media representatives Cris Yambot and Melvin Yambot, Barangay Councilor Venancio M. Castillo, and the acting clerk of court of the Municipal Trial

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[41] TSN, March 27, 2012, p. 12.

[42] TSN, December 7, 2010, pp. 11-12.

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

Court of San Leonardo. But the DOJ representative was conspicuously absent.

In ***People v. Seguiente,***[44] the Court acquitted the accused because the prosecution's evidence was totally bereft of any showing that a representative from the DOJ was present during the inventory and photograph. The Court keenly noted, as in this case, that the prosecution failed to recognize this particular deficiency. The Court, thus, concluded that this lapse, among others, effectively produced serious doubts on the integrity and identity of the *corpus delicti* especially in the face of allegation of frame up.

In ***People v. Rojas***,[45] the Court likewise acquitted the accused because the presence of representatives from the DOJ and the media was not obtained despite the buy-bust operation against the accused being supposedly pre-planned. The prosecution, too, did not acknowledge, let alone, explain such deficiency.

Fourth. As for the third and fourth links, they were as severely broken as the first. To begin with, there was absolutely no showing how the alleged seized item was stored after it was examined by PCI Timario. No evidence, testimonial nor documentary, was offered to identify the person to whom PCI Timario gave the specimen after examination and where the same was kept until it was retrieved by PCI Timario and presented in court. Indubitably, this is another breach of the chain of custody rule. As held in the landmark case of ***Mallillin v. People***:[46]

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

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[44] G.R. No. 218253, June 20, 2018.

[45] G.R. No. 222563, July 23, 2018.

[46] 576 Phil. 576, 587 (2008).

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.** (Emphasis supplied)

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

Strict adherence to the chain of custody rule must be observed;[47] 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-à-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 not be possible to obtain at all times because of varying field conditions.[48] In fact, the IRR 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.[49]

Unfortunately, however, PO3 Gavino and PO2 Songalia did not at all offer any explanation which would have excused the buy-bust team's stark failure to comply with the chain of custody rule here. Consequently, 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"* does not come into play.

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

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

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

We emphasize that life imprisonment, no less, is imposed for illegal sale of dangerous drugs even for the minutest amount, as in this case where the alleged drug only weighed 0.01 gram. It 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.[50]

As amply discussed, the chain of custody here had been 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, appellant must be unshackled, acquitted, and released from restraint.

Suffice it to state that the presumption of regularity in the performance of official functions[51] 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.[52] And here, the presumption was sufficiently overturned by compelling evidence on record of the repeated breach of the chain of custody rule.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated September 23, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06912 is **REVERSED AND SET ASIDE**. Appellant Antonio Martin *y* Ison is **ACQUITTED** of violation of Section 5, Article II of Republic Act 9165.

The Court further **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City: (a) to cause the immediate release of Antonio Martin *y* Ison from custody unless he is being held

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

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

[52] *People v. Cabiles*, 810 Phil. 969, 976 (2017).

for some other lawful cause; and (b) to inform the Court of the action taken within five days from notice.

Let an entry of final judgment be issued immediately.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 233535. July 1, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILLIAM RODRIGUEZ *y* BANTOTO,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; REQUIRED PRESENCE OF WITNESSES; NON-COMPLIANCE MUST BE SUFFICIENTLY JUSTIFIED. — Accused-appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt as there was failure on the part of the police officers to preserve the integrity of the alleged seized items given that the conduct of the inventory and the taking of the photographs were not done in the presence of a representative from the DOJ [as required under] Section 21, Article II of RA 9165, the law applicable at the time of the commission of the crime charged, x x x Under the said provision, the physical inventory and taking of photographs of the seized items must be witnessed by three insulating witnesses (*i.e*. an elected public official, a representative from the media, and a representative from the DOJ). They must also sign the inventory and be given copies of the same. In *People v. Lim*, the Court emphasized the

> importance of the presence of the three insulating witnesses during the physical inventory and the photograph of the seized items. And in case of their absence, the Court ruled that the prosecution must allege and prove the reasons for their absence and convince the Court that earnest efforts were made to secure their attendance. x x x In view of the failure of the prosecution to provide a justifiable reason for the non-compliance with Section 21, Article II of RA 9165, which creates doubt as to the integrity and evidentiary value of the seized items, the Court is constrained to acquit the accused-appellant based on reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal filed by accused-appellant William Rodriquez *y* Bantoto (accused-appellant) from the March 9, 2017 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08151, which affirmed the February 2, 2016 Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 2, in Criminal Case No. 13-298732 finding accused-appellant guilty of violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Factual Antecedents

Accused-appellant was charged with violation of Sections 5 and 11(3), Article II of RA 9165 under the following Informations:

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[1] *Rollo*, pp. 2-13; penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Renato C. Francisco.

[2] CA *rollo*, pp. 37-45; penned by Presiding Judge Sarah Alma M. Lim.

Crim. Case No. 13[-]298732

That on or about July 27, 2013, in the City of Manila, Philippines, the said [accused-appellant] conspiring and confederating [with] one, whose true name, real identity and present whereabouts is still unknown and mutually helping each other, not authorized by law to sell, trade, deliver, transport or distribute any dangerous drug, did then and there willfully, unlawfully, knowingly and jointly sell or offer for sale to a police officer/poseur buyer one (1) heat-sealed transparent plastic [sachet] marked as 'DAID' [containing] white crystalline substance weighing ZERO POINT ZERO SEVEN (0.07) gram, which after qualitative examination x x x gave positive result to the tests for Methamphetamine Hydrochloride known as '*shabu*,' a dangerous drug.

Contrary to law.[3]

Crim. Case No. 13[-]298733

That on or about July 27, 2013, in the City of Manila, Philippines, the said [accused-appellant], not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully, and knowingly have in his possession and under his custody and control five (5) unsealed transparent plastic sachet[s] with markings 'FSM,' 'FSM-1,' 'SM-2,' 'FSM-3' and 'FSM-4' containing white crystalline substance weighing ZERO POINT ONE SEVEN (0.17) gram, ZERO POINT ONE ZERO (0.10) gram, ZERO POINT THREE TWO (0.32) gram, ZERO POINT ZERO ZERO THREE (0.003) gram and ZERO POINT ZERO TWO (0.02) gram, or a total weight of ZERO POINT SIX ONE THREE (0.613) gram, which after qualitative examination x x x gave positive result to the tests for Methamphetamine Hydrochloride known as '*shabu*,' a dangerous drug.

Contrary to law.[4]

Upon arraignment, accused-appellant pleaded not guilty to the crimes charged.[5]

Version of the Prosecution

According to the prosecution, on July 26, 2013 at around 6:00 p.m., two crew members of the investigative program,

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[3] Records, p. 2.

[4] *Id*. at 3.

[5] CA *rollo*, p. 38.

Imbestigador ng Bayan (Imbestigador), went to the Manila Police District, District Anti-Illegal Drugs (DAID), to inform the police about the rampant selling of drugs in the area by accused-appellant and a certain *alias* Dang. After verifying the information with their Confidential Informant (CI), the DAID formed a buy-bust team with PO3 Fred Martinez (PO3 Martinez) as poseur-buyer. The DAID then coordinated with the Philippine Drug Enforcement Agency (PDEA).

Thereafter, on July 27, 2013, at around 1:15 a.m., the buy-bust team, together with the crew members of *Imbestigador* and the CI, proceeded to the pension house on M.G. Del Pilar Street where accused-appellant and Dang were residing. Upon arrival, Dang approached the CI, who introduced PO3 Martinez as a buyer of ₱500.00 worth of *shabu*. Dang then brought them inside the pension house where PO3 Martinez saw accused-appellant and several unsealed plastic sachets on top of the table. After Dang introduced PO3 Martinez to accused-appellant, PO3 Martinez then handed the marked money to the accused-appellant, who, in turn, gave PO3 Martinez one plastic sachet containing white crystalline substance. Upon receiving the sachet, PO3 Martinez gave the pre-arranged signal to the buy-bust team who, together with the crew members of *Imbestigador*, rushed in and arrested accused-appellant. But because of the commotion, Dang was able to get away. PO3 Martinez then recovered the buy-bust money and five unsealed plastic sachets on top of the table. The sachet bought from the accused-appellant was marked as "DAID" while the five sachets found on top of the table were marked as "FSM," "FSM-1," "FSM-2," "FSM-3," and "FSM-4." *Barangay Tanods* Sonny Boy Rodriguez (Rodriguez) and Joseph Caeg (Caeg) were called to the scene to sign the inventory because the crew members of *Imbestigador* refused to sign. Photographs of the evidence were also taken. The accused-appellant was then brought to the *Ospital ng Maynila* for medical examination and later to the DAID. Once there, the police prepared the request for laboratory examination and the chain of custody report. PCI Alejandro de Guzman (PCI de Guzman) received the request and conducted a laboratory

examination, which yielded positive for methamphetamine hydrochloride.[6]

Version of the Accused-appellant

The accused-appellant denied the accusations against him. He testified that on the said date, he was resting inside the pension house when he heard a noise from the door. When he opened the door, four or five persons rushed into the room and poked their guns at him. He was told to lie face down on the bed and was handcuffed. He then saw drugs on the table but denied knowing where those drugs came from. He was then brought to the *Ospital ng Maynila*, and later to the DAID.[7]

Ruling of the Regional Trial Court

On February 2, 2016, the RTC rendered a Decision finding accused-appellant guilty beyond reasonable doubt of the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165. The RTC gave more weight and credence to the testimonies of the prosecution's witnesses than to accused-appellant's defenses of denial and frame-up, especially since accused-appellant failed to show any ill motive on the part of the prosecution's witnesses to falsely accuse him of the crime charged.[8] However, the RTC resolved to acquit accused-appellant of the crime of illegal possession of dangerous drugs under Section 11, Article II of RA 9165 on the ground of reasonable doubt because the identity and the integrity of the five unsealed plastic sachets were not preserved due to the failure of the police officers who handled the evidence to seal the same and to put this fact on record.[9] Thus—

WHEREFORE, judgment is hereby rendered as follows x x x:

In Crim. Case No. 13-298732, finding [accused-appellant] William Rodriguez y Bantoto GUILTY beyond reasonable doubt of the crime

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[6] CA *rollo*, pp. 38-42.

[7] *Id*. at 42.

[8] *Id*. at 43-45.

[9] *Id*. at 45.

charged and is hereby sentenced to life imprisonment and to pay a fine of ₱500,000.00, and

In Crim. Case No. 13-298733, ACQUITTING [accused-appellant] William Rodriguez y Bantoto on the ground of reasonable doubt.

The specimens are forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt [of] the said specimens to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.

SO ORDERED.[10]

Ruling of the Court of Appeals

Accused-appellant elevated the case to the CA chiefly on the ground that the prosecution had utterly failed to establish beyond reasonable doubt the integrity and credibility of the *corpus delicti* itself. Accused-appellant highlighted the police officers' non-compliance with the procedural safeguards under RA 9165 as the inventory and photograph of the seized items were not done in the presence of a representative from the Department of Justice (DOJ).[11] Accused-appellant assailed the utter failure of the prosecution to establish the unbroken chain of custody of the confiscated items and the failure of the RTC to consider his defense of denial.[12]

On March 9, 2017, the CA affirmed the RTC's Decision. The CA found that, contrary to the claim of accused-appellant, the integrity and evidentiary value of the seized items had been preserved in an unbroken chain of custody.[13] With particular reference to the accused appellant's allegation as to the absence of the representative from the DOJ, the CA ruled that this was not fatal as there was no showing that there was a break in the chain of custody of the seized items.[14]

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[10] *Id*.

[11] *Id*. at 27-30.

[12] *Id*. at 30-34.

[13] *Rollo*, pp. 8-12.

[14] *Id*. at 12.

Unfazed, accused-appellant filed the instant appeal.

Our Ruling

The appeal is meritorious.

Accused-appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt as there was failure on the part of the police officers to preserve the integrity of the alleged seized items given that the conduct of the inventory and the taking of the photographs were not done in the presence of a representative from the DOJ.[15]

The Court agrees with accused-appellant.

Section 21, Article II of RA 9165,[16] the law applicable at the time of the commission of the crime charged, provides —

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 [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

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[15] CA *rollo*, pp. 27-30.

[16] 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.

conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphasis supplied)

x x x x x x x x x.

Under the said provision, the physical inventory and taking of photographs of the seized items must be witnessed by three insulating witnesses (*i.e.* an elected public official, a representative from the media, and a representative from the DOJ). They must also sign the inventory and be given copies of the same.

In *People v. Lim*,[17] the Court emphasized the importance of the presence of the three insulating witnesses during the physical inventory and the photograph of the seized items. And in case of their absence, the Court ruled that the prosecution must allege and prove the reasons for their absence and convince the Court that earnest efforts were made to secure their attendance. The Court explained —

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for 'a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be

[17] G.R. No. 231989, September 4, 2018.

> regarded as a flimsy excuse.' Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. (Emphasis in the original)

Simply put, under prevailing jurisprudence, in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance.

Here, the physical inventory and the taking of photographs of the seized items were allegedly witnessed by the crew members of *Imbestigador* and *Barangay Tanods* Rodriguez and Caeg. Their presence, however, cannot be considered substantial compliance. To begin with, although present during the physical inventory and taking of photographs, the crew members of *Imbestigador* did not sign the inventory sheet.[18] As to the *barangay tanods*, who were present and who signed the inventory sheets, their presence is immaterial because *barangay tanods* are not elected public officials. Also, no DOJ representative was present at that time. Thus, strictly speaking, the rule requiring the insulating witnesses to be present during the physical inventory and the taking of the photographs and to sign the inventory sheet was not complied with.

Since there was no compliance, it was incumbent upon the prosecution to justify their absence and convince the Court that

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[18] CA *rollo*, p. 40; records, p. 14.

earnest efforts were exerted to secure their presence. Unfortunately, no justification was offered by the prosecution. Neither did it show that earnest efforts were exerted to secure their presence. In view of the failure of the prosecution to provide a justifiable reason for the non-compliance with Section 21, Article II of RA 9165, which creates doubt as to the integrity and evidentiary value of the seized items, the Court is constrained to acquit the accused-appellant based on reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The March 9, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08151, which affirmed the February 2, 2016 Decision of the Regional Trial Court of Manila, Branch 2, in Criminal Case No. 13-298732, finding accused-appellant William Rodriguez *y* Bantoto guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant William Rodriguez *y* Bantoto is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections. The said Director is **DIRECTED** to report to this Court the action taken within five (5) days from receipt of this Decision.

SO ORDERED.

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

Gesmundo, J., on official leave.

SECOND DIVISION

[G.R. No. 233850. July 1, 2019]

TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES also known as PHILIPPINE EXPORT-IMPORT CREDIT AGENCY, *petitioner, vs.* **PHILIPPINE VETERANS BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENT; THE GRANT THEREOF IS AN ADJUDICATION ON THE MERITS OF THE CASE; CASE AT BAR. — An order or resolution granting a Motion for Summary Judgment which fully determines the rights and obligations of the parties relative to the case and leaves no other issue unresolved, except the amount of damages, is a final judgment. As explained by the Court in *Ybiernas, et al. v. Tanco-Gabaldon, et al.*, when a court, in granting a Motion for Summary Judgment, adjudicates on the merits of the case and declares categorically what the rights and obligations of the parties are and which party is in the right, such order or resolution takes the nature of a final order susceptible to appeal. **In leaving out the determination of the amount of damages, a summary judgment is not removed from the category of final judgments.** In the instant case, it is clear that the assailed Order discussed at length the applicable facts, the governing law, and the arguments put forward by both parties, making an extensive assessment of the merits of respondent PVB's Complaint. The RTC then made a definitive adjudication in favor of respondent PVB. As manifestly seen in the assailed Order, the RTC categorically determined what the rights and obligations of the parties are, ruling in no uncertain terms that respondent PVB's Complaint was meritorious and that petitioner TIDCORP should be made liable under the Guarantee Agreement.

2. ID.; ID.; ID.; ABSENCE OF GENUINE ISSUE, DISCUSSED. — Summary judgment is a device for weeding out sham claims or defenses at an early stage of the litigation, thereby avoiding the expense and loss of time involved in a trial. According to

Section 1, Rule 35 of the Rules of Court, a party seeking to recover upon a claim may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his/her favor. According to Section 3 of the same Rule, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is **no genuine issue as to any material fact** and that **the moving party is entitled to a judgment as a matter of law.** The term ***"genuine issue"*** has been defined as **an issue of fact which calls for the presentation of evidence** as distinguished from an issue which is **sham, fictitious, contrived, set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial.** The court can determine this on the basis of the pleadings, admissions, documents, affidavits and/or counter-affidavits submitted by the parties before the court.

3. ID.; JURISDICTION; THE STAY ORDER OF THE REHABILITATION COURT SHALL NOT APPLY TO THE ENFORCEMENT OF CLAIMS AGAINST SURETIES AND OTHER PERSONS SOLIDARILY LIABLE WITH THE DEBTOR. — [T]he Stay Order issued by the Rehabilitation Court *did not preclude* the RTC from hearing and deciding respondent PVB's Complaint. First and foremost, it must be noted that the Stay Order relied upon by petitioner TIDCORP merely ordered the staying and suspension of enforcement of all claims and proceedings against the petitioner PhilPhos and *not* against all the other persons or entities solidarily liable with the debtor. x x x Second, Section 18(c) of the FRIA explicitly states that **a stay order shall not apply** "**to the enforcement of claims against sureties and other persons solidarily liable with the debtor, and third party or accommodation mortgagors as well as issuers of letters of credit,** x x x." In addition, under Rule 4, Section 6 of A.M. No. 00-8-10-SC or the Interim Rules of Procedure on Corporate Rehabilitation, a stay order has the effect of staying enforcement only with respect to claims made against the debtor, its guarantors and persons *not solidarily liable* with the debtor: x x x In *Situs Dev. Corporation, et al. v. Asiatrust Bank, et al.*, the Court held that when a stay order is issued, the rehabilitation court is only empowered to suspend claims against the debtor, its guarantors, and sureties who are *not solidarily liable* with the debtor. Hence,

the making of claims against sureties and other persons solidarily liable with the debtor is not barred by a stay order.

4. CIVIL LAW; SPECIAL CONTRACTS; CONTRACT OF GUARANTEE; BENEFIT OF EXCUSSION; IF THE BENEFIT OF EXCUSSION IS WAIVED, THE CONTRACT BECOMES A SURETYSHIP AND THE CREDITOR CAN GO DIRECTLY AGAINST THE SURETY (WHO IS SOLIDARILY LIABLE WITH THE PRINCIPAL DEBTOR) FOR PAYMENT OF THE DEBT. — Under a normal contract of guarantee, the guarantor binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so. The guarantor who pays for a debtor, in turn, must be indemnified by the latter. However, **the guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor and resorted to all the legal remedies against the debtor.** This is what is otherwise known as the **benefit of excussion.** Conversely, if this benefit of excussion is waived, the guarantor can be directly compelled by the creditor to pay the entire debt even without the exhaustion of the debtor's properties. In other words, a guarantor who engages to **directly** shoulder the debt of the debtor, waiving the benefit of excussion and the requirement of prior presentment, demand, protest or notice of any kind, undoubtedly makes himself/herself solidarily liable to the creditor. As explained in *Spouses Ong v. Philippine Commercial International Bank (Spouses Ong),* [in] surety x x x a creditor can go directly against the surety although the principal debtor is solvent and is able to pay or no prior demand is made on the principal debtor. ***A surety is directly, equally and absolutely bound with the principal debtor for the payment of the debt and is deemed as an original promissor and debtor from the beginning.*** x x x [U]nder the Civil Code, "by virtue of [Article 2047, which states that a contract is called a suretyship when a person binds himself solidarily with the principal debtor,] **when the guarantor binds himself solidarily with the debtor, the contract ceases to be a guaranty and becomes suretyship.**" x x x The determination of whether an obligation is a suretyship is not a matter of nomenclature and semantics. That an obligor is designated as a "guarantor" or that the contract is denominated as a "guarantee agreement" does not automatically mean that the obligor is a guarantor or that the contract entered into is a contract of guarantee. As previously held by the Court, even

assuming that a party was expressly made liable only as a "guarantor" in an agreement, he/she can be held immediately liable directly and immediately if the benefit of excussion was waived.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Villanueva Gabionza & Dy 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, in relation to Rule 41, Section 2(c), of the Rules of Court filed by petitioner Trade and Investment Development Corporation (petitioner TIDCORP), also known as Philippine Export-Import Credit Agency (PhilEXIM), assailing the Order[2] dated August 16, 2017 (assailed Order) issued by the Regional Trial Court of Makati City, Branch 150 (RTC) in Civil Case No. R-MKT-16-02011-CV, which granted respondent Philippine Veterans Bank's (respondent PVB) Motion for Summary Judgment[3] dated February 14, 2017.

The Facts and Antecedent Proceedings

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

The instant case stems from a Complaint for Specific Performance[4] (Complaint) filed on September 22, 2016 before the RTC by respondent PVB against petitioner TIDCORP.

In its Complaint, respondent PVB alleged that on November 23, 2011, PVB, together with other banking institutions (Series

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[1] *Rollo,* pp. 19-42.

[2] *Id*. at 45-51; penned by Presiding Judge Elmo M. Alameda.

[3] *Id*. at 165-184.

[4] *Id*. at 141-152.

A Noteholders), entered into a Five-Year Floating Rate Note Facility Agreement[5] (NFA) with debtor Philippine Phosphate Fertilizer Corporation (PhilPhos), a PEZA registered domestic corporation situated in Leyte, up to the aggregate amount of ₱5 billion. Under the said NFA, respondent PVB committed the amount of ₱1 billion.

To secure payment of the Series A Notes, petitioner TIDCORP, with the express conformity of PhilPhos, executed a **Guarantee Agreement**[6] dated November 23, 2011 (Guarantee Agreement) whereby petitioner TIDCORP agreed to guarantee the payment of the guaranty obligation to the extent of ninety (90%) of the outstanding Series A Notes, including interest, on a rolling successive three-month period commencing on the first drawdown date and ending on the maturity date of the Series A Notes.

On November 8, 2013, Typhoon Yolanda made landfall in Central Visayas, which resulted in widespread devastation in the province of Leyte where PhilPhos' manufacturing plant was situated. Due to the damage brought by said typhoon to PhilPhos' manufacturing facilities, it failed to resume its operations.

Thus, on September 17, 2015, PhilPhos filed a Petition for Voluntary Rehabilitation under the Financial Rehabilitation and Insolvency Act of 2010[7] (FRIA) before the Regional Trial Court of Ormoc City, Branch 12 (Rehabilitation Court). On September 22, 2015, the Rehabilitation Court issued a Commencement Order, which included a **Stay Order**.[8]

On November 5, 2015, or 45 days as provided in the Guarantee Agreement,[9] respondent PVB filed its Notice of Claim[10] with

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[5] *Id.* at 52-102.

[6] *Id.* at 103-124.

[7] Republic Act No. (RA) 10142 or An Act Providing For The Rehabilitation Or Liquidation Of Financially Distressed Enterprises And Individuals.

[8] *Rollo,* pp. 126-128.

[9] *Id.* at 113.

[10] *Id.* at 129-130.

petitioner TIDCORP, which received the same on November 6, 2015.

In a Letter[11] dated November 12, 2015, petitioner TIDCORP declined to give due course to respondent PVB's Notice of Claim, invoking the Stay Order issued by the Rehabilitation Court. Despite several demands[12] made by respondent PVB pursuant to the Guarantee Agreement, petitioner TIDCORP maintained its position to deny PVB's claim due to the issuance of the said Stay Order.

In its Complaint, respondent PVB asserted that "[t]o secure the payment of the Series A Notes, [petitioner] TIDCORP, with the express conformity of PhilPhos, executed a **Guarantee Agreement** with the Series A Noteholders (except CBC) x x x, whereby, among others, it: (a) **agreed to guarantee payment to the Series A Noteholders to the extent of Ninety (90%) Percent of the Series A Notes and interest;** and **(b) waived the benefit of excussion,** x x x."[13]

In its Answer with Counterclaim[14] (Answer), petitioner TIDCORP argued that the RTC cannot validly try the case because of the Rehabilitation Court's Stay Order, which enjoined the enforcement of all claims, actions and proceedings against PhilPhos.

In view of the Answer filed by petitioner TIDCORP, respondent PVB filed a Motion for Summary Judgment[15] dated February 14, 2017 (Motion for Summary Judgment). Thereafter, petitioner TIDCORP filed its Comment (On Plaintiffs Motion for Summary Judgment)[16] dated March 6, 2017.

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[11] *Id.* at 131-132.

[12] *Id*. at 133-139.

[13] *Id*. at 143; emphasis supplied.

[14] *Id*. at 153-164.

[15] *Id.* at 165-184.

[16] *Id*. at 185-190.

The Ruling of the RTC on Respondent PVB's Motion for Summary Judgment

On August 16, 2017, the RTC issued the assailed Order[17] granting respondent PVB's Motion for Summary Judgment. The dispositive portion of the Order reads:

> The facts are clear and undisputed from the pleadings, supporting affidavits, and admissions on file. Thus, a full-blown trial need not be conducted to resolve the merits of this case, hence, the Motion for Summary Judgment is granted. x x x.
>
> SO ORDERED.[18]

In sum, the RTC held that, as made manifest in the pleadings, supporting affidavits, and admissions on record, there was no genuine issue as to any material fact posed by petitioner TIDCORP with respect to its liability under the Guarantee Agreement, except as to the amount of damages. Thus, the RTC found that respondent PVB was entitled to a judgment in its favor as a matter of law.

Hence, as petitioner TIDCORP deemed the assailed Order as a final order susceptible of appeal in which pure questions of law are involved, petitioner TIDCORP directly filed the instant Petition before the Court under Rule 45, in relation to Section 2(c), Rule 41 of the Rules of Court. Respondent PVB filed a Motion to Dismiss[19] dated November 8, 2017 (Motion to Dismiss), arguing that petitioner TIDCORP filed the wrong mode of appeal. In a Resolution[20] dated September 12, 2018, the Court denied respondent PVB's Motion to Dismiss for lack of merit. On November 5, 2018, respondent PVB filed its Comment.[21]

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[17] *Id*. at 45-51.

[18] *Id.* at 51.

[19] *Id*. at 192-201.

[20] *Id*. at 217.

[21] *Id*. at 219-240.

Issue

The singular issue posited by petitioner TIDCORP for the Court's disposition is whether the RTC erred in granting respondent PVB's Motion for Summary Judgment.

The Court's Ruling

I. *Procedural Issue – Correct Mode of Appeal*

Before delving into the merits of the instant Petition, the Court first deals with the procedural matter raised by respondent PVB in its Motion to Dismiss.

Respondent PVB argues that the instant Petition should be summarily dismissed because the petitioner allegedly pursued the wrong mode of appeal, maintaining that the assailed Order is a mere interlocutory order and not a final order subject of an appeal under Rule 45.

Respondent PVB's contention is incorrect.

An order or resolution granting a Motion for Summary Judgment which fully determines the rights and obligations of the parties relative to the case and leaves no other issue unresolved, except the amount of damages, is a final judgment.

As explained by the Court in *Ybiernas, et al. v. Tanco-Gabaldon, et al.*,[22] when a court, in granting a Motion for Summary Judgment, adjudicates on the merits of the case and declares categorically what the rights and obligations of the parties are and which party is in the right, such order or resolution takes the nature of a final order susceptible to appeal. **In leaving out the determination of the amount of damages, a summary judgment is not removed from the category of final judgments.**[23]

In the instant case, it is clear that the assailed Order discussed at length the applicable facts, the governing law, and the arguments put forward by both parties, making an extensive assessment of the merits of respondent PVB's Complaint. The

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[22] 665 Phil. 297 (2011).

[23] *Id*. at 308-309.

RTC then made a definitive adjudication in favor of respondent PVB. As manifestly seen in the assailed Order, the RTC categorically determined what the rights and obligations of the parties are, ruling in no uncertain terms that respondent PVB's Complaint was meritorious and that petitioner TIDCORP should be made liable under the Guarantee Agreement.

Hence, respondent PVB's argument in its Motion to Dismiss is unmeritorious.

Having disposed of the procedural issues, the Court now decides the substantive merits of the instant Petition.

II. *Substantive Issue – The Propriety of the RTC's Summary Judgment*

The solitary matter to be dealt with by the Court is the propriety of the RTC's Order granting respondent PVB's Motion for Summary Judgment.

Summary judgment is a device for weeding out sham claims or defenses at an early stage of the litigation, thereby avoiding the expense and loss of time involved in a trial.[24]

According to Section 1, Rule 35 of the Rules of Court, a party seeking to recover upon a claim may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his/her favor.

According to Section 3 of the same Rule, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is **no genuine issue as to any material fact** and that **the moving party is entitled to a judgment as a matter of law.**

The term "***genuine issue***" has been defined as **an issue of fact which calls for the presentation of evidence** as distinguished from an issue which is **sham, fictitious, contrived, set up in bad faith and patently unsubstantial so as not to constitute**

[24] *Excelsa Industries, Inc. v. Court of Appeals,* 317 Phil. 664, 671 (1995).

a genuine issue for trial.[25] The court can determine this on the basis of the pleadings, admissions, documents, affidavits and/or counter-affidavits submitted by the parties before the court.[26]

In assailing the RTC's decision granting the Motion for Summary Judgment, petitioner TIDCORP, in the main, asserts that respondent PVB is not entitled to judgment as a matter of law and that there are genuine issues on material facts that necessitate trial on the merits, contrary to the findings of the RTC.

To support this theory, petitioner TIDCORP raises two grounds: (1) the RTC cannot validly hear and decide respondent PVB's Complaint because of the Rehabilitation Court's Stay Order which enjoined the enforcement of all claims, actions and proceedings against PhilPhos; and (2) there is supposedly a contentious material fact that raises a genuine issue in the instant case.

The Court shall discuss these two grounds in *seriatim*.

The Stay Order of the Rehabilitation Court did not divest the RTC's jurisdiction to hear and decide respondent PVB's Complaint.

With respect to the first ground raised by petitioner TIDCORP, the Court holds that the Stay Order issued by the Rehabilitation Court *did not preclude* the RTC from hearing and deciding respondent PVB's Complaint.

First and foremost, it must be noted that the Stay Order relied upon by petitioner TIDCORP merely ordered the staying and suspension of enforcement of all claims and proceedings against the petitioner PhilPhos and *not* against all the other persons or entities solidarily liable with the debtor. The tenor of the Stay Order itself belies the theory of petitioner TIDCORP. According to the Stay Order, the said order only covers "all claims, actions, or proceedings **against the petitioner [referring to debtor PhilPhos].**"[27]

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[25] *Id*.

[26] *Id*.

[27] *Rollo,* p. 128; emphasis and underscoring supplied.

Second, Section 18(c) of the FRIA explicitly states that **a stay order shall not apply "to the enforcement of claims against sureties and other persons solidarily liable with the debtor, and third party or accommodation mortgagors as well as issuers of letters of credit,** x x x."[28]

In addition, under Rule 4, Section 6 of A.M. No. 00-8-10-SC or the Interim Rules of Procedure on Corporate Rehabilitation, a stay order has the effect of staying enforcement only with respect to claims made against the debtor, its guarantors and persons *not solidarily liable* with the debtor:

> Section 6. *Stay Order.*— If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) working days from the filing of the petition, issue an order: (a) appointing a rehabilitation receiver and fixing his bond; (b) **staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and persons not solidarily liable with the debtor** x x x.[29]

In *Situs Dev. Corporation, et al. v. Asiatrust Bank, et al.*,[30] the Court held that when a stay order is issued, the rehabilitation court is only empowered to suspend claims against the debtor, its guarantors, and sureties who are *not solidarily liable* with the debtor. Hence, **the making of claims against sureties and other persons solidarily liable with the debtor is not barred by a stay order.**

Thus, the question now redounds to whether the abovementioned provision of the FRIA on the non-application of a stay order with respect to the enforcement of claims against sureties and other persons solidarily liable with the debtor applies to petitioner TIDCORP.

Upon a simple perusal of the Guarantee Agreement, to which petitioner TIDCORP *readily admitted* it is bound, the answer

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[28] Emphasis and underscoring supplied.

[29] Emphasis and underscoring supplied.

[30] 701 Phil. 569, 572-573 (2013).

to the aforementioned question becomes a clear and unmistakable yes. **Petitioner TIDCORP indubitably engaged to be solidarily liable with PhilPhos under the Guarantee Agreement.**

The Guarantee Agreement unequivocally states that petitioner TIDCORP waived its right of excussion under Article 2058 of the Civil Code[31] and that, consequently, the Series A Noteholders can claim under the Guarantee Agreement **DIRECTLY** against petitioner TIDCORP without having to exhaust all the properties of PhilPhos and without need of any prior recourse against PhilPhos:

> 5.1 ORDINARY GUARANTEE. TIDCORP, with the ISSUER'S express conformity, **hereby waives the provision of Article 2058 of the New Civil Code of the Philippines on excussion, as well as presentment, demand, protest or notice of any kind with respect to this Guarantee Agreement.** It is therefore understood that **the SERIES A NOTEHOLDERS can claim under this Guarantee Agreement *directly* with TIDCORP *without* the SERIES A NOTEHOLDERS having to exhaust all the properties of the ISSUE and without need of prior recourse to the ISSUER.**[32]

Under a normal contract of guarantee, the guarantor binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so. The guarantor who pays for a debtor, in turn, must be indemnified by the latter. However, **the guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor and resorted to all the legal remedies against the debtor.** This is what is otherwise known as the **benefit of excussion.**[33] Conversely, if this benefit of excussion is waived,[34]

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[31] Article. 2058. The guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies against the debtor.

[32] *Rollo,* p. 106; emphasis and underscoring supplied.

[33] *JN Development Corporation v. Philippine Export and Foreign Loan Guarantee Corporation,* 505 Phil. 636, 643 (2005).

[34] According to Article 2059 of the Civil Code, even in agreements denominated as guarantee contracts, excussion shall not take place:

the guarantor can be directly compelled by the creditor to pay the entire debt even without the exhaustion of the debtor's properties.

In other words, a guarantor who engages to **directly** shoulder the debt of the debtor, waiving the benefit of excussion and the requirement of prior presentment, demand, protest or notice of any kind, undoubtedly makes himself/herself solidarily liable to the creditor.

As explained in *Spouses Ong v. Philippine Commercial International Bank*[35] *(Spouses Ong),* a surety is one who directly, equally, and absolutely binds himself/herself with the principal debtor for the payment of the debt:

> x x x Thus, a creditor can go directly against the surety although the principal debtor is solvent and is able to pay or no prior demand is made on the principal debtor. ***A surety is directly, equally and absolutely bound with the principal debtor for the payment of the debt and is deemed as an original promissor and debtor from the beginning.***[36]

Recognized Civil Law Commentator, former Court of Appeals Justice Eduardo P. Caguioa also explained that one of the hallmarks of a contract of guaranty is its ***subsidiary*** *character* – "that the guarantor only answers if the debtor cannot fulfill his obligation; hence the benefit of excussion in favor of the guarantor."[37] Hence, under the Civil Code, "by virtue of [Article 2047, which states that a contract is called a suretyship when

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(1) If the guarantor has expressly renounced it;
(2) If he has bound himself solidarily with the debtor;
(3) In case of insolvency of the debtor;
(4) When he has absconded, or cannot be sued within the Philippines unless he has left a manager or representative;
(5) If it may be presumed that an execution on the property of the principal debtor would not result in the satisfaction of the obligation

[35] 489 Phil. 673 (2005).

[36] *Id*. at 677. Emphasis supplied; italics in the original.

[37] EDUARDO P. CAGUIOA, *COMMENTS AND CASES ON CIVIL LAW CIVIL CODE OF THE PHILIPPINES*, Vol. VI, 306 (First ed. 1970).

a person binds himself solidarily with the principal debtor,] **when the guarantor binds himself solidarily with the debtor, the contract ceases to be a guaranty and becomes suretyship."**[38] The eminent civilist further explained that what differentiates a surety from a guaranty is that in the former, "a surety is principally liable[,] while a guarantor is [only] secondarily liable."[39]

In the instant case, without any shadow of doubt, petitioner TIDCORP had **expressly renounced the benefit of excussion** and in no uncertain terms made itself **directly and principally liable without any qualification** to the Series A Noteholders and **without the need of any prior recourse to PhilPhos.**

In effect, the nature of the guarantee obligation assumed by petitioner TIDCORP under the Guarantee Agreement was transformed into a suretyship. This is the case because the defining characteristic that distinguishes a guarantee from a suretyship is that in the latter, the obligor promises to pay the principal's debt if the principal will not pay, while in the former, the obligor agrees that the creditor, after proceeding against the principal and exhausting all of the principal's properties, may proceed against the obligor.[40]

And yet, petitioner TIDCORP insists that despite the waiver of the benefit of excussion, it is still considered a guarantor because the Guarantee Agreement expressly designates petitioner TIDCORP as an "Ordinary Guarantor."

The argument fails to convince.

The determination of whether an obligation is a suretyship is not a matter of nomenclature and semantics. That an obligor is designated as a "guarantor" or that the contract is denominated as a "guarantee agreement" does not automatically mean that the obligor is a guarantor or that the contract entered into is a

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[38] *Id*.; emphasis and underscoring supplied.

[39] *Id*. at 309.

[40] *Palmares v. Court of Appeals,* 351 Phil. 664, 680-681 (1998).

contract of guarantee. As previously held by the Court, even assuming that a party was expressly made liable only as a "guarantor" in an agreement, he/she can be held immediately liable directly and immediately if the benefit of excussion was waived.[41]

Petitioner TIDCORP downplays the waiver of the benefit of excussion by making the specious argument that the waiver does not define or characterize a guaranty and that it is supposedly merely one of the effects of a guaranty. But as already explained, the waiver of the benefit of excussion is the crucial factor that differentiates a surety from a guaranty. Otherwise stated, when a person/entity engages that he/she will be directly liable to the creditor as to another debtor's obligation without the need for the creditor to exhaust the properties of the debtor and to have prior recourse against the latter, then for all intents and purposes, such obligation is in the nature of a suretyship regardless of how the parties labelled the agreement.

As explained in *Spouses Ong,* one of the defining characteristics of a suretyship contract is that the benefit of excussion is not available to the surety as he is principally liable for the payment of the debt:

> x x x There is a sea of difference in the rights and liabilities of a guarantor and a surety. *A guarantor insures the solvency of the debtor while a surety is an insurer of the debt itself.* A contract of guaranty gives rise to a *subsidiary obligation on the part of the guarantor.* It is only after the creditor has proceeded against the properties of the principal debtor and the debt remains unsatisfied that a guarantor can be held liable to answer for any unpaid amount. This is the principle of excussion. **In a suretyship contract, however, *the benefit of excussion is not available to the surety as he is principally liable for the payment of the debt.*** As the surety insures the debt itself, he obligates himself to pay the debt if the principal debtor will not pay, regardless of whether or not the latter is financially capable to fulfill his obligation.[42]

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[41] *Orix Metro Leasing and Finance Corporation v. Cardline, Inc.,* 778 Phil. 280, 290 (2016).

[42] *Supra* note 35 at 676-677. Emphasis supplied; italics in the original.

Petitioner TIDCORP argues that the Court in *JN Development Corporation, et al. v. Philippine Export and Foreign Loan Guarantee Corporation*[43] supposedly considered the contract therein a contract of guarantee despite the waiver of the benefit of excussion.

Petitioner TIDCORP's assertion is not well-taken as the Court made no such pronouncement in the said case. In fact, the Court in the aforementioned case explained that what distinguishes a contract of guaranty is that the "guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor and resorted to all the legal remedies against the debtor."[44] Hence, in a contract where an obligor can be compelled to pay the creditor even when the latter has not exhausted all the property of the debtor and resorted to all the legal remedies against the debtor, such contract is not in the nature of a contract of guarantee.

In fact, in citing *Philippine Export and Foreign Loan Guarantee Corporation v. VP Eusebio Construction, Inc.,*[45] petitioner TIDCORP actually further strengthened the argument that it is a surety and not a guaranty.[46] In the said case, the Court explained that **one of the essential features of a suretyship is when the obligor's obligation is not discharged by the absence of a notice of default of the principal debtor.** In the instant case, the Guarantee Agreement clearly states that **petitioner TIDCORP will be liable to satisfy its obligations under the said agreement despite the absence of "presentment, demand, protest or notice of any kind with respect to this Guarantee Agreement."**[47]

Hence, in accordance with the Guarantee Agreement, which states that respondent PVB can claim DIRECTLY from petitioner

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[43] *Supra* note 33.

[44] *Id*. at 643.

[45] 478 Phil. 269 (2004).

[46] *Rollo,* p. 37.

[47] Item No. 5.1, *id*. at 106.

TIDCORP without the former having to exhaust all the properties of and without need of prior recourse to PhilPhos, in accordance with Section 18(c) of the FRIA, the issuance of the Stay Order by the Rehabilitation Court clearly did not prevent the RTC from acquiring jurisdiction over respondent PVB's Complaint, as correctly held by the RTC in the assailed Order.

Based on the records of the instant case, there was no genuine issue raised as to a material fact posed by petitioner TIDCORP.

With respect to petitioner TIDCORP's second argument, the Court likewise concurs with the RTC's finding that upon examination of the records of the instant case, there was no genuine issue raised as to a material fact.

There is no "genuine issue" which calls for the presentation of evidence if the issues raised by a party are a sham, fictitious, contrived, set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial.[48] The court can determine this on the basis of the pleadings, admissions, documents, affidavits and/or counter-affidavits submitted by the parties to the court.[49] In a collection case, where the obligation and the fact of non-fulfillment of the obligation, as well as the execution of the debt instrument, are admitted by the debtor, with the rate of interest and/or amount of damages being the only remaining issue, there is no genuine issue and a summary judgment may be rendered upon proper motion.[50]

In the instant case, as correctly pointed out by the RTC, **petitioner TIDCORP readily admitted that it was bound by the Guarantee Agreement,** which expressly obligated petitioner TIDCORP to guarantee the payment of the Guaranty obligation, which was specifically pegged at 90% of the

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[48] *Excelsa Industries, Inc. v. Court of Appeals, supra* note 24.

[49] *Id*.

[50] *Asian Construction and Development Corporation v. Philippine Commercial International Bank,* 522 Phil. 168, 178 (2006); *Garcia v. Llamas,* 462 Phil. 779, 794 (2003).

outstanding Series A Notes. With petitioner TIDCORP admitting that it was "bound by the terms and conditions enumerated in this Guarantee Agreement and such other related documents x x x,"[51] the RTC did not commit any error in holding that respondent PVB was entitled to judgment as a matter of law.

Jurisprudence holds that "the defendant must show that he has a *bona fide* defense to the action, one which he may be able to establish. It must be a plausible ground of defense, something fairly arguable and of a substantial character. This he must show by affidavits or other proof."[52]

The RTC was correct in holding that petitioner TIDCORP failed to proffer a plausible ground of defense of a substantial character, considering that in its Answer, the only special and/or affirmative defense raised by petitioner TIDCORP was the argument on the lack of jurisdiction of the RTC in light of the Rehabilitation Court's Stay Order, which as previously discussed, is an erroneous assertion.

Further, petitioner TIDCORP's argument on its denial of receiving a Notice of Claim with attachments from respondent PVB in accordance with the Guarantee Agreement is manifestly unmeritorious, considering that its letters dated November 12, 2015[53] and January 27, 2016[54] expressly acknowledged the fact that they received the said Notice of Claim on November 6, 2015. Petitioner TIDCORP is bound by such admissions.

Also telling is the fact that in its correspondence with respondent PVB,[55] petitioner TIDCORP consistently failed to assail the correctness and completeness of the Notice of Claim. Its denial of respondent PVB's Notice of Claim was confined

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[51] Item No. 7.1.3, *rollo,* p. 107.

[52] *Asian Construction and Development Corporation v. Philippine Commercial International Bank, supra* note 50 at 180.

[53] *Rollo,* pp. 131-132.

[54] *Id*. at 140.

[55] Letters dated November 12, 2015 and January 27, 2016, *id*. at 131-132 and 140.

merely to its allegation that it was precluded by the Rehabilitation Court's Stay Order from acting on the claim.

Hence, taking together the fact that petitioner TIDCORP expressly admitted its obligations under the Guarantee Agreement, and that it failed to offer any substantial defense against the claim of respondent PVB, the RTC was not in error in holding that there is no genuine issue as to a material fact extant in the instant case.

For the foregoing reasons, the Court hereby denies the instant Petition for lack of merit.

WHEREFORE, in view of the foregoing, the instant Petition is hereby **DENIED**. The Order dated August 16, 2017 rendered by the Regional Trial Court of Makati City, Branch 150 in Civil Case No. R-MKT-16-02011-CV is **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 235468. July 1, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DAN DUMANJUG *y* LOREÑA,**[*] *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF

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[*] Spelled as "Lorena" in some parts of the *rollo*, CA *rollo* and records.

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

2. ID.; ID.; CHAIN OF CUSTODY RULE; STRICT COMPLIANCE TO THE PROCEDURES UNDER SECTION 21, ARTICLE II IS REQUIRED. — In cases involving dangerous drugs, the State bears not only the burden of proving the elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires **strict compliance** with procedures laid down by it to ensure that rights are safeguarded. In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt. In this connection, Section 21, Article II of RA 9165 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 The Court has previously stressed that **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, 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.

3. ID.; ID.; ID.; ID.; FAILURE THEREOF DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID, BUT PROSECUTION MUST SATISFACTORILY PROVE THE JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED. — [T]he failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void. However, 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.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an ordinary appeal[1] filed by the accused-appellant Dan Dumanjug *y* Loreña (Dumanjug), assailing the Decision[2] dated September 8, 2017 (assailed Decision) of the Court of Appeals,[3] Cagayan de Oro City (CA) in CA-G.R. CR-HC No. 01510-MIN, which affirmed the Omnibus Decision[4]

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[1] See Notice of Appeal dated September 27, 2017, *rollo*, pp. 21-23.

[2] *Id*. at 3-20. Penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Romulo V. Borja and Ronaldo B. Martin, concurring.

[3] Special Twenty-First Division.

[4] CA *rollo*, pp. 34-49. Penned by Judge Godofredo B. Abul, Jr.

dated October 28, 2015 rendered by the Regional Trial Court of Butuan City, Branch 4 (RTC) in Criminal Case No. 14604 entitled *People of the Philippines v. Dan Dumanjug y Loreña*, finding Dumanjug guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[5] otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts and Antecedent Proceedings

As narrated by the CA in the assailed Decision and as culled from the records of the instant case, the facts and antecedent proceedings of the instant case are as follows:

> On 22 December 2010, [Dumanjug] was charged with violation of Sections 5 and 15 of R.A. 9165 in Criminal Case Nos. 14604 and 14606. The Information[6] charging [Dumanjug] of violation of Section 5 of R.A. 9165 reads as follows:
>
> > That at more or less 11:30 o'clock in the morning of December 7, 2010 at Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully, and feloniously sell one (1) sachet of methamphetamine hydrochloride, otherwise known as shabu weighing of (*sic*) zero point one zero three nine (0.1039) gram, a dangerous drug to a poseur[-] buyer for a consideration of five hundred (₱500.00) pesos.
> >
> > CONTRARY TO LAW: (Violation of Section 5 in relation to Section 26, paragraph b, of Article II of R.A. 9165).[7]
>
> During the arraignment for both cases on 16 May 2011, [Dumanjug], then assisted by his counsel *de parte*, pleaded "not guilty" to the crimes charged.[8]

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

[6] Records, p. 1.

[7] *Id*.

[8] *Id*. at 40.

After the pre-trial, a joint trial on the merits ensued.

Version of the Prosecution

On 6 December 2010, Agent Robin Beniga Tibayan (Agent Tibayan) of the [Philippine Drug Enforcement Agency (PDEA)] Regional Office 13, Libertad, Butuan City, received an information from a walk-in Confidential Informant (informant) that [Dumanjug] was selling *shabu* in Fort Poyohon, Butuan City. Agent Tibayan immediately informed OIC Regional Director Joel Plaza, who then instructed Agent Subang to verify the information received. On 7 December 2010, after the verification turned out positive, Agent Subang, as the Team Leader, formed a team and conducted a briefing for a buy-bust operation to be conducted against [Dumanjug]. Agent Tibayan was designated as the poseur-buyer and was handed with a ₱500.00 bill marked with "RT" while Agent Myrian A. Balbada (Agent Balbada) was designated as the arresting officer. Agent Tibayan and the informant then proceeded to Purok 5, Fort Poyohon while Agent Balbada and the rest of the buy-bust team followed in a separate unmarked vehicle.

When Agent Tibayan and the informant reached the boarding house of [Dumanjug], the latter told them to go upstairs. Upon reaching the second floor, [Dumanjug] asked the informant how much he was going to buy to which the informant replied, "Only ₱500.00 worth, boss." [Dumanjug] then went inside his room and went he came back he handed over one (1) small sachet of *shabu*. After checking that it was a genuine *shabu*, Agent Tibayan handed the marked ₱500-bill to [Dumanjug]. Agent Tibayan then made a "drop" call to Agent Baldaba — the pre-arranged signal indicating that the transaction ha[d] been consummated. A few minutes thereafter, Agent Balbada and the backup team arrived at the scene. After introducing themselves as PDEA operatives and informing [Dumanjug] of his Constitutional rights and the reason for his arrest, [Dumanjug] was handcuffed. At the scene, Agent Tibayan marked the small sachet of *shabu* that was bought from [Dumanjug] as "RT-1." In [Dumanjug's] room, which was 3 to 5 meters away from the crime scene, the team saw in plain sight a weighing scale, eyeglass casing containing four (4) disposable lighters, empty sachets, aluminum foil and a Nokia cellular phone. No markings were made on the said items after Agent Subang assessed that the scene was quite dangerous.

[Dumanjug] was then taken to the PDEA Office w[h]ere he was thoroughly searched. At the same time, the pieces of evidence were photographed, marked and inventoried in the presence of [Dumanjug],

the barangay kagawad of Fort Poyohon and representatives from the media and the Department of Justice. A Request for Laboratory Examination on the *shabu* specimen and a Request for Drug Test for [Dumanjug] were also prepared by Agent Tibayan which were personally submitted by him to the PNP Crime Laboratory on that same day. The result of the said examination yielded positive for *methamphetamine hydrochloride*, which is commonly known as "*shabu*."

During trial, the prosecution and the defense stipulated as to the essential testimony of P/Supt. Noemi P. Austero, the forensic chemist, to wit:

> 1. That on [*sic*] P/Supt Noemi P. Austero, is a Licensed Chemical Engineer;
>
> 2. That she is an expert witness on illegal drug examination;
>
> 3. That sometime on December 7, 2010, their office, the Regional Crime Laboratory Office 13 received a Request for Laboratory examination from Agent Robin Tibayan of the PDEA, involving one (1) heat sealed transparent plastic sachet containing suspected shabu with marking RT1, already marked Exhibit C for the prosecution;
>
> 4. That, thereafter, FCO Austero conducted a laboratory examination on the specimen with marking RT1, which result was reduced into writing, as evidenced by Chemistry Report No. D-157-2010, copy of which is attached in page 11 of the Record in Crim. Case No. 14604, which was already marked as Exh. D for the prosecution;
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> 5. That on the same occasion, P/Supt Austero received from Agent Tibayan of the PDEA, a Request for Drug Test, a copy of which was already marked as Exh. E for the prosecution.[9]

When the prosecution was ordered to formally offer its evidence, the public prosecutor offered the following evidence: (1) Affidavit of Apprehension; (2) Certificate of Inventory; (3) Request for Laboratory Examination; (4) Chemistry Report No. D-157-2010; (5) Request for Drug Test; (6) Chemistry Report No. DT-186-2010; (7) Photocopy of marked money with Serial No. FL763971-₱500; (8) Piece of Bondpaper with Pictures; (9) Specimen Shabu; (10) Photocopy

[9] TSN, March 11, 2014, p. 5; records, p. 94.

of PDEA Blotter; (11) Pre-Operational Report; (12) Drug Paraphernalia and Nokia Cellphone; (13) Spot Report; and (14) Progress Report.[10]

Version of the Defense

[Dumanjug] denied the charges against him. His version of the story is as follows:

[Dumanjug] was a former salesman at Butuan Goodyear Enterprises, Inc. (BGEI), the main office of Happy Enterprises. On 7 December 2010, at around 8 o'clock in the morning, [Dumanjug] reported for work at BGEI then later proceeded to Happy Enterprises to load stocks that were supposed to be delivered to Mangagoy. After loading the stocks, [Dumanjug] instructed the driver to drop him off at his boarding house at Fort Poyohon so he [could] prepare his things and finish the report he was going to submit at BGEI before going to Mangagoy. The driver of the truck was instructed by [Dumanjug] to go home.

While [Dumanjug] was doing his report in his room situated at the second level of his boarding house, he heard a noise downstairs. When he checked it out, he saw armed men, whose faces were covered with bonnets, successfully wrecking the main door and going up the stairs towards his room. Once they reached [Dumanjug], they allegedly pointed their guns at him and instructed the latter to lie in prone position. While in that position, the masked armed men conducted a search inside the rooms in the boarding house, including [Dumanjug's] room. After the search, he was instructed to stand up and then he was handcuffed. [Dumanjug] was then interrogated as to the location of the *shabu* to which [Dumanjug] only replied that he kn[e]w nothing about any *shabu*. The men w[ere] about to bring him to the PDEA Office but since he was in his underwear, he requested them if he could put on a pair of pants. After which, the masked armed men also searched his pants for any illegal drugs but did not find any.

[Dumanjug] was brought to PDEA Office where he waited inside a room alone. When he was able to talk to a PDEA Agent, he pleaded the latter not to plant any evidence against him but when he was brought outside the room, [Dumanjug] alleged that a marked money was placed inside his pocket. [Dumanjug] did not see any civilians within the vicinity of the PDEA Office until he went outside the

[10] Records, pp. 114-115.

room that he came to know there was a barangay official, a media man and a DOJ representative.[11]

The Ruling of the RTC

On October 28, 2015, the RTC rendered an Omnibus Decision finding Dumanjug guilty of the crimes charged against him. The decretal portion of the Omnibus Decision reads:

> WHEREFORE, premises considered, in Criminal Case No. 14604 the Court finds accused Dan Dumanjug y Loreña guilty beyond reasonable doubt for violation of Section 5 of Article II of Republic Act 9165 (Comprehensive Dangerous Drugs Act of 2002) and hereby sentences him to undergo imprisonment of Life [I]mprisonment and to pay a fine of five hundred thousand (₱500,000.00) pesos without subsidiary imprisonment in case of insolvency.
>
> In Criminal Case No. 14606 for violation of Section 15, Article II of the said law, accused is hereby sentenced to undergo rehabilitation for a period of six (6) months at a government accredited rehabilitation center at the DOH Treatment and Rehabilitation Center located at Brgy. Anomar, Surigao City after service of his sentence in Criminal Case No. 14604.
>
> The sachet of shabu is hereby ordered confiscated in favor of the government to be dealt with in accordance with law.
>
> Accused shall be credited in the service of his sentence with his preventive imprisonment conformably with Article 29 of the Revised Penal Code, as amended.
>
> SO ORDERED.[12]

Dumanjug moved to reconsider[13] the aforementioned Omnibus Decision of the RTC. However, Dumanjug's Motion for Reconsideration was denied in an Order[14] dated December 4, 2015. Hence, Dumanjug filed a Notice of Appeal[15] on his

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[11] *Rollo*, pp. 3-7.

[12] CA *rollo*, pp. 48-49.

[13] Records, pp. 150-158.

[14] *Id*. at 163.

[15] *Id*. at 167-168.

conviction on Sale of Illegal Drugs (Criminal Case No. 14604) and sought the reversal thereof based on two issues, *i.e.*, (1) whether the testimonies of the prosecution witnesses were credible, and (2) whether the chain of custody was established.

The Ruling of the CA

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

According to the CA, all the essential elements of the criminal offense of illegal sale of dangerous drugs under Section 5 of RA 9156 have been sufficiently established by the prosecution. The CA held that while "gaps were observed in the strict compliance in the 'chain of custody rule', x x x [i]n sum, the prosecution successfully established that [Dumanjug] was caught in *flagrante delicto* of selling the sachet of *shabu*, for which reason, his conviction must be sustained."[16]

Hence, the instant appeal.

Issue

For the Court's resolution is the issue of whether the RTC and CA erred in convicting Dumanjug for violating Section 5, Article II of RA 9165.

The Court's Ruling

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

Dumanjug 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.[17]

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[16] *Rollo*, pp. 18-19; underscoring supplied.

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

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

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[20] The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.[21]

In this connection, Section 21, Article II of RA 9165[22] lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The

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

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

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

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

[22] The said section reads as follows:

> 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:

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

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

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

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

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

drugs immediately after seizure and confiscation. In *People v. Tomawis*,[24] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

> The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People vs. Mendoza*,[25] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.
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> **The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed**, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.
>
> The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.
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> **To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied**

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[24] G.R. No. 228890, April 18, 2018.

[25] 736 Phil. 749 (2014).

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."[26] (Emphasis and underscoring supplied)

The physical inventory and photographing of the allegedly seized drug in the presence of the three required witnesses were not done at the time of seizure and confiscation of the drug and at or near the place of the buy-bust.

In the instant case, it is not disputed that the inventory and photographing of evidence that was conducted in the presence of Dumanjug, the DOJ representative, *i.e.*, Ronaldo Bedrijo, the media representative, *i.e.*, Rey Brangan, and the Barangay Kagawad, *i.e.*, Celso Montilla, were not conducted immediately after the seizure and confiscation of the illegal drug at the place of the supposed buy-bust operation, *i.e.*, the boarding house of Dumanjug. Instead, the inventory and photographing of evidence in the presence of the required witnesses were commenced after the buy-bust operation was terminated and in another location — the Regional Office of the PDEA.

As noted by the CA in the assailed Decision, "[t]he inventory and the taking of photographs of the seized items were, however, not done at the crime scene. It was established by the prosecution that when they reached the PDEA Office, the team marked the other confiscated items, made inventory of all the marked items, including the marked sachet of *shabu*, and took photographs for the necessary documentation of the process."[27] The CA also noted that there was a "failure of the apprehending team to immediately conduct a physical inventory and photograph of the seized items"[28] and that "gaps were observed in the strict

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[26] *People v. Tomawis*, *supra* note 24, at 11-12.

[27] *Rollo*, p. 17; underscoring supplied.

[28] *Id.*; underscoring supplied.

compliance in the 'chain of custody rule'[.]"[29] As factually found by the RTC in its Omnibus Decision based on the testimonies of Agents Tibayan and Balbada, not a single photograph was taken during the alleged buy-bust operation.

In fact, on cross-examination, Agent Tibayan readily acknowledged that the buy-bust team even failed to bring a camera when they conducted the supposed buy-bust operation:

Q Did you bring along a camera because you will be conducting a buy-bust operation?

A I think we were not able to bring a camera with us, sir.

Q You did not discuss to bring a camera during the briefing?

A We have agreed, sir.

Q But, no picture was taken at the crime scene?

A Yes, sir.[30]

Bearing in mind the foregoing incontrovertible facts, the fairly recent case of *People v. Musor*[31] becomes instructive. The said case essentially involves a similar set of facts, wherein the police conducted the marking and inventory in the police station and not immediately in the place of the buy-bust because the place of the buy-bust was allegedly dangerous as the venue "was dark and there were persons drinking in the area."

In the aforesaid case, the Court found the police's explanation "hollow and not worthy of belief,"[32] explaining 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 ***only*** when holding the same

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[29] *Id*. at 18; underscoring supplied.

[30] TSN, September 25, 2013, pp. 43-44.

[31] G.R. No. 231843, November 7, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64866>.

[32] *Id*.

is not practicable in the place of the buy-bust. This means that **the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as aforementioned, *must be immediately done at the place of seizure and confiscation.*** As explained by the Court:

> The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as aforementioned, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.
>
> It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items as 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. The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.[33]

The aforementioned case however clarified that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void. However, the

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[33] *Id*.

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.[34]

Therefore, the critical question now redounds to whether there were justifiable grounds excusing the buy-bust team's failure to observe the mandatory requirements set under Section 21 of RA 9165. The CA believed that "the failure of the apprehending team to immediately conduct a physical inventory and photograph of the seized items was sufficiently justified during trial."[35]

The Court disagrees.

After an exhaustive review of the records of the instant case, the Court finds that there is ***no justifiable ground*** in the instant case that warrants the non-observance of the mandatory requirements set by Section 21 of RA 9165.

First, the testimonies of the prosecution's witnesses, *i.e.*, Agents Tibayan and Balbada, offer conflicting reasons as to how the buy-bust team arrived at the decision to conduct the inventory and photographing of the evidence in the PDEA Regional Office and not at the crime scene.

When asked during direct examination as to why the inventory, photographing, and marking of the evidence were not done during the buy-bust operation, Agent Tibayan merely explained that "based on the assessment of our team leader the place is quite dangerous."[36] When pressed further on cross-examination, Agent Tibayan reiterated that the only reason why the inventory, photographing, and marking of the evidence was not done during the buy-bust operation was due to the assessment of the team leader, *i.e.*, Agent Subang, that the venue was "quite dangerous."[37]

In sharp contrast, on direct examination, Agent Balbada explained that the reason why the buy-bust team decided to

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[34] *Id*.

[35] *Rollo*, p. 17.

[36] TSN, September 25, 2013, p. 15.

[37] *Id*. at 43.

undertake the inventory, photographing, and marking of the evidence elsewhere was due to the supposed "gathering crowd of onlookers and kibitzers" in the area.[38] When asked as to how many persons converged at the place where the alleged buy-bust operation took place, Agent Balbada answered "[m]ore or less, two hundred (200), sir."[39]

Striking is the fact that Agent Tibayan made no mention whatsoever as to the supposed convergence of hundreds of persons in the vicinity of the crime scene. If indeed there is a shred of truth in Agent Balbada's testimony on the presence of hundreds of persons in the crime scene, being present all throughout the buy-bust operation, Agent Tibayan would have raised the same when he was pressed, both on direct and cross-examination, on the issue of why Section 21 of RA 9165 was not complied with. However, Agent Tibayan merely invoked the assessment of the team leader as the sole reason why the buy-bust team deviated from the mandatory requirements of Section 21 of RA 9165. This seriously erodes the veracity of Agent Balbada's assertion that the inventory and photographing at the crime scene was made dangerous due to the presence of roughly two hundred (200) persons.

Further, on cross-examination, Agent Tibayan's description of the presence of people found on the crime scene *directly contradicts* Agent Balbada's version of events:

> Q How about in front of the boarding house, were there people loitering outside?
>
> A No, sir.[40]

Furthermore, on redirect examination, when again questioned as to why there were no photographs taken during the buy-bust operation, Agent Balbada seemed to have changed her answer and testified that "[n]o picture was taken because I forgot

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[38] TSN, March 5, 2014, p. 6.

[39] *Id*.

[40] TSN, September 25, 2013, p. 36; underscoring supplied.

to take pictures, sir, because I was the designated arresting officer as well as the photographer at that time. So, I was with the suspect that's why it's hard for me to do two things at the same time."[41] These glaring inconsistencies do not escape the Court's attention.

Second, from the testimony of Agent Balbada herself, it becomes apparent that the supposed convergence of roughly two hundred (200) persons in the vicinity of the crime scene, aside from being uncorroborated, is in itself an incredible and implausible tale.

When asked on cross-examination to describe the area of the alleged buy-bust operation, Agent Balbada answered the following:

Q So, the alleged boarding house of Dan Dumanjug is how many meters away from Montilla Boulevard?

A More or less, twenty (20) meters, sir.

Q The place is not a residential area, am I correct?

A There were only I think five (5) or four (4) houses, sir.

x x x x x x x x x

Q So, if you will be going to that boarding house, you will only (*sic*) access one alley?

A One alley, sir.[42]

Hence, bearing in mind that the area is not a big residential area, only containing four to five houses, and that the boarding house is accessible only through one alley, it is not hard to see that the uncorroborated allegation that more or less two hundred (200) people converged at the crime scene is dubious and unbelievable, to say the least. In fact, the testimonies of Agents Tibayan and Balbada reveal that after the buy-bust operation, the buy-bust team was able to easily leave the vicinity of the

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[41] TSN, March 5, 2014, p. 17.

[42] *Id*. at 13.

crime scene. If indeed a multitude of onlookers and loiterers numbering two hundred (200) persons converged at the venue of the buy-bust, considering that there was only one alley in the area, the buy-bust team would have experienced some difficulty in leaving the area, which was not the case.

Third, even if Agent Balbada's incredible testimony on the convergence of two hundred (200) persons in the vicinity of the crime scene was to be believed, there is still no justifiable reason to conclude that it was "quite dangerous" to hold the inventory and photographing of the evidence in the presence of the required witnesses at the place of the alleged buy-bust operation.

To stress, the buy-bust operation was not conducted outdoors; it was conducted in an enclosed area, *i.e.,* the second floor of Dumanjug's boarding house. Hence, the conducting of inventory and photographing of evidence would have been left completely unaffected and unhampered by the presence of loiterers located outside the boarding house. Further, it was not alleged whatsoever that these supposed loiterers showed any intention to enter the boarding house and interfere with the buy-bust operation. Nor are there any allegations that these persons were armed and posed any significant threat to the conduct of the buy-bust operation. In sharp contrast, the members of the buy-bust team were fully armed and had engaged in extensive planning coming into the buy-bust operation.

In fact, it must be stressed that during the buy-bust operation, the buy-bust team was able to spend some time inspecting the room located on the second floor of the boarding house, closely examine the drug specimen recovered, and undertake the marking of the sachet. This obviously shows that there was no serious danger posed whatsoever to the buy-bust team and that the inventory and photographing of the evidence could have also been conducted immediately after the confiscation of the drugs at the crime scene.

Considering the foregoing, the Court concludes that the prosecution's theory on the infeasibility of conducting the inventory and photographing of the evidence in the presence

of the required witnesses immediately after the confiscation of the illegal drug at the place of the buy-bust operation due to the area being "quite dangerous" on account of the convergence of roughly two hundred (200) persons in the vicinity is a farfetched and implausible piece of fiction that deserves no consideration whatsoever.

Even assuming *arguendo* that the area of the buy-bust operation was indeed dangerous, necessitating the conduct of the inventory and photographing in another location, to reiterate, 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 the instant case, it is not disputed that the inventory and photographing of the evidence was conducted in the ***PDEA Regional Office***.

On cross-examination, Agent Balbada unequivocally admitted that **the PDEA Regional Office is *not* the nearest police station**:

> Q So, after neutralizing Dan Dumanjug, immediately you brought him to the PDEA Regional Office and not to the nearest police station which is the Langihan Police Station and Ong Yiu Police Sub-station?
>
> A Yes, sir.[43]

Hence, the inventory and photographing of evidence in the presence of the required witnesses at the PDEA Regional Office was not conducted in accordance with law.

Aside from the foregoing, the Court makes the following disturbing observation.

If the prosecution's theory is to be believed, there was no prior assessment before the conduct of the buy-bust operation that the area of the buy-bust was dangerous; the assessment of the team leader on the supposed danger posed by the alleged convergence of two hundred (200) persons in the crime scene

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[43] *Id*. at 15.

was supposedly made right there and then during the conduct of the buy-bust operation. Therefore, with no prior expectation of danger in the area, the buy-bust team should have been ready, willing, and able to conduct the search, inventory, and photographing of the evidence with the required witnesses in the place of the buy-bust operation in accordance with Section 5 of RA 9156. However, bothersome is the fact that, aside from the buy-bust team failing to bring any camera during the buy-bust operation, the prosecution's witnesses readily admit that the three witnesses were called only *after* the buy-bust operation was already concluded:

> Q When you reached the PDEA Regional Office, there were yet no third-party witnesses at that time, am I correct? I'm referring to Barangay Kagawad Celso Montilla, Mr. Ronaldo Bedrijo and Mr. Rey Brangan, they were not yet there when you arrived at that time?
>
> A Yes, sir.
>
> Q So, after you arrived at the PDEA Regional Office, that was the time that you informed all these three (3) persons?
>
> A Yes, sir.[44]

In other words, regardless of the level of danger extant in the venue of the buy-bust operation, from the get-go, **the PDEA agents really had no intention whatsoever to conduct the buy-bust in accordance with Section 21 of RA 9165**.

In sum, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. The integrity and evidentiary value of the *corpus delicti* have thus been seriously compromised. In light of this, Dumanjug must perforce be acquitted.

As a final note, the Court believes that the menace of illegal drugs must be curtailed with resoluteness and determination. Our Constitution declares that the maintenance of peace and order, the protection of life, liberty, and property, and the

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[44] *Id*. at 16.

promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.[45]

Nevertheless, by sacrificing the sacred and indelible right to presumption of innocence for the sheer sake of convenience and expediency, the very maintenance of peace and order sought after is rendered wholly nugatory. By thrashing basic constitutional rights as a means to curtail the proliferation of illegal drugs, instead of protecting the general welfare, oppositely, the general welfare is viciously assaulted. In other words, by disregarding the Constitution, the war on illegal drugs becomes a self-defeating and self-destructive enterprise.

Thus, the Court heavily enjoins the law enforcement agencies, the prosecutorial service, as well as the lower and appellate courts, to strictly and uncompromisingly observe and consider the mandatory requirements of the law on the prosecution of dangerous drugs cases. Otherwise, the malevolent mantle of the rule of men shall dislodge the rule of law. This cannot be allowed. Not while this Court sits.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated September 8, 2017 of the Court of Appeals, Cagayan de Oro City in CA-G.R. CR-HC No. 01510-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Dan Dumanjug *y* Loreña 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 Davao Prison and Penal Farm, Dujali, Davao del Norte for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

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

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[45] CONSTITUTION, Art. II, Sec. 5.

SECOND DIVISION

[G.R. No. 238141. July 1, 2019]

WILLIAM CRUZ *y* FERNANDEZ and VIRGILIO FERNANDEZ *y* TORRES, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL IN CRIMINAL CASES THROWS THE ENTIRE CASE OPEN FOR REVIEW. —** [I]n criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **ID.; ID.; SEARCH AND SEIZURE MUST BE CARRIED OUT ON THE STRENGTH OF A JUDICIAL WARRANT; EXCEPTIONS; SEARCH INCIDENTAL TO A LAWFUL ARREST WITHOUT A WARRANT; DISCUSSED. —** Section 2, Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes 'unreasonable' within the meaning of said constitutional provision.** To protect the people from unreasonable searches and seizures, Section 3 (2), Article III of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.** In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. One of the recognized exceptions to the need for a warrant before a search may be affected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be**

a lawful arrest before a search can be made — **the process cannot be reversed.** Relatedly, a lawful arrest may be effected with or without a warrant. With respect to the latter, a warrantless arrest may be done when, *inter alia,* the accused is caught *in flagrante delicto* pursuant to Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure, x x x Case law requires two (2) requisites for a valid *in flagrante delicto* warrantless arrest, namely, that: (*a*) **the person to be arrested must execute an overt act** indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*b*) such overt act is **done in the presence or within the view of the arresting officer.** Essentially, the arresting officer must have personal knowledge of the fact of the commission of an offense, *i.e.,* he must have personally witnessed the same.

3. ID.; ID.; ID.; ID.; ID.; VALID INCIDENTAL SEARCH WHERE WARRANTLESS ARREST WAS UNLAWFUL; EVIDENCE SEIZED WAS INADMISSIBLE. — [Here,] as a consequence of petitioners' unlawful warrantless arrest, it necessarily follows that there could have been no valid search incidental to a lawful arrest which had yielded the alleged illegal gambling paraphernalia from petitioners. Notably, while petitioners are deemed to have waived any objections as to the legality of their arrest due to their failure to question the same before arraignment and their active participation in trial, it must be clarified that the foregoing constitutes a waiver only as to any question concerning any defects in their arrest, and not with regard to the inadmissibility of the evidence seized during an illegal warrantless arrest. x x x In fine, since the items seized by the police officers are inadmissible against petitioners — as they were obtained in violation of petitioners' right against unreasonable searches and seizures — and given that the alleged illegal gambling paraphernalia is the very *corpus delicti* of the crime charged, the Court is hereby constrained to acquit petitioners.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before this Court is a petition for review on *certiorari*[1] seeking to annul and set aside the Decision[2] dated November 29, 2017 and the Resolution[3] dated March 14, 2018 of the Court of Appeals (CA) in CA-G.R. CR. No. 38062, which affirmed the Joint Decision[4] dated September 29, 2015 of the Regional Trial Court of Lingayen, Pangasinan, Branch 69 (RTC) in Criminal Case Nos. L-10557 and L-10558 finding petitioners Virgilio Fernandez *y* Torres (Virgilio) and William Cruz *y* Fernandez (William; collectively, petitioners) guilty beyond reasonable doubt of violating Section 3 (c)[5] of Republic Act No. (RA) 9287,[6] otherwise known as the "Illegal Gambling Law."

The Facts

This case stemmed from two (2) Informations[7] filed before the RTC, charging petitioners with violation of Section 3 (d)[8]

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[1] *Rollo*, pp. 12-23.

[2] *Id*. at 28-36. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Stephen C. Cruz and Samuel H. Gaerlan, concurring.

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

[4] *Id*. at 50-54. Penned by Presiding Judge Loreto S. Alog, Jr.

[5] Section 3. *Punishable Acts*. — Any person who participates in any illegal numbers game shall suffer the following penalties:

x x x x x x x x x

c) The penalty of imprisonment from eight (8) years and one (1) day to ten (10) years, if such person acts as a **collector or agent**[.] (Emphasis and underscoring supplied)

[6] Entitled "AN ACT INCREASING THE PENALTIES FOR ILLEGAL NUMBERS GAMES, AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 1602, AND FOR OTHER PURPOSES," approved on April 2, 2004.

[7] Both dated July 13, 2015. Records (Crim. Case No. L-10557), p. 1; and records (Crim. Case No. L-10558), p. 1.

[8] Section 3. *Punishable Acts*. — Any person who participates in any illegal numbers game shall suffer the following penalties:

of RA 9287 for unlawfully engaging in an illegal gambling bookies activity. The prosecution alleged that on July 10, 2015, the Chief of Police of Binmaley, Pangasinan, instructed Police Officer 3 Ramon de Guzman (PO3 de Guzman) and Police Officer 2 Joel Sabordo (PO2 Sabordo) to conduct a surveillance of illegal gambling activities along Mabini Street in Barangay Poblacion, Binmaley, Pangasinan. Upon arriving thereat, PO3 de Guzman and PO2 Sabordo saw petitioners from a distance of around five (5) meters carrying ball pens, *papelitos*, and money and allegedly collecting *jueteng*[9] bets from some persons. They then approached petitioners and asked them if they were employees of Meredien Vista Gaming Corporation (MVGC). When petitioners failed to show any authority to conduct business, PO3 de Guzman and PO2 Sabordo began arresting them, confiscated their ball pens, *papelitos*, and money, and thereafter, brought them to the police station.[10]

Both petitioners pleaded not guilty to the crime charged,[11] but only Virgilio testified during trial.[12] He maintained that at the time of the incident, he went to see his wife in Mabini Street and saw William along the way. Moments later, some policemen arrived and invited them to the police station for questioning. At the police station, they discovered that they were being charged with violation of RA 9287 for allegedly participating in an illegal numbers game. Virgilio, however, denied the charges.[13]

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x x x x x x x x x

d) The penalty of imprisonment from ten (10) years and one (1) day to twelve (12) years, if such person acts as **a coordinator, controller or supervisor**[.] (Emphasis and underscoring supplied)

[9] Note that the Informations state that "Jai-Alai" was conducted (See records [Crim. Case No. L-10557], p. 1; and records [Crim. Case No. L-10558], p. 1), but narration in the decisions of the lower courts, including the Brief for the Appellee, indicates the documents confiscated as one used in "*Jueteng*" (see *rollo*, pp. 29, 34, 50, 51, and 59).

[10] See *rollo*, pp. 30-31 and 51-52.

[11] See *id*. at 30.

[12] See *id*. at 31.

[13] See *id*.

The RTC Ruling

In a Joint Decision[14] dated September 29, 2015, the RTC found petitioners guilty beyond reasonable doubt of violating Section 3 (c) of RA 9287, and accordingly, sentenced each of them to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day, as minimum, to nine (9) years, as maximum.[15] It upheld the validity of petitioners' warrantless arrest as it was shown that they were caught *in flagrante delicto* collecting and soliciting bets for an illegal numbers game called "*jueteng*." It pointed out that their acts of receiving money and writing on some pieces of paper engendered a well-founded belief on the part of the police officers that they were actually committing an offense under RA 9287.[16] It likewise observed that the seized *papelitos* contained number combinations and bet amounts that were used in the game of *jueteng*, and that mere possession of such gambling paraphernalia is deemed *prima facie* evidence of a violation of RA 9287.[17]

Aggrieved, petitioners appealed[18] to the CA.

The CA Ruling

In a Decision[19] dated November 29, 2017, the CA affirmed *in toto* petitioners' conviction. It held that petitioners' bare denials cannot be given credence in light of the arresting officers' positive and categorical statement that they caught petitioners in the act of soliciting bets for *jueteng*; and as such, they had conducted a valid *in flagrante delicto* arrest on petitioners.[20]

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[14] *Id*. at 50-54.

[15] *Id*. at 54.

[16] See *id*. at 53.

[17] See *id*. at 54.

[18] See Notice of Appeal dated September 29, 2015; records (Crim. Case No. L-10557), p. 59 and records (Crim. Case No. L-10558), p. 59.

[19] *Rollo*, pp. 28-36.

[20] *Id*. at 34-35.

Undaunted, petitioners filed a motion for reconsideration,[21] which was likewise denied in a Resolution[22] dated March 14, 2018; hence, this petition.

The Issue Before the Court

The issue to be resolved by the Court is whether or not the CA erred in affirming the conviction of petitioners for violation of Section 3 (c) of RA 9287.

The Court's Ruling

"At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[23]

Guided by this consideration, and as will be explained hereunder, the Court believes that petitioners' conviction must be set aside.

Section 2, Article III[24] 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**

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[21] Dated January 10, 2018. CA *rollo*, pp. 94-98.

[22] *Rollo*, pp. 38-39.

[23] See *Sindac v. People*, 794 Phil. 421, 427 (2016); and *People v. Comboy*, 782 Phil. 187, 196 (2016).

[24] Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

seizure becomes 'unreasonable' within the meaning of said constitutional provision. To protect the people from unreasonable searches and seizures, Section 3 (2), Article III[25] of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding**. In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree.[26]

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.**[27] Relatedly, a lawful arrest may be effected with or without a warrant. With respect to the latter, a warrantless arrest may be done when, *inter alia*, the accused is caught *in flagrante delicto* pursuant to Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure, which states:

> Section 5. *Arrest without warrant; when lawful*. — A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) **When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense**[.] (Emphasis and underscoring supplied)

Case law requires two (2) requisites for a valid *in flagrante delicto* warrantless arrest, namely, that: (*a*) **the person to be arrested must execute an overt act** indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*b*) such overt act is **done in the presence or within the view of the arresting officer**. Essentially, the arresting officer

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[25] Section 3. x x x.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[26] See *Trinidad v. People*, G.R. No. 239957, February 18, 2019, citing *Sindac v. People*, *supra* note 23, at 428.

[27] See *Trinidad v. People*, *id*.

must have personal knowledge of the fact of the commission of an offense, *i.e.*, he must have personally witnessed the same.[28]

In *Villamor v. People*,[29] a case which also involved alleged illegal gambling activities, the Court held that the conduct of an *in flagrante delicto* warrantless arrest therein is unlawful because of the arresting officers' failure to reasonably ascertain that the criminal activity was afoot before proceeding with the same. In that case, the Court remarked that it was highly suspect for the apprehending officers to have witnessed an overt act indicating that the accused therein had just committed, were actually committing, or were attempting to commit a violation of RA 9287, considering, *inter alia*, the distance of the police officers from the purported *locus criminis*, *viz*.:

> **[T]he Court finds it doubtful that the police officers were able to determine that a criminal activity was ongoing** to allow them to validly effect an *in flagrante delicto* warrantless arrest and a search incidental to a warrantless arrest thereafter. x x x **It appears that the police officers acted based solely on the information received from PD Peñaflor's informant and not on personal knowledge that a crime had just been committed, was actually being committed, or was about to be committed in their presence.** x x x PO1 Saraspi even admitted that **from his position outside the compound, he could not read the contents of the so-called "*papelitos*"; yet, upon seeing the calculator, phone, papers and money on the table, he readily concluded the same to be gambling [paraphernalia]**.
>
> On the part of PD Peñaflor, he likewise admitted that **from his position outside the compound, he could not determine the activities of the persons inside**. x x x.
>
> x x x x x x x x x
>
> From the circumstances above, it is highly suspect that PD Peñaflor had witnessed any overt act indicating that the petitioners were actually committing a crime. While PD Peñaflor claims that he caught the petitioners in the act of collecting bets and counting bet money, **this**

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[28] See *Sindac v. People*, *supra* note 23, at 429-430.

[29] G.R. No. 200396, March 22, 2017, 821 SCRA 328.

observation was highly improbable given the distance of the police from the petitioners and the fact that the compound was surrounded by a bamboo fence.[30] (Emphases and underscoring supplied)

In this case, the Court similarly finds that there could have been no lawful *in flagrante delicto* warrantless arrest made on petitioners. Based on the records, PO3 de Guzman himself admitted that he and PO2 Sabordo were about five (5) meters away from petitioners when they allegedly saw petitioners carrying *papelitos*, ball pens, and money. Perceiving that the same constitute gambling paraphernalia, the arresting officers immediately concluded that petitioners were engaged in illegal gambling activities, *i.e.*, collecting *jueteng* bets, prompting them to swoop in with the intention of arresting petitioners. Pertinent portions of PO3 de Guzman's testimony reads:

> [Prosecutor Jeffrey Catungal]: When conducting surveillance particular place [sic], did you proceed to conduct surveillance?
> [PO3 de Guzman]: We conduct surveillance at Brgy. Poblacion particularly Mabini Street Binmaley, Pangasinan, sir.
>
> Q: In going to the said place, what purposes of conducting surveillance [sic], was there anything that called your attention?
> A: Yes, there were two (2) male factors, sir.
>
> Q: **What were you able to see or observe from them, if any?**
> A: **They were collecting bets, sir.**
>
> Q: **How sure are you that they were collecting bets?**
> A: **They have [paraphernalia], sir.**
>
> Q: When you said they have [paraphernalia], what [paraphernalia]?
> A: In collecting *jueteng* bets, sir.
>
> Q: **How far were you from them?**
> A: **Almost 5 meters away, sir.**
>
> COURT:
>
> Q: **What those [paraphernalia] you are referring to?**

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[30] *Id*. at 343-346.

A: **[Ball pen], *papelitos* and money, sir.**[31] (Emphases and underscoring supplied)

Considering that the arresting officers were at a considerable distance of about five (5) meters away from the supposed criminal transaction, it would be highly implausible for them — even assuming that they have perfect vision — to ascertain with reasonable accuracy that the aforesaid items were being used as gambling paraphernalia. In an effort to legitimize the warrantless arrest and the consequent search made incidental thereto, the arresting officers insist that the arrest was made only after ascertaining that petitioners were not MVGC employees. However, the fact that petitioners were: (*a*) holding ball pens, *papelitos*, and money; and (*b*) not MVGC employees do not, by themselves, constitute an illegal gambling activity punishable under RA 9287. Notably, there was no other overt act that could be properly attributed to petitioners so as to rouse suspicion in the minds of the arresting officers that the former had just committed, were committing, or were about to commit a crime. Verily, these circumstances are not enough to justify a valid *in flagrante delicto* warrantless arrest on petitioners.

As a consequence of petitioners' unlawful warrantless arrest, it necessarily follows that there could have been no valid search incidental to a lawful arrest which had yielded the alleged illegal gambling paraphernalia from petitioners. Notably, while petitioners are deemed to have waived any objections as to the legality of their arrest due to their failure to question the same before arraignment and their active participation in trial, it must be clarified that the foregoing constitutes a waiver only as to any question concerning any defects in their arrest, and not with regard to the inadmissibility of the evidence seized during an illegal warrantless arrest.[32] In *Sindac v. People*,[33] the Court held:

We agree with the respondent that the petitioner did not timely object to the irregularity of his arrest before his arraignment as required

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[31] TSN, September 1, 2015, pp. 4-5.

[32] See *supra* note 23, at 435.

[33] *Id*.

by the Rules. In addition, he actively participated in the trial of the case. As a result, the petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest.

However, this waiver to question an illegal arrest only affects the jurisdiction of the court over his person. It is well-settled that a waiver of an illegal, warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.

Since the *shabu* was seized during an illegal arrest, its inadmissibility as evidence precludes conviction and justifies the acquittal of the petitioner.[34] (Emphasis and underscoring supplied)

In fine, since the items seized by the police officers are inadmissible against petitioners — as they were obtained in violation of petitioners' right against unreasonable searches and seizures — and given that the alleged illegal gambling paraphernalia is the very *corpus delicti* of the crime charged,[35] the Court is hereby constrained to acquit petitioners.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 29, 2017 and the Resolution dated March 14, 2018 of the Court of Appeals in CA-G.R. CR. No. 38062 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioners William Cruz *y* Fernandez and Virgilio Fernandez *y* Torres are **ACQUITTED** of the crime charged.

SO ORDERED.

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

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[34] *Id*. at 436, citing *Homar v. People*, 768 Phil. 195, 209 (2015).

[35] *Villamor v. People*, *supra* note 29, at 349.

SECOND DIVISION

[G.R. No. 238299. July 1, 2019]

EMMANUELITO LIMBO *y* PAGUIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; THE IDENTITY OF THE DANGEROUS DRUG MUST BE ESTABLISHED WITH MORAL CERTAINTY. — In cases of Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.

2. ID.; ID.; CHAIN OF CUSTODY RULE; REQUIREMENT THAT THE MARKING, PHYSICAL INVENTORY AND PHOTOGRAPHY OF THE SEIZED ITEMS BE CONDUCTED IMMEDIATELY AFTER SEIZURE. — To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia,* that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. The law further requires that the said

inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the Department of Justice (DOJ), and any elected public official; or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence." As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'"

3. **ID.; ID.; ID.; RULE IN CASE OF NON-COMPLIANCE; NON-COMPLIANCE AS TO WITNESS REQUIREMENT; IT MUST BE ESTABLISHED THAT GENUINE AND SUFFICIENT EFFORTS WERE EXERTED TO SECURE THE PRESENCE OF THE WITNESSES BUT THEY FAILED TO APPEAR. —** [T]he Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and (*b)* the integrity and evidentiary value of the seized items are properly preserved. x x x It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist. Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is

for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.

4. ID.; ID.; ID.; ID.; ID.; ABSENCE OF THE REQUIRED WITNESSES MUST BE JUSTIFIED BASED ON ACCEPTABLE REASONS. — Pertinently, the Court in *People v. Lim,* explained that the absence of the required witnesses must be justified based on acceptable reasons such as: "(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) ***earnest efforts to secure the presence of a DOJ [and] media representative[s] 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."

APPEARANCES OF COUNSEL

A.A. Navarro III Law Offices for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 22, 2017 and the Resolution[3] dated March 20, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 37091, which affirmed the Decision[4] dated October 14, 2014 of the Regional Trial Court of Muntinlupa City, Branch 203 (RTC) in Crim. Case No. 10-559 finding petitioner Emmanuelito Limbo *y* Paguio (petitioner) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[6] filed before the RTC accusing petitioner of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165. The prosecution alleged that at around 4:30 in the afternoon of August 30, 2010, acting on a tip about the purported drug activities at Mendiola Street, Barangay Alabang, Muntinlupa City, Police Officer (PO) 3 Manuel Amodia, Jr. (PO3 Amodia), PO2 Mark Sherwin Forastero (PO2 Forastero), and PO2 Alfredo Andes (PO2 Andes) conducted monitoring and surveillance at the said place. In an alley in

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[1] *Rollo*, pp. 14-33.

[2] *Id*. at 45-60. Penned by Associate Justice Maria Filomena D. Singh with Associate Justices Ricardo R. Rosario and Edwin D. Sorongon, concurring.

[3] *Id*. at 38-43.

[4] *Id*. at 61-74. Penned by Presiding Judge Myra B. Quiambao.

[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[6] Dated August 31, 2010. *Id*. at 75-76.

front of San Roque Church, PO3 Amodia saw petitioner talking to an unidentified person. Growing suspicious, he approached them and noticed that petitioner was holding two (2) transparent plastic sachets containing white crystalline substance on his palm and was showing it to his companion. Convinced that these were prohibited drugs, PO3 Amodia immediately arrested petitioner and seized the sachets from him, then proceeded to inform him of his rights under the law and the reason for his arrest, while the other person was able to evade the authorities. Immediately thereafter, they decided to return to their office because petitioner was trying to break free ("*nagpupumiglas siya*"). Thereat, the arresting officers allegedly placed calls to certain persons who are representatives from the media, the Department of Justice (DOJ) and local elected officials urging them to come; however, after more or less two (2) hours of waiting, they decided to proceed without their presence, and instead, called upon a certain Ely Diang, a local government employee of Muntinlupa City. They then conducted an inventory,[7] marked the evidence, took photographs,[8] and prepared other relevant documents. They also prepared a Request for Laboratory Examination on Seized Evidence[9] which was forwarded to the Southern Police District Crime Laboratory (Crime Laboratory) together with the two (2) sachets containing white crystalline substance. Later, upon laboratory examination,[10] the substance was identified as metamphetamine hydrochloride or *shabu*, a dangerous drug.[11]

For his part, petitioner denied the charges against him and claimed that he was framed by the police officers. He explained that he was simply riding his motorcycle traversing the corner

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[7] See Receipt/Inventory of Property Seized dated August 30, 2010; records, p. 11.

[8] See *id*. at 120.

[9] *Id*. at 122.

[10] See Physical Science Report No. D-315-10S signed by Police Chief Inspector Abraham Verde Tecson; *id*. at 123.

[11] See *rollo*, pp. 45-47 and 62-64.

of Mendiola Street when he was accosted and grabbed by PO3 Amodia, PO2 Forastero, and PO2 Andes. PO2 Andes told him that he had managed to procure evidence against him ("*[e]to may ebidensya na ako sa iyo*"), showing him two (2) sachets containing white crystalline substance.[12]

In a Decision[13] dated October 14, 2014, the RTC found petitioner guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine in the amount of ₱300,000.00.[14] It found the prosecution to have sufficiently proved all the elements of the crime based on the testimony of PO3 Amodia, which was shown to be credible. It also found that the failure to physically inventory and photograph the sachets seized from petitioner in the manner prescribed by Section 21, Article II of RA 9165 was justified considering the attempt to comply with the same and that the integrity and evidentiary value of the evidence had been properly preserved.[15] Aggrieved, petitioner appealed[16] to the CA.

In a Decision[17] dated May 22, 2017, the CA affirmed the RTC ruling.[18] It likewise found that all the elements of the crime charged were proven beyond reasonable doubt and that the deviation from the requirements under Section 21, Article II of RA 9165 was justified.[19]

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[12] See *id*. at 64-66.

[13] *Id*. at 61-74.

[14] *Id*. at 74.

[15] *Id*. at 67-74.

[16] See Notice of Appeal dated October 27, 2014; *id*. at 89-90.

[17] *Id*. at 45-60.

[18] *Id*. at 60.

[19] See *id*. at 49-59.

Dissatisfied, petitioner moved for reconsideration,[20] which was, however, denied in a Resolution[21] dated March 20, 2018; hence, this petition.

The Court's Ruling

The petition is meritorious.

In cases of Illegal Possession of Dangerous Drugs under RA 9165,[22] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[23] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.[24]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[25] As

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[20] See Motion for Reconsideration (Re: Decision dated May 22, 2017) dated June 17, 2017; CA *rollo*, pp. 129-141.

[21] *Rollo*, pp. 38-43.

[22] The elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

[23] See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.*; *People v. Miranda*, *id.;* and *People v. Mamangon*, *id*. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[24] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[25] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 22; *People v. Sanchez*, *supra* note 22; *People v. Magsano*, *supra*

part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[26] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[27]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640,[28] a representative from the media *AND* the Department of Justice (DOJ), and any elected public official;[29] or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media.[30] The law requires the presence of these witnesses

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note 22; *People v. Manansala*, *supra* note 22; *People v. Miranda*, *supra* note 22; and *People v. Mamangon*, *supra* note 22. See also *People v. Viterbo*, *supra* note 23.

[26] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

[27] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

[28] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014.

[29] See Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

[30] See Section 21 (1), Article II of RA 9165, as amended by RA 10640.

primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[31]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."[32] This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'"[33]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[34] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[35] The foregoing is based on the saving clause found in Section 21 (a),[36] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted

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[31] See *People v. Miranda*, *supra* note 22. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[32] See *People v. Miranda*, *id.* See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, *supra* note 24, at 1038.

[33] See *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16, 44, citing *People v. Umipang*, *id*.

[34] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[35] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[36] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: **"*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."**

into the text of RA 10640.[37] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[38] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[39]

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[40] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[41] These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[42]

Notably, the Court, in *People v. Miranda*,[43] issued a definitive reminder to prosecutors when dealing with drugs cases. It

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[37] Section 1 of RA 10640 pertinently states: **"*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."**

[38] *People v. Almorfe*, *supra* note 35.

[39] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[40] See *People v. Manansala*, *supra* note 22.

[41] See *People v. Gamboa*, *supra* note 24, citing *People v. Umipang*, *supra* note 24 at 1053.

[42] See *People v. Crispo*, *supra* note 22.

[43] *Supra* note 22.

implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[44]

In the present case, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by a member of the media, a representative from the DOJ, and an elective public official. This may be easily gathered from the Receipt/Inventory of Property Seized[45] which only confirms the presence of an employee of the local government of Muntinlupa City, *i.e.* Ely Diang. Such finding is confirmed by the testimony of PO3 Amodia on direct and cross-examination, to wit:

Direct Examination

[Fiscal Tomas Ken Romaquin, Jr.]: Are you familiar with the rule that when you conduct inventory, you must request for the presence of several witnesses, among them should be representative from the Department of Justice and elected local official and representative from the media and so on?
[PO3 Amodia]: Yes, sir.

Q: How come it appears from this Receipt/Inventory that there's nobody from the media, there's no signature by a local government official?
A: I was calling representative from the media and from the local government and we've been waiting for a long time and nobody came, so we decided to call for one local government employee because we might suffer some technicality in our documentation, sir.[46]

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[44] See *id*.

[45] Records, p. 11.

[46] TSN, September 18, 2012, p. 11.

Cross-Examination

[Atty. John Michael Zambales]: And also in your direct examination Mr. Witness, you also said that you tried to call those needed in order for the markings like media, elected officials, is that right?
[PO3 Amodia]: Yes, sir.

x x x x x x x x x

Q: And no one answer?
A: There was but nobody arrived, sir.

Q: And how long did you wait?
A: More or less two (2) hours, sir.

Q: Two (2) hours from?
A: From the time we called, sir.

Q: And what time is that when you called?
A: 4:30 when we arrested him, may be 5:00 p.m., sir.

Q: And that is already in your office?
A: Yes, sir.[47]

To justify this deviation, PO3 Amodia explained that despite their efforts in contacting the required witnesses, none of them came to their office within a period of more or less two (2) hours; hence, they decided to proceed without their presence in order to obviate any technicalities in their documentation.[48]

The Court finds this explanation untenable.

In *People v. Umipang*,[49] the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "[a] sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse."[50] Verily,

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[47] TSN, September 18, 2012, p. 27.

[48] See *rollo*, pp. 63-64.

[49] *Supra* note 24.

[50] *Id*. at 1053.

mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[51]

Pertinently, the Court in *People v. Lim*,[52] explained that the absence of the required witnesses must be justified based on acceptable reasons such as: "(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) ***earnest efforts to secure the presence of a DOJ [and] media representative[s] 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."[53]

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[51] *People v. Crispo*, *supra* note 22.

[52] See G.R. No. 231989, September 4, 2018.

[53] See *id*., citing *People v. Sipin*, G.R. No. 224290, June 11, 2018.

However, none of these circumstances exist in this case. The mere fact that the witnesses contacted by the police officers failed to appear at their office within a brief period of two (2) hours is not reasonable enough to justify non-compliance with the requirements of the law. Indeed, the police officers did not even bother to follow up on the persons they contacted, thus, it cannot be said that genuine and sufficient efforts were exerted to comply with the witness requirement.

In view of the foregoing, the Court is therefore impelled to conclude that the integrity and evidentiary value of the items purportedly seized from petitioner — which constitute the *corpus delicti* of the crimes charged — have been compromised.[54] As such, petitioner's acquittal is in order.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 22, 2017 and the Resolution dated March 20, 2018 of the Court of Appeals in CA-G.R. CR No. 37091 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Emmanuelito Limbo *y* Paguio is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

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[54] See *People v. Patacsil*, G.R. No. 234052, August 6, 2018.

SECOND DIVISION

[G.R. No. 242682. July 1, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NERISSA MORA *a.k.a.* NERI BALAGTA MORA and MARIA SALOME POLVORIZA,** *accused,* **NERISSA MORA *a.k.a.* NERI BALAGTA MORA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (RA 9208); TRAFFICKING IN PERSONS, DEFINED. —** Section 3 (a) of RA 9208 defines the term "Trafficking in Persons" as the "recruitment, transportation, transfer or harboring, or receipt of persons **with or without the victim's consent or knowledge,** within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." The same provision further provides that "[t]he recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph." The crime of "Trafficking in Persons" becomes qualified when, among others, the trafficked person is a child.

2. **ID.; ID.; QUALIFIED TRAFFICKING IN PERSONS COMMITTED IN CASE AT BAR; CRIME CAN STILL BE COMMITTED EVEN IF THE VICTIM GIVES CONSENT. —** In this case, Mora and Polvoriza were charged with Qualified Trafficking in Persons under Section 4 (e) in relation to Section 6 (a) of RA 9208. Section 4 (e) of RA 9208 reads: Section 4. *Acts of Trafficking in Persons.* — It shall be unlawful for any person, natural or juridical, to commit any of

the following acts: x x x (e) To maintain or hire a person to engage in prostitution or pornography[.] As correctly ruled by the courts *a quo,* Mora and Polvoriza are guilty beyond reasonable doubt of the crimes charged as the prosecution had clearly established the existence of the elements thereof, as seen in the following: *(a)* Mora, through deception and by taking advantage of AAA's vulnerability as a minor, was able to "convince" the latter to go to Buraburan, Buhi, Camarines Sur; *(b)* upon arrival thereat, Mora took AAA to Polvoriza's videoke bar, *i.e.,* Otoy's, and left her there; and *(c)* since then and for the next eight (8) months, Polvoriza forced AAA to work as a prostitute in Otoy's, coercing her to perform lewd acts on a nightly basis, such as dancing naked in front of male customers and even having sex with them. In this regard, the courts *a quo* correctly found untenable Mora and Polvoriza's insistence that it was AAA who voluntarily presented herself to work as an entertainer/sex worker in Otoy's, as trafficking in persons can still be committed even if the victim gives consent — most especially in cases where the victim is a minor. In this regard, case law instructs that "[t]he victim's consent is rendered meaningless due to the coercive, abusive, or deceptive means employed by perpetrators of human trafficking. Even without the use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will."

3. ID.; ID.; ID.; PENALTY AND DAMAGES. — Anent the proper penalty to be imposed, Section 10 (c) of RA 9208 states that persons found guilty of Qualified Trafficking shall suffer the penalty of life imprisonment and a fine of not less than ₱2,000,000.00 but not more than ₱5,000,000.00. Thus, the courts *a quo* correctly sentenced Mora (and Polvoriza) to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00. Finally, the courts *a quo* correctly ordered them to pay AAA the amounts of ₱500,000.00 as moral damages and ₱l00,000.00 as exemplary damages pursuant to prevailing jurisprudence. Further, the Court deems it proper to impose on all monetary awards due to the victim legal interest at the rate of six percent (6%) per annum from finality of judgment until full payment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Nerissa Mora *a.k.a.* Neri Balagta Mora (Mora) assailing the Decision[2] dated June 25, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08255, which affirmed the Judgment[3] dated April 4, 2016 of the Regional Trial Court of Ligao City, Albay, Branch 13 (RTC) in Crim. Case No. 6668, convicting her and her co-accused, Maria Salome Polvoriza (Polvoriza) of Qualified Trafficking in Persons defined and penalized under Section 4 (e) in relation to Section 6 (a) of Republic Act No. (RA) 9208,[4] otherwise known as the "Anti-Trafficking in Persons Act of 2003."

The Facts

This case stemmed from an Information[5] filed before the RTC, charging Mora and Polvoriza of the crime of Qualified Trafficking in Persons, the accusatory portion of which reads:

That on November 26, 2011 until July [5], 2012 in the Municipality of Polangui[,] Province of Albay, Philippines, within the jurisdiction

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[1] See Notice of Appeal dated July 16, 2018; *rollo*, pp. 22-23.

[2] *Id*. at 2-21. Penned by Associate Justice Renato C. Francisco with Associate Justices Magdangal M. De Leon and Rodil V. Zalameda, concurring.

[3] CA *rollo*, pp. 53-90. Penned by Presiding Judge Ignacio C. Barcillano, Jr.

[4] Entitled "AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES"; approved May 26, 2003.

[5] Records, pp. 1-2.

of this Honorable Court, the above named accused, in conspiracy with one another, for purpose of exploitation, such as prostitution and other forms of sexual exploitation, did, then and there willfully, unlawfully and knowingly hire and maintain [AAA[6]] at [OTOY'S VIDEOKE] BAR at Barangay Sagrada, Buhi, Camarines Sur, and in pursuit of aforesaid conspiracy, said accused-Nerissa Mora, take said [AAA] at Barangay Itaran, Polangui, Albay and brought her to said [Otoy's] Videoke Bar, by way of deception and taking advantage of the vulnerability of said [AAA], as a minor; and accused-Maria Salome Polvoriza as manager/owner, did RECEIVE and EMPLOY said [AAA] as a prostitute in the said Videoke Bar, to her damage and prejudice.

That the crime was attended by the qualifying [circumstance] of minority, victim-[AAA], being 16[7] years of age.

ACTS CONTRARY TO LAW.[8]

The prosecution claimed that on November 26, 2011, Mora was able to convince AAA, then a minor, to come with her to Buraburan, Buhi, Camarines Sur. Upon arriving thereat, Mora left AAA at Otoy's Videoke Bar (Otoy's) owned by Polvoriza; thereafter, Polvoriza locked AAA inside a room therein,

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[6] 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 RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.)

[7] The crime was committed when AAA was 15 until 16 years of age. (See Certificate of Live Birth; *id*. at 9).

[8] *Id*. at 1.

prohibited her from going out, and took her mobile phone and destroyed its SIM card. Polvoriza then made AAA work as an entertainer at Otoy's under the stage name "Rizza M. Rañada," forcing her to take *shabu*, dance naked, and even have sex with the customers. Eight (8) months later, AAA was able to escape from Polvoriza's custody and return to her father, to whom she narrated her ordeal. Her father then took AAA to the police station to report the matter and also to a medico-legal, who, after examination,[9] confirmed, *inter alia*, that AAA sustained multiple hymenal lacerations which could have resulted from consensual and forcible sexual contact.[10]

In her defense, while Mora admitted knowing Polvoriza, she denied being close friends with her. She also averred that she and AAA had been close to each other and even treated the latter as her own sister. She then narrated that on November 26, 2011, AAA insisted that she accompany her to Buraburan, Buhi, Camarines Sur, to which Mora reluctantly agreed. Upon arrival thereat, AAA proceeded inside Otoy's and a few moments later returned outside to give her ₱200.00. Thereafter, she returned home. Finally, she claimed that when she first met AAA, she thought that the latter was already of age based on her physical appearance.[11]

For her part, Polvoriza maintained that she first saw AAA in the evening of November 26, 2011 when the latter went inside Otoy's, introduced herself as "Rizza M. Rañada," and expressed her desire to work therein. According to Polvoriza, she initially declined as she did not hire entertainers for her bar, but nonetheless, she let AAA stay because she was "nice." A few days later, AAA returned to Otoy's and handed her a pink card, which Polvoriza knew to be a health card secured by entertainers from health centers. Finally, Polvoriza claimed that she only learned of AAA's true identity when she was arrested in connection with the instant criminal case.[12]

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[9] See Medico-Legal Certificate dated July 12, 2012; *id*. at 8.

[10] See *rollo*, pp. 4-7. See also CA *rollo*, pp. 57-69.

[11] See *id*. at 7-8. See also CA *rollo*, pp. 75-76.

[12] See *id*. at 8-9. See also CA *rollo*, pp. 79-81.

The RTC Ruling

In a Judgment[13] dated April 4, 2016, the RTC found Mora and Polvoriza guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced each of them to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱2,000,000.00. It also ordered them to jointly and severally pay AAA the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages.[14]

The RTC found that the prosecution had proven beyond reasonable doubt that Mora and Polvoriza conspired with each other to take AAA, through deception and by taking advantage of her minority, to Otoy's where AAA was forced to become a sex worker who, among others, danced naked in front of male customers and was even coerced into having sex with them. In this regard, the RTC found immaterial AAA's purported voluntariness to work at Otoy's as claimed by both accused, pointing out that knowledge or consent on the part of minor victims is immaterial in cases of Human Trafficking.[15]

Aggrieved, Mora[16] and Polvoriza[17] separately appealed to the CA.

The CA Ruling

In a Decision[18] dated June 25, 2018, the CA affirmed the RTC ruling with modification, imposing legal interest at the rate of six percent (6%) per annum on all monetary awards given to AAA, from finality of the ruling until full payment.[19] It held that the prosecution, through AAA's unimpeached

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[13] CA *rollo* at 53-90.

[14] *Id*. at 89.

[15] See *id*. at 81-89.

[16] See Notice of Appeal dated April 4, 2016; *id*. at 14.

[17] See Notice of Appeal dated April 4, 2016; *id*. at 15.

[18] *Rollo*, pp. 2-21.

[19] *Id*. at 20.

testimony, had successfully established beyond reasonable doubt the existence of the elements of the crime charged.[20]

Hence, this appeal[21] filed by Mora. Notably, records do not show that Polvoriza made a similar appeal before the Court.

The Issue Before the Court

The issue for the Court's resolution is whether or not Mora's conviction for Qualified Trafficking in Persons should be upheld.

The Court's Ruling

The appeal is without merit.

Section 3 (a) of RA 9208 defines the term "Trafficking in Persons" as the "recruitment, transportation, transfer or harboring, or receipt of persons **with or without the victim's consent or knowledge**, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." The same provision further provides that "[t]he recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph."[22] The crime of "Trafficking in Persons" becomes qualified when, among others, the trafficked person is a child.[23]

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[20] See *id*. at 12-19.

[21] See Notice of Appeal dated July 16, 2018; *id*. at 22-23.

[22] See *People v. XXX*, G.R. No. 235652, July 9, 2018.

[23] See Section 6 (a) of RA 9208 which provides:

Section 6. *Qualified Trafficking in Persons*. — The following are considered as qualified trafficking:

(a) When the trafficked person is a child[.]

In this case, Mora and Polvoriza were charged with Qualified Trafficking in Persons under Section 4 (e) in relation to Section 6 (a) of RA 9208. Section 4 (e) of RA 9208 reads:

> Section 4. *Acts of Trafficking in Persons*. — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:
>
> x x x x x x x x x
>
> (e) To maintain or hire a person to engage in prostitution or pornography[.]

As correctly ruled by the courts *a quo,* Mora and Polvoriza are guilty beyond reasonable doubt of the crimes charged as the prosecution had clearly established the existence of the elements[24] thereof, as seen in the following: (*a*) Mora, through deception and by taking advantage of AAA's vulnerability as a minor, was able to "convince" the latter to go to Buraburan, Buhi, Camarines Sur; (*b*) upon arrival thereat, Mora took AAA to Polvoriza's videoke bar, *i.e.*, Otoy's, and left her there; and (*c*) since then and for the next eight (8) months, Polvoriza forced AAA to work as a prostitute in Otoy's, coercing her to perform lewd acts on a nightly basis, such as dancing naked in front of male customers and even having sex with them. In this regard, the courts *a quo* correctly found untenable Mora and Polvoriza's insistence that it was AAA who voluntarily presented herself to work as an entertainer/sex worker in Otoy's, as trafficking in persons can still be committed even if the victim gives consent

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[24] For a successful prosecution of Trafficking in Persons, the following elements must be shown: (*a*) the act of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders"; (*b*) the means used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and (*c*) the purpose of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." (See *People v. Hirang*, 803 Phil. 277, 289 [2017], citing *People v. Casio*, 749 Phil. 458, 472-473 [2014]).

— most especially in cases where the victim is a minor. In this regard, case law instructs that "[t]he victim's consent is rendered meaningless due to the coercive, abusive, or deceptive means employed by perpetrators of human trafficking. Even without the use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will."[25]

In light of the foregoing, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.[26] As such, Mora's (and Polvoriza's) conviction for Qualified Trafficking in Persons must be upheld.

Anent the proper penalty to be imposed, Section 10 (c) of RA 9208 states that persons found guilty of Qualified Trafficking shall suffer the penalty of life imprisonment and a fine of not less than ₱2,000,000.00 but not more than ₱5,000,000.00. Thus, the courts *a quo* correctly sentenced Mora (and Polvoriza) to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00.

Finally, the courts *a quo* correctly ordered them to pay AAA the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence.[27] Further, the Court deems it proper to impose on all monetary awards due to the victim legal interest at the rate of six percent (6%) per annum from finality of judgment until full payment.[28]

WHEREFORE, the appeal is **DENIED**. The Decision dated June 25, 2018 of the Court of Appeals in CA-G.R. CR-HC No.

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[25] *People v. Casio*, *id*. at 475-476.

[26] *Peralta v. People*, G.R. No. 221991, August 30, 2017, 838 SCRA 350, 360, citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

[27] See *People v. XXX*, *supra* note 22.

[28] See *People v. Jugueta*, 783 Phil. 806, 854 (2016).

08255 is **AFFIRMED**. As such, accused-appellant Nerissa Mora *a.k.a.* Neri Balagta Mora is found **GUILTY** beyond reasonable doubt of Qualified Trafficking in Persons defined and penalized under Section 4 (e) in relation to Section 6 (a) of Republic Act No. 9208, and accordingly, sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱2,000,000.00. She is likewise ordered to pay the victim, AAA, the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages, both with legal interest at the rate, of six percent (6%) per annum from the finality of this Decision until full payment.

SO ORDERED.

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

EN BANC

[A.C. No. 7389. July 2, 2019]

VANTAGE LIGHTING PHILIPPINES, INC., JOHN PAUL FAIRCLOUGH and MA. CECILIA G. ROQUE, *complainants, vs.* **ATTY. JOSE A. DIÑO, JR.,** *respondent.*

[A.C. No. 10596. July 2, 2019]

ATTY. JOSE A. DIÑO, JR., *complainant, vs.* **ATTYS. PARIS G. REAL and SHERWIN G. REAL,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; DISBARMENT OR SUSPENSION OF ATTORNEYS; GROUNDS THEREFOR; GROSS MISCONDUCT; CASE AT BAR. — Section 27, Rule 138 of

the Rules of Court provides the grounds for the disbarment or suspension of a lawyer, x x x Gross misconduct is defined as any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.,* conduct prejudicial to the rights of the parties or to the right determination of the cause. Generally, such conduct is motivated by a premeditated, obstinate or intentional purpose. x x x [Here,] by representing to his clients that he can secure the issuance of a TRO by bribing the judge ₱150,000.00, Atty. Diño violated Canon 13 of the Code of Professional Responsibility which provides: Canon 13 — A lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing the court. x x x As an officer of the Court, Atty. Diño has a paramount duty to protect the court's integrity and assist it in the administration of justice according to law. He should not espouse a belief that the judicial system can be bought, much less contribute to the perpetuation of such belief. Unfortunately, instead of relying on the merits of his clients' cause, Atty. Diño represented to his clients that the judicial system can be bribed. This inexcusable, shameful and unlawful act of Atty. Diño, by itself, constitutes gross misconduct. In fact, we find that it is conduct so condemnable that it merits the harshest of penalties.

2. **ID.; CODE OF PROFESSIONAL RESPONSIBILITY; A CLAIM FOR ATTORNEY'S FEES MAY BE ASSERTED EITHER IN THE VERY ACTION ON WHICH A LAWYER RENDERED HIS SERVICES OR IN A SEPARATE ACTION. —** Under Rule 16.03 of the Code of Professional Responsibility, a claim for attorney's fees may be asserted either in the very action in which a lawyer rendered his services or in a separate action, x x x The existence of this appropriate recourse notwithstanding, Atty. Diño still opted to file criminal and civil complaints against his former clients. This supports the view that his acts were ill-intentioned, and in violation of: (1) the Lawyer's Oath, which provides that he shall not wittingly or willingly promote or sue any groundless, false or unlawful suit; and (2) Rule 20.04 of the Code of Professional Responsibility, which imposes upon him the duty to avoid unnecessary lawsuits against his client to collect his fees and to resort to judicial action only to prevent imposition, injustice or fraud. We also find that Atty. Diño violated Canon 8 of the Code of Professional Responsibility when he filed a disbarment

case to harass the Reals, his former clients' new counsel. By resorting to such harassment tactics against the opposing counsel, he failed to conduct himself with courtesy, fairness and candor towards his professional colleagues.

3. **ID.; LAWYERS; ACTS OF PROFESSIONAL MALPRACTICE AND GROSS MISCONDUCT THAT WARRANT THE PENALTY OF DISBARMENT. —** In view of Atty. Diño's acts of professional malpractice and gross misconduct, and considering further the gravity of his acts, **we find that Atty. Dino's conduct warrants disbarment from the practice of law.** A three-year suspension from the practice of law is too light a penalty for a lawyer who, instead of protecting the integrity and independence of the Court, besmirched its reputation by claiming that a member of the Judiciary is for sale. Atty. Diño is clearly unfit to discharge the duties of an officer of the Court; hence, he deserves the ultimate penalty of disbarment.

4. **ID.; DISBARMENT PROCEEDINGS; THE MAIN CONCERN IS THE LAWYER'S ADMINISTRATIVE LIABILITY AND DOES NOT INCLUDE CLAIMS FOR DAMAGES THAT HAVE NO INTRINSIC LINK TO THE LAWYER'S PROFESSIONAL ENGAGEMENT. —** We, deny complainants' claim for damages. As we have reiterated in *Dagala v. Quesada,* disciplinary proceedings against lawyers are only confined to the issue of whether or not the respondent-lawyer is still fit to be allowed to continue as a member of the Bar. In other words, the main concern in disbarment proceedings is a lawyer's administrative liability. Matters which have no intrinsic link to the lawyer's professional engagement, such as the liabilities of the parties which are purely civil in nature, should be threshed out in a proper proceeding of such nature, not during administrative-disciplinary proceedings. Here, we find that complainants' claims for damages have no intrinsic link to Atty. Diño's professional engagement. Their claims, in fact, refer to expenses they allegedly incurred to defend themselves from the vexatious cases filed by Atty. Diño after the termination of their professional engagement, and injury to the goodwill of Vantage and the resulting psychological trauma on Fairclough and Roque.

5. **ID.; ID.; THE QUANTUM OF PROOF NECESSARY IS SUBSTANTIAL EVIDENCE. —** In *Cabas v. Sususco,* we ruled that the quantum of proof necessary for a finding of guilt in a

disbarment case is substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The complainant has the burden of proving his allegations against respondents.

APPEARANCES OF COUNSEL

Paris G. Real and *Sherwin G. Real* for complainants.

D E C I S I O N

JARDELEZA, *J.*:

Before us are two disbarment complaints: one filed by Vantage Lighting Philippines Inc., (Vantage), its President John Paul Fairclough (Fairclough) and its Vice President for Finance and Administration Ma. Cecilia G. Roque (Roque) (collectively referred to as complainants) against Vantage's former counsel, Atty. Jose A. Diño, Jr. (Atty. Diño), docketed as A.C. No. 7389;[1] and the other one filed by Atty. Diño against Vantage's present lawyers, Attys. Paris G. Real and Sherwin G. Real (Reals), docketed as A.C. No. 10596.[2]

A.C. No. 7389

On January 2, 2007, complainants filed a verified disbarment complaint[3] against Atty. Diño, which we referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

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[1] *Rollo*, Vol. I, pp. 1-62.

[2] *Rollo*, Vol. III. pp. 2-6.

[3] Complaint with urgent application for a temporary restraining order and/or writ of preliminary prohibitory and mandatory injunctions: (1) To prevent respondent Atty. Jose A. Diño, Jr., from incessantly filing contrived and groundless cases against his former clients, the complainants herein and/or their agents [which now total five]; and (2) To order the concerned courts and/or agencies to dismiss the malicious and baseless civil and criminal cases which respondent Atty. Jose A. Diño, Jr., capriciously filed against his former clients, the complainants herein and their officers and/or agents. (*Rollo*, Vol. I, pp. 1-62.)

Complainants alleged that, on August 15, 2006, Atty. Diño and Vantage executed a Retainer's Agreement for purposes of instituting a complaint against PHPC Co. (PHPC) and Hitachi Plant Engineering Co. Ltd. (Hitachi), subject to the payment of the following professional fees:

1. Acceptance Fee in the amount of One Hundred Fifty Thousand Pesos (₱150,000.00 + 12% VAT), payable in the following manner:
   a.) ₱75,000.00 upon the signing of this Agreement; and
   b.) ₱75,000.00 upon the filing of the Complaint in court.
2. Per pleading professional fee of Five Thousand Pesos (₱5,000.00 + 12% VAT) with reference to major pleadings filed, *i.e.*, complaint, answer to counterclaim, reply, briefs or memorandum, etc.;
3. Per appearance fee of Two Thousand Five Hundred Pesos (₱2,500.00 + 12% VAT) for each hearing or conference attended. For hearings or conferences outside of Metro Manila, the appearance fee shall be Three Thousand Five Hundred Pesos (₱3,500.00, net of taxes), exclusive of transportation and lodging expenses if necessary;
4. Deposit for photocopying, t.s.n. and other incidental expenses and costs of litigation in the amount of Three Thousand Pesos (₱3,000.00), subject to liquidation and replenishment; and
5. Success fee of One Hundred Fifty Thousand Pesos (₱150,000.00 net of taxes) in the event of a favorable resolution before the lower court as a result of our legal efforts, whether by decision or compromise settlement.[4]

As per their agreement, Vantage paid Atty. Diño ₱75,000.00 upon signing of the retainer.[5]

The civil complaint[6] against PHPC and Hitachi was filed on September 5, 2006 before the Regional Trial Court (RTC) of

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[4] *Rollo*, Vol. I, pp. 65-66.

[5] *Id.* at 7.

[6] Civil Case No. 06-0258, entitled *Vantage Lighting Phils., Inc. v. PHPC Co., Ltd. Inc. and Hitachi Plant Engineering Co. Ltd.*, *id.* at 196-198.

Parañaque City. On September 11, 2006, Atty. Diño called Roque informing her that Vantage had to pay ₱150,000.00 to the judge to whom the civil complaint of Vantage would be raffled for the issuance of a temporary restraining order (TRO).[7]

Atty. Diño also texted Roque, saying that if Vantage is unable to give him the cash before 2:00 o'clock that same afternoon, Atty. Diño will just advance the ₱20,000.00 to the judge to whom the case would be raffled.[8]

Later that same day, Atty. Diño informed Roque through a text message that the case was raffled to Judge Rolando How (Judge How). Thinking that the payment for the TRO is just a regular legal expense, Vantage agreed to reimburse the ₱20,000.00 to Atty. Diño. As it was then already past banking hours, Roque texted Atty. Diño that he will be reimbursed the ₱20,000.00 on the date of the hearing scheduled the following day. In reply, Atty. Diño told Roque that Vantage will have to prepare another ₱65,000.00 because the TRO might be issued after the hearing.[9]

The September 12, 2006 hearing was ultimately reset to the following day. Vantage, thru a Mr. Mannix Franco, nevertheless gave Atty. Diño the amount of ₱20,000.00. Atty. Diño was silent as regards the ₱65,000.00.[10]

On September 14, 2006, Roque texted Atty. Diño to ask about the status of the case and whether the TRO was going to be issued. She also told Atty. Diño that Vantage had already prepared the additional ₱65,000.00 that he asked for. In response, Atty. Diño texted Roque, "Yes awaiting it now I already paid 130k but that's my own lookout." Thereafter, at 2:16 in the afternoon of the same day, Atty. Diño texted Roque "pls ask ur messenger to stand by and be ready to personally pick up the tro at the RTC [*sic*]." After a few minutes, he again texted Roque "tro

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[7] *Id.* at 7.

[8] *Id.* at 8.

[9] *Id.*

[10] *Id.*

will be issued tom anyway that's my commitment. No expense on ur part without tro on hand."[11]

On September 15, 2006, Atty. Diño texted Roque that if the TRO will not be issued on Monday, the deal with the judge is no longer valid and the ₱20,000.00 will be returned to Vantage.[12] Three days later, he texted Roque again to say that "Fixer said judge will release order on Wednesday (September 20) I said no. Your 20k will be returned tomorrow. For your information."[13]

In the morning of September 19, 2006 and not having received any news from Atty. Diño, Vantage re-deposited the ₱65,000.00 with the bank and sent its messenger to pick up the ₱20,000.00 which Atty. Diño promised to return. Atty. Diño, however, refused to return the same and declared that he would just apply the amount to his legal fees.[14]

It appears that Atty. Diño continued to send more text messages to Roque, which the latter only got to read the following day, or on September 20, 2006. These messages read as follows:

1. "bring the 65k tom. 8:30 am tro already issued (sent at around 4:52 in the afternoon.);"
2. "exchange will be at brewsters cafe where we had coffee the other day 8:30 am (sent at around 5:05 in the afternoon);" and
3. "I will appreciate it if we start acting like professionals and honor our commitment. If your company does not want to pay the 65k, a simple yes or no will be fine. Thank you. (sent at around 6:21 in the evening)."[15]

Roque replied to Atty. Diño, apologizing for not being able to promptly respond to his text messages the previous day. She

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[11] *Rollo*, Vol. I, pp. 8-9.

[12] *Id.* at 9.

[13] *Id.* at 10.

[14] *Id.*

[15] *Rollo*, Vol. I, pp. 10-11.

also informed Atty. Diño that she will ask Vantage's personnel about the ₱65,000.00.[16] At Roque's instructions, Vantage's accounting officer called Atty. Diño to inform him that the ₱65,000.00 he asked for was re-deposited after he intimated that no TRO would be issued. Atty. Diño thereafter called Roque in anger, threatening that they (Vantage) will be sorry if they fail to pay his fees and reimburse him the amount of ₱130,000.00 which he allegedly gave to the fixers as payment to Judge How for the issuance of the TRO. When Roque told Atty. Diño that she will have to clear the matter first with Vantage management, Atty. Diño reportedly went berserk.[17]

Because of their misunderstanding, Atty. Diño withdrew as counsel for Vantage on September 21, 2006.[18] The next day, he sent Vantage the following Billing Statement:

1.	Balance of Acceptance Fee (Due last 05 Sept. 2006)	₱75,000.00
2.	Reimbursement of Mobilization and Representation Expenses (Due last 19 Sept. 2006)	130,000.00
3.	Per Pleading Fee (₱5,000.00 per pleading)Complaint, Sept. 5; Urgent Motion Sept. 18 Motion Sept. 20	15,000.00
4.	Appearances (₱2,500 per) Sept. 5, 12, 13, 18 & 20	12,500.00
5.	Reimbursement of incidental expenses (under item 4 of the Contract) Sheriff's and Process Server's Fee	2,500.00
6.	Success fee (under item 5 of the Contract) Considering the issuance of the TRO, this item will be billed separately upon the issuance of the Preliminary Injunction.	
	TOTAL	**₱235,000.00**[19]

[16] *Id.* at 11.

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

[18] *Id.* at 13.

[19] *Id.* at 13, 70.

It also appears that Atty. Diño filed a number of cases against complainants in a span of two months from the date he sent the Billing Statement to Vantage, as follows:

1. On October 4, 2006, Atty. Diño filed a criminal complaint for *estafa* against Roque and Fairclough before the Office of the City Prosecutor in Parañaque City. In his complaint affidavit,[20] Atty. Diño alleged:

> 3. Said respondents falsely pretended to the Complainant that he will be paid ₱150,000.00 as professional fee and ₱150,000.00 as success fee, plus per pleading and appearance fees, **PROVIDED**, that the Complainant first advance the amount of ₱150,000.00 as mobilization and representation expenses for the purpose of securing the TRO and Writ of Preliminary Injunction;[21]

2. On October 20, 2006, Atty. Diño filed a collection suit for sum of money and damages[22] against Roque in Civil Case No. 6175 in the amount of ₱50,000.00 before Branch 80 of the RTC in Muntinlupa City. The amount allegedly represented Atty. Diño's unpaid acceptance fees, billable hours, actual expenses incurred and success fee on the collection of accounts from the two debtors of Vantage and/or Roque;

3. On October 25, 2006, Atty. Diño filed a criminal complaint for grave oral defamation[23] against Roque before the Office of the City Prosecutor in Muntinlupa City. Roque allegedly hurled defamatory language against Atty. Diño over the telephone while it was on speaker mode. This was allegedly heard by Atty. Diño's client;

4. On November 21, 2006, Atty. Diño filed a criminal complaint for libel[24] against Roque before the Prosecutor's

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[20] *Id.* at 79-81.

[21] *Id.* at 17, 79.

[22] *Id.* at 18, 105-109.

[23] *Rollo*, Vol. I, pp. 18, 96-98.

[24] *Id.* at 21, 138-139.

Office in Muntinlupa City. Atty. Diño alleged that Roque signed a letter dated October 13, 2006 containing a statement that Atty. Diño bribed Judge How. The unsealed letter was allegedly read by the office building security guard;

5. On November 28, 2006, Atty. Diño filed a criminal complaint for falsification of private document and use of falsified document[25] against Roque and the Reals before the Prosecutor's Office in Muntinlupa City. Atty. Diño averred that Roque and the Reals introduced as evidence in court the letter[26] dated November 15, 2006 addressed to the Bureau of Immigration (BI) with a purported signature of Atty. Diño. The letter sent to the BI requested for hold departure order/watch list against Fairclough and contained statements that Fairclough has a pending *estafa* case and had molested a child.[27]

Complainants here assert that: (1) the suits and actions filed by Atty. Diño against them are clearly groundless and these acts of harassment are sufficient cause to disbar him from the legal profession for gross misconduct;[28] (2) Atty. Diño violated Rule 20.04[29] of the Code of Professional Responsibility when he filed several cases against complainants instead of settling his financial concerns with them;[30] and (3) Atty. Diño committed serious fraud, gross dishonesty, and gross misrepresentation when he accused the Reals of claiming that he (Diño) sent a letter to the BI claiming that Fairclough is the subject of an

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[25] *Id.* at 21, 125-127.

[26] *Id.* at 118.

[27] *Id.* at 19, 118.

[28] *Id.* at 23-29.

[29] Rule 20.04 – A lawyer shall avoid controversies with clients concerning his compensation and shall resort to judicial action only to prevent imposition, injustice or fraud.

[30] *Rollo*, Vol. I, pp. 29-34.

estafa case and a child molester.[31] Complainants also claim damages on account of Atty. Diño's harassment suits.[32]

Atty. Diño, in his verified comment,[33] dismissed complainants' allegations as false and incredible.[34] He denied bribing Judge How to secure the TRO[35] claiming:

> 4. **Considering the high stakes involved necessitating an exceptionally urgent prayer for preliminary reliefs,** the Respondent meticulously informed and explained to both Roque and Vantage's Chief Officer John Fairclough (Fairclough) **the additional fees, expenses and costs of litigation that were necessary, i.e., mobilization expenses, filing fees, payment of sheriffs fees, representation expenses for collaborating lawyers who will be tasked to devote laborious man-hours in personally monitoring the progress of the Complaint, payment for additional staff, among others**;
>
> 5. The provision for additional fees, expenses and costs of litigation is explicit in Item No. 4 of the LSA;
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> 6. Both Roque and Fairclough gave their solemn word of honor to the Respondent that, immediately upon the release of the TRO, he will be reimbursed for the additional fees, expenses and costs of litigation that would be incurred, capped at ₱150,000.00.[36] (Emphasis supplied.)

Atty. Diño thereafter itemized the following receivables from Vantage:

> 64. In this complaint, the complainants furtively hid the Fact that despite demand, they have not paid to the Respondent's Law Firm the balance of the Acceptance Fee (₱75,000.00 due

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[31] *Id.* at 34-47.

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

[33] *Id.* at 152-195.

[34] *Id.* at 166-170.

[35] *Id.* at 169, 178-180.

[36] *Id.* at 154.

last September 05, 2006), per pleading fees (total of ₱15,000.00) for pleadings actually filed and which pleadings the complainants were furnished copies of, per appearance fees (total of ₱12,500.00) for hearings/conferences at which the complainants and/or their agents were always present at, and **for additional expenses and costs of litigation (total of ₱130,000.00), for the following:**

- mobilization expenses;
- filing fees;
- representation expenses and professional fees for collaborating lawyers who devote laborious man-hours from September 05 up to 19, 2006 in personally monitoring the progress of the Complaint;
- payment for additional staff;
- photocopying and mailing expenses, among others.[37] (Emphasis supplied.)

Atty. Diño also argued that complainants' allegations are affirmative defenses which should be brought in the fora where the cases against them are pending.[38] He added that the cases he filed were not baseless as in fact the respective adjudicating bodies found reasonable grounds to continue with the proceedings therein.[39]

On September 4, 2007, Investigating Commissioner Maria Editha Go-Biñas (Investigating Commissioner Go-Biñas) issued a Notice of Mandatory Conference[40] directing the parties to appear on October 18, 2007 to take up the parties' admissions, stipulations of facts, and definition of issues. The mandatory conference, however, was reset to December 6, 2007 upon Atty. Diño's motion.[41] The parties were also directed to submit their respective mandatory conference briefs three days before the scheduled hearing.[42]

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[37] *Id.* at 168-169.

[38] *Id.* at 170-171.

[39] *Id.* at 172-173.

[40] *Id.* at 215.

[41] *Id.* at 236.

[42] *Id.*

On December 6, 2007, Atty. Diño, Fairclough, Roque and the Reals appeared at the scheduled hearing although the latter failed to file their mandatory conference brief. With the acquiescence of Atty. Diño, they were allowed to file their mandatory conference brief within three days. Investigating Commissioner Go-Biñas stated in her Order[43] dated December 6, 2007 that after the submission of the brief, the parties will be notified when to file their respective position papers and thereafter, the case will be submitted for decision unless there is a need to answer clarificatory questions.[44] Both parties submitted their respective mandatory conference briefs as directed.[45]

A.C. No. 10596

In his verified complaint[46] dated January 16, 2007 before the IBP Commission on Bar Discipline (CBD), instituted as CBD Case No. 071913, Atty. Diño alleged that the Reals erroneously attributed to him a one-page letter dated November 15, 2006 addressed to the BI, which letter they also used as an attachment in Roque's answer to the collection suit for sum of money and damages[47] he filed against the complainants.[48] Atty. Diño stated that the Reals knew full well that the letter did not come from him since they are familiar with his signature, his office letterhead, logo and fax number.[49]

According to Atty. Diño, he gave the Reals a chance to rectify their error. However, instead of apologizing, the Reals persisted and maintained their illegal act by using anew the letter on November 28, 2006 when they attached it to the counter-affidavit

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[43] *Rollo*, Vol. I, pp. 239-240.

[44] *Id.* at 240.

[45] *Id.* at 252-267.

[46] *Rollo*, Vol. III, pp. 2-6.

[47] *Supra* note 22.

[48] *Rollo*, Vol. III, p. 2.

[49] *Id.* at 3.

they submitted before the Office of the City Prosecutor of Muntinlupa City in the *estafa* case.[50]

Atty. Diño thus asserts that the Reals violated the following provisions of the Code of Professional Responsibility:[51]

> Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
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> x x x x x x x x x
>
> Rule 7.03 — A lawyer shall not engage in conduct that adversely affects on his fitness to practice law, x x x.
>
> x x x x x x x x x
>
> Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in court; x x x.
>
> x x x x x x x x x
>
> Rule 19.01 — A lawyer shall employ only fair and honest means to attain the lawful objectives of his client x x x.

The Reals, for their part, claim that this is a retaliatory complaint and they did not author the subject letter.[52]

A mandatory conference in this case was held on July 20, 2007. Only the Reals and Fairclough however were present; Atty. Diño did not appear at the hearing despite being duly notified by the Order[53] issued on June 25, 2007. Thus, on even date, the assigned Investigating Commissioner Randall C. Tabayoyong (Investigating Commissioner Tabayoyong) issued an Order[54] dated July 20, 2007 terminating the mandatory conference. He ruled that Atty. Diño had waived his right to participate in the proceedings. The parties were thereafter directed to file their respective verified position papers.[55]

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[50] *Id.*

[51] *Rollo*, Vol. III, p. 5.

[52] *Id.* at 47-60.

[53] *Id.* at 172.

[54] *Id.* at 174-175.

[55] *Id.* at 175.

Upon Atty. Diño's motion,[56] Investigating Commissioner Tabayoyong directed the consolidation of A.C. No. 10596 with A.C. No. 7389 in an Order[57] dated October 5, 2007.

Acting on the consolidated cases,[58] Investigating Commissioner Go-Biñas found, at the outset, that Atty. Diño gave the Judiciary a bad name by representing to his clients that the amounts he asked for were payment for the issuance of the TRO.[59] She also held that Atty. Diño should not have gone around filing several cases against the complainants, who were his former clients, purportedly to collect his fees; he should have instead observed the proceeding specifically provided under the law for such purpose.[60] For this infraction, she recommended that Atty. Diño be suspended from the practice of law for three months.[61]

On the other hand, Investigating Commissioner Go-Biñas did not find Atty. Diño's allegation against the Reals worthy of credence. According to her, the Reals, being the complainants' current counsel, would not utilize a letter which not only contains damaging statements against Fairclough, but also a prayer for the issuance of a hold departure order against him.[62]

The IBP Board of Governors, through Resolution No. XX-2013-277[63] dated March 20, 2013, unanimously adopted and approved the report and recommendation of Investigating

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

[57] *Id.* at 218-225.

[58] Upon Atty. Diño's omnibus motion to consolidate and to suspend proceedings pending consolidation dated July 16, 2007 (*Rollo*, Vol. III, pp. 177-178), the IBP CBD consolidated CBD Case No. 07-1913 (A.C. No. 10596) with A.C. No. 7389 through its Order dated October 5, 2007 (*Id.* at 218-225).

[59] *Rollo*, Vol. V, p. 8.

[60] *Id.* at 11.

[61] *Id.* at 14.

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

[63] *Id.* at 2-3.

Commissioner Go-Biñas, with the modification that Atty. Diño be suspended from the practice of law for one year (instead of three months). The Board of Governors also affirmed the dismissal of Atty. Diño's complaint against the Reals.[64]

Atty. Diño filed a motion for reconsideration but this was denied by the IBP Board of Governors through its Notice of Resolution No. XXI-2014-157[65] dated March 22, 2014.

On August 20, 2014, Atty. Diño filed before the IBP Board of Governors a motion for leave to file and admit motion for reconsideration[66] and motion to reconsider, reverse and set aside resolution and/or to remand the complaint to the CBD for proper investigation[67] both dated August 20, 2014.

On October 14, 2014, Atty. Diño filed before this Court a motion to remand the consolidated complaints to the IBP Board of Governors for proper investigation.[68] In a Resolution[69] dated February 11, 2015, we noted Atty. Diño's motion to remand the consolidated complaints and treated his motion for reconsideration of Resolution No. XXI-2014-157 as a petition for review.[70]

Atty. Diño mainly argues that: (1) there was no accusatory affidavit against him that was submitted before the IBP-CBD; (2) Vantage did not present any witness against him; and (3) the documents attached to the complaint were mere photocopies.[71]

At the outset, we note that there is nothing in the records to show that subsequent hearings transpired after the submission

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[64] *Id.* at 2.

[65] *Rollo*, Vol. IV, p. 304.

[66] *Rollo*, Vol. I, pp. 294-297.

[67] *Id.* at 298-320.

[68] *Rollo*, Vol. IV, pp. 319-327.

[69] *Id.* at 317-318.

[70] *Id.* at 318.

[71] *Rollo*, Vol. I, pp. 300-302.

of the conference briefs by the parties before Investigating Commissioner Go-Biñas and prior to the latter's Report and Recommendation[72] dated June 20, 2012. We find, however, that this is not a sufficient ground for us to remand the consolidated cases. Investigating Commissioner Tabayoyong already held a mandatory conference in A.C. No. 10596 where the Reals stipulated on the exhibits submitted by Atty. Diño. These included: (a) the letter to the BI; (b) Roque's answer in the collection suit for sum of money and damages; (c) Atty. Diño's demand letter dated November 24, 2006 asking for an apology from the Reals for alleging in the collection suit for sum of money and damages that he sent the letter to the BI; and (d) Roque's counter-affidavit in the criminal complaint for grave oral defamation. The Reals also verified, under oath, all the documents that they attached in their answer to Atty. Diño's complaint.[73] Moreover, in Atty. Diño's conference brief[74] filed after the consolidation of the cases, he admitted having filed criminal complaints against his clients and the Reals. We find these allegations and admissions contained in these exhibits and documents sufficient for us to adjudicate on the merits.[75]

I.

We find Atty. Diño guilty of gross misconduct and violation of the Lawyer's Oath and the Code of Professional Responsibility.

Section 27, Rule 138 of the Rules of Court provides the grounds for the disbarment or suspension of a lawyer, thus:

> 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

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[72] *Rollo*, Vol. IV, pp. 305-315.

[73] *Rollo*, Vol. III, pp. 266-271.

[74] *Rollo*, Vol. I, pp. 252-257.

[75] *Id.* at 255-256.

to take before admission to practice, or for a willful disobedience appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied.)

Gross misconduct is defined as any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.*, conduct prejudicial to the rights of the parties or to the right determination of the cause.[76] Generally, such conduct is motivated by a premeditated, obstinate or intentional purpose.[77]

We agree with and find as persuasive the finding of the IBP Investigating Commissioner that Atty. Diño tainted the image of the Judiciary by claiming that the ₱150,000.00 to be collected from Vantage will be used to facilitate the issuance of the TRO.[78] Although Atty. Diño now denies bribing the judge to secure the issuance of the TRO, explaining that the amount of ₱150,000.00 was for the payment of the additional fees, expenses and costs of litigation which he euphemistically called "mobilization expenses" and, for alleged professional fees for collaborating lawyers who devoted laborious man-hours in personally monitoring the progress of the complaint,[79] we find his explanation not worthy of credence.

First, Atty. Diño himself admitted in his complaint-affidavit for *estafa*[80] that the ₱150,000.00 which he described as mobilization and representation expenses was for the purpose of securing the TRO. This statement negates his assertion in the verified complaint that the ₱150,000.00 was for other

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[76] *Flores v. Mayor, Jr.*, A.C. No. 7314, August 25, 2015, 768 SCRA 161, 168, citing *Lahm III v. Mayor, Jr.,* A.C. No. 7430, February 15, 2012, 666 SCRA 1, 9.

[77] *Spouses Donato v. Asuncion, Sr.*, A.C. No. 4914, March 3, 2004, 424 SCRA 199, 204.

[78] *Rollo*, Vol. V, p. 8.

[79] *Rollo,* Vol. I, pp. 168-169.

[80] *Id.* at 79-81.

expenses.[81] Atty. Diño did not even explain in the Billing Statement what he needed to mobilize. Second, the Retainer's Agreement[82] and the Billing Statement[83] did not authorize the hiring of collaborating lawyers. Third, the reimbursement of incidental expenses such as sheriff's and process server's fees were billed under Item No. 5, *i.e.*, "Reimbursement of incidental expenses" in the Billing Statement. This is different from Item No. 2, *i.e.*, "Reimbursement of Mobilization and Representation Expenses" of the same Billing Statement. Plainly, and contrary to Atty. Diño's claim, the ₱130,000.00 could not have included the sheriffs and process server's fees.

By representing to his clients that he can secure the issuance of a TRO by bribing the judge ₱150,000.00, Atty. Diño violated Canon 13 of the Code of Professional Responsibility which provides:

> Canon 13 — A lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing the court.

In *Dongga-as v. Cruz-Angeles,*[84] we suspended respondents-lawyers from the practice of law for three years because they represented to their client that they could find a "friendly" court, judge, and public prosecutor to ensure a favorable ruling in the client's annulment case. Their representation undermined and/or denigrated the integrity of the national prosecution service and the courts, in violation of the Code of Professional Responsibility.

As an officer of the Court, Atty. Diño has a paramount duty to protect the court's integrity and assist it in the administration of justice according to law. He should not espouse a belief that the judicial system can be bought, much less contribute to the

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[81] *Id.* at 80.

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

[83] *Id.* at 70.

[84] A.C. No. 11113, August 9, 2016, 799 SCRA 624.

perpetuation of such belief. Unfortunately, instead of relying on the merits of his clients' cause, Atty. Diño represented to his clients that the judicial system can be bribed. This inexcusable, shameful and unlawful act of Atty. Diño, by itself, constitutes gross misconduct. In fact, we find that it is conduct so condemnable that it merits the harshest of penalties.

Worse, after failing to get the reimbursement/payment for his fees and other amounts he advanced for such illegal purposes, Atty. Diño threatened complainants that they would not like the succeeding events if they fail to pay him. Indeed, he made true to his threats to institute retaliatory acts against complainants and the Reals as he in fact filed five actions against Vantage and its officers within a span of two months.

Atty. Diño claims that he was merely trying to collect his professional fees and other advances that he made in complainants' behalf. Under Rule 16.03 of the Code of Professional Responsibility, however, a claim for attorney's fees may be asserted either in the very action in which a lawyer rendered his services or in a separate action,[85] to wit:

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

The existence of this appropriate recourse notwithstanding, Atty. Diño still opted to file criminal and civil complaints against his former clients. This supports the view that his acts were ill-intentioned, and in violation of: (1) the Lawyer's Oath,[86]

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[85] *Heirs and/or Estates of Atty. Rolando P. Siapian v. Intestate Estate of Late Eufrocina G. Mackay*, G.R. No. 184799, September 1, 2010, 629 SCRA 753.

[86] I, ..., do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein;

which provides that he shall not wittingly or willingly promote or sue any groundless, false or unlawful suit; and (2) Rule 20.04[87] of the Code of Professional Responsibility, which imposes upon him the duty to avoid unnecessary lawsuits against his client to collect his fees and to resort to judicial action only to prevent imposition, injustice or fraud.

We also find that Atty. Diño violated Canon 8[88] of the Code of Professional Responsibility when he filed a disbarment case to harass the Reals, his former clients' new counsel. By resorting to such harassment tactics against the opposing counsel, he failed to conduct himself with courtesy, fairness and candor towards his professional colleagues.[89]

In *Reyes v. Chiong*,[90] we suspended a lawyer from the practice of law for two years for failing to treat his opposing counsel and other lawyer with courtesy, dignity and civility, and for wittingly and willingly promoting a groundless suit. There, the respondent lawyer impleaded his opposing counsel and the prosecutor handling the *estafa* case of his client as parties-respondents in a civil complaint for the collection of sum of money. We found that respondent lawyer misused the legal

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I will do no falsehood, nor consent to its commission; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion.

SO HELP ME GOD.

[87] Rule 20.04 — A lawyer shall avoid controversies with clients concerning his compensation and shall resort to judicial action only to prevent imposition, injustice or fraud.

[88] Canon 8 — A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.

[89] The Reals represented the complainants who were respondents in the complaint for sum of money and damages filed by Diño.

[90] A.C. No. 5148, July 1, 2003, 405 SCRA 212.

processes when he unjustly impleaded the two lawyers despite knowing that they had no participation in the civil complaint.

In view of Atty. Diño's above-enumerated acts of professional malpractice and gross misconduct, and considering further the gravity of his acts, **we find that Atty. Diño's conduct warrants disbarment from the practice of law**. A three-year suspension from the practice of law is too light a penalty for a lawyer who, instead of protecting the integrity and independence of the Court, besmirched its reputation by claiming that a member of the Judiciary is for sale. Atty. Diño is clearly unfit to discharge the duties of an officer of the Court; hence, he deserves the ultimate penalty of disbarment.

II.

We, however, deny complainants' claim for damages. As we have reiterated in *Dagala v. Quesada*,[91] disciplinary proceedings against lawyers are only confined to the issue of whether or not the respondent-lawyer is still fit to be allowed to continue as a member of the Bar. In other words, the main concern in disbarment proceedings is a lawyer's administrative liability. Matters which have no intrinsic link to the lawyer's professional engagement, such as the liabilities of the parties which are purely civil in nature, should be threshed out in a proper proceeding of such nature, not during administrative-disciplinary proceedings.

Here, we find that complainants' claims for damages have no intrinsic link to Atty. Diño's professional engagement. Their claims, in fact, refer to expenses they allegedly incurred to defend themselves from the vexatious cases filed by Atty. Diño after the termination of their professional engagement, and injury to the goodwill of Vantage and the resulting psychological trauma on Fairclough and Roque.[92]

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[91] A.C. No. 5044, December 2, 2013, 711 SCRA 206, 217, citing *Tria-Samonte v. Obias*, A.C. No. 4945, October 8, 2013, 707 SCRA 1.

[92] *Rollo*, Vol. I, pp. 60-61.

III.

Finally, we affirm the dismissal of Atty. Diño's disbarment complaint against the Reals.

In *Cabas v. Sususco*,[93] we ruled that the quantum of proof necessary for a finding of guilt in a disbarment case is substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The complainant has the burden of proving his allegations against respondents.[94]

A review of the records shows that Atty. Diño failed to discharge his burden to prove that the Reals falsified a letter bearing his signature and addressed to the BI. In his complaint,[95] he based his charge of falsification on the fact that the Reals are familiar with his signature, letterhead, fax logo and fax number.[96] There was no concrete evidence, however, to prove that the Reals authored such letter.

On the contrary, the Reals' defense should be given more weight for being in line with logic and reasons. As correctly ruled by the Investigating Commissioner, the Reals could not have been the authors of the letter since they have no motive to damage the character and image of Fairclough, their client.[97] In fact, as complainants' present counsel, it is highly improbable that they would fabricate a letter containing a prayer for the issuance of a hold departure order against Fairclough and statements damaging to the latter's person and thereafter use it to their client's detriment.

WHEREFORE, premises considered, Atty. Jose A. Diño, Jr. is hereby **DISBARRED FROM THE PRACTICE OF LAW**

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[93] A.C. No. 8677, June 15, 2016, 793 SCRA 309, as cited in *Reyes v. Nieva*, A.C. No. 8560, September 6, 2016, 802 SCRA 196, 219.

[94] *Rollo*, Vol. I, p. 240.

[95] *Rollo*, Vol. III, pp. 2-6.

[96] *Id.* at 2-3.

[97] *Rollo*, Vol. V, pp. 12-13.

EFFECTIVE IMMEDIATELY upon his receipt of this Decision. Let his name be stricken off the Roll of Attorneys.

On the other hand, the administrative complaint against Attys. Paris G. Real and Sherwin G. Real is **DISMISSED** for failure of Atty. Jose A. Diño, Jr. to prove his case against them.

Let copies of this Decision be furnished to the Office of the Bar Confidant to be appended to Atty. Jose A. Diño, Jr.'s personal record as an attorney, to the Integrated Bar of the Philippines, and to all courts in the country for their information and guidance. May this Decision serve as a warning to all lawyers that this Court takes seriously any imputation that would harm the integrity of our courts and the judicial system.

SO ORDERED.

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

Gesmundo, J., on official leave.

EN BANC

[A.M. No. RTJ-19-2562. July 2, 2019]
(Formerly A.M. No. 18-10-234-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **HON. PHILIP G. SALVADOR Presiding Judge, Regional Trial Court of Laoag City, Ilocos Norte, Branch 13, and Acting Presiding Judge, Regional Trial Court of Batac City, Ilocos Norte, Branch 17,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; IN RESOLVING ADMINISTRATIVE CASES AGAINST JUDGES OR JUSTICES OF THE LOWER COURTS, REFERENCE NEED ONLY BE MADE TO RULE 140 OF THE RULES OF COURT AS REGARDS THE CHARGES AND THE IMPOSABLE PENALTIES. —** [T]he Court notes that the OCA improperly recommended Judge Salvador to be administratively liable for Conduct Grossly Prejudicial to the Best Interest of the Service, given that such administrative offense is found in civil service laws and rules which have no application to administrative cases involving judges or justices of the lower courts. In the recent case of *Boston Finance and Investment Corporation v. Gonzalez (Boston Finance),* the Court *En Banc* had definitively settled, *inter alia,* that "in resolving administrative cases against judges or justices of the lower courts, **reference need only be made to Rule 140 of the Rules of Court** as regards the charges, as well as the imposable penalties." Likewise, it held that "[i]f the respondent judge or justice of the lower court is found guilty of **multiple offenses** under Rule 140 of the Rules of Court, the Court shall impose separate penalties for each violation."

2. **ID.; ID.; ID.; RETIREMENT; A JUDGE HAS NO AUTHORITY TO ACT ON A CASE ONCE HE HAS RETIRED FROM OFFICE; VIOLATION THEREOF IS GROSS IGNORANCE OF THE LAW. —** It is an elementary rule that a judge has no authority to act on a case once he has retired from office. Undoubtedly, retirement is one of the recognized modes of severing one's public employment. Retirement has been defined as a withdrawal from office, public station, business, occupation, or public duty. In this regard, jurisprudence states that when a judge retires, all his authority to decide any case, *i.e.,* to write, sign and promulgate the decision thereon, also 'retires' with him. In other words, he had lost entirely his power and authority to act on all cases assigned to him prior to his retirement. However, despite his optional retirement on January 31, 2018, Judge Salvador continued to discharge his previous functions as Presiding Judge and Acting Presiding Judge of the RTC-Laoag and the RTC-Batac, respectively. Clearly, such actions exhibited his utter lack of conversance about a basic tenet of law and procedure. As such,

he should be held administratively liable for Gross Ignorance of the Law, which infraction he is considered to have committed for every case he had presided over/decided beyond the effective date of his retirement.

3. ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW AND VIOLATION OF SUPREME COURT RULES; DIRECTIVES AND CIRCULARS; PENALTY. — Anent the proper penalty to be meted on Judge Salvador, Section 11 (A), Rule 140 of the Rules of Court provides that a serious charge, such as Gross Ignorance of the Law, may be punishable by: *(a)* **dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;** (*b)* suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or (*c*) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. On the other hand, Section 11 (B) of the same Rule provides that a less serious charge, such as Violation of Supreme Court Rules, Directives, and Circulars, may be punishable by: *(a)* suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or *(b)* **a fine of more than ₱l0,000.00 but not exceeding ₱20,000.00.**

4. ID.; ID.; ID.; ID.; PENALTY WHERE JUDGE ALREADY RETIRED FROM SERVICE. — Considering that Judge Salvador has been found guilty of multiple counts of Gross Ignorance of the Law under Rule 140 of the Rules of Court, the Court, pursuant to *Boston Finance,* shall impose the penalty of dismissal, each for his multiple acts of Gross Ignorance of the Law, and separately, a fine of ₱20,000.00 for his Violation of Supreme Court Rules, Directives, and Circulars. However, since Judge Salvador had already retired and can no longer be dismissed from the service as penalty for his multiple acts of Gross Ignorance of the Law, the Court deems it proper to instead, forfeit all his retirement benefits, except accrued leave credits. x x x Likewise, following existing jurisprudence, the accessory penalty of disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations, is imposed against Judge Salvador. Meanwhile,

for his Violation of Supreme Court Rules, Directives, and Circulars, the Court hereby imposes on him a fine of ₱20,000.00, to be deducted by the OCA from his accrued leave credits. In case his leave credits are found to be insufficient, the OCA is ordered to direct Judge Salvador to pay, within ten (10) days from notice, the said amount or the remaining balance thereof, if any.

5. ID.; ID.; ID.; CASES ACTED UPON BY A JUDGE DESPITE THE EFFECTIVITY OF HIS RETIREMENT; OUGHT TO BE DECLARED NULL AND VOID; PARTIES IN THOSE CASES MUST BE DULY NOTIFIED OF THE JUDGE'S LACK OF AUTHORITY SO THAT THEY MAY AVAIL OF THE APPROPRIATE PROCEDURAL RELIEF TO NULLIFY THE PROCEEDINGS. — Judge Salvador acted on ten (10) cases in RTC-Laoag and fifteen (15) cases in RTC-Batac despite the effectivity of his retirement on January 31, 2018. x x x Since Judge Salvador had already lost his authority to act on the cases assigned to his *salas* by virtue of his retirement, his actions on the affected cases ought to be declared null and void. However, considering that this case is only administrative/disciplinary in nature and hence, revolves only around the issue of Judge Salvador's administrative liability, it escapes the parameters of the Court's jurisdiction over this case to make a wholesale declaration of nullity herein. **Instead, the Court finds it prudent to direct, through the OCA, RTC-Laoag and RTC-Batac, as the case may be, to duly notify the parties involved in the above-mentioned cases of Judge Salvador's lack of authority as of January 31, 2018 so that they may avail of the appropriate procedural relief to nullify the proceedings/rulings rendered by him as of the said date.** Notably, the foregoing observation holds true even for the criminal cases presided over/decided by Judge Salvador as of January 31, 2018 since double jeopardy attaches only when "the accused was convicted or acquitted or the case was dismissed without his express consent" by "*a court of competent jurisdiction.*" It is well-settled that "double jeopardy will not attach x x x when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction," as in the case of Judge Salvador who presided over the proceedings in the above-enumerated cases despite his lack of authority as of January 31, 2018.

D E C I S I O N

PERLAS-BERNABE, *J.*:

The instant administrative case arose from the report[1] on the judicial audit conducted by the Judicial Audit Team of the Office of the Court Administrator (OCA) of the case records of Regional Trial Court (RTC) of Laoag City, Ilocos Norte, Branch 13 (RTC-Laoag) and RTC of Batac City, Ilocos Norte, Branch 17 (RTC-Batac), both handled by Judge Philip G. Salvador (Judge Salvador) as Presiding Judge and Acting Presiding Judge, respectively.

The Facts

On January 22, 2018, Judge Salvador, then Presiding Judge of RTC-Laoag and Acting Presiding Judge of RTC-Batac, submitted his application for optional retirement effective January 31, 2018 to the Employees' Welfare and Benefits Division of the OCA, which was later approved in a Resolution dated April 3, 2018 in A.M. No. 16969-Ret.[2] In view thereof, the Judicial Audit Team performed a judicial audit and inventory of Judge Salvador's cases in the aforesaid *salas*.[3]

In a report[4] dated August 8, 2018, the Judicial Audit Team reported to the OCA that despite the effectivity of Judge Salvador's optional retirement on January 31, 2018, he still conducted hearings, issued orders, and/or rendered decisions

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[1] See Report on the Judicial Audit and Inventory of Case Records Conducted in Branch 13, Regional Trial Court of Laoag City; *rollo,* pp. 9-16.

[2] Entitled *"Re: Application for Optional Retirement under Republic Act. No. 910, as amended by Republic Act Nos. 5095 and 9946, of Hon. Philip G. Salvador, Presiding Judge, Regional Trial Court, Branch 13, Laoag City, Ilocos Norte."* See *id*. at 2.

[3] See *id*.

[4] See Report on the Judicial Audit and Inventory of Case Records Conducted in Branch 13, Regional Trial Court of Laoag City signed by Judicial Supervisor Reginald I. Bacolor; *id*. at 9-16.

in ten (10) cases[5] pending before the RTC-Laoag and in fifteen (15) cases pending before the RTC-Batac.[6] As such, it was recommended that: *(a)* a regular administrative case be filed against Judge Salvador for Grave Misconduct and Ignorance of the Law; and *(b)* the subject cases decided and resolved by Judge Salvador be referred to the designated acting presiding judge of RTC-Laoag and RTC-Batac for their appropriate action.[7]

The OCA's Report and Recommendation

In a report[8] dated September 26, 2018, the OCA recommended that: *(a)* the report dated August 8, 2018 of the Judicial Audit Team be re-docketed as a regular administrative matter; *(b)* Judge Salvador be found guilty of Conduct Grossly Prejudicial to the Best Interest of the Service, and accordingly, be meted with a fine in the amount of ₱100,000.00 in lieu of suspension; and *(c)* the decision and resolutions he rendered after January 31, 2018 be declared null and void, and said cases be ordered remanded to the court of origin for adjudication anew and promulgation of new decisions.[9]

It found that since the decisions and resolutions were made after the effectivity date of Judge Salvador's optional retirement on January 31, 2018, the same were without authority, and therefore, should be considered null and void. It likewise ruled that the act of Judge Salvador in issuing said decisions and resolutions constitutes conduct grossly prejudicial to the best

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[5] The original report indicates eleven (11) cases. However, it appears on the records that the Decision dated January 15, 2018 in Criminal Case Nos. 15981 and 15982 was erroneously included in the list of cases reported to be decided by Judge Salvador after the effectivity of his optional retirement on January 31, 2018.

[6] See *id*. at 11-15.

[7] *Id*. at 16.

[8] See Administrative Matter for Agenda signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Raul Bautista Villanueva; *id*. at 2-8.

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

interest of the service, which is penalized by suspension from the service. However, considering Judge Salvador's retirement from service, the OCA recommended instead that he be fined in the amount of ₱100,000.00.[10]

The Issue Before the Court

The sole issue presented for the Court's resolution is whether or not Judge Salvador should be administratively sanctioned.

The Court's Ruling

I.

At the outset, the Court notes that the OCA improperly recommended Judge Salvador to be administratively liable for Conduct Grossly Prejudicial to the Best Interest of the Service, given that such administrative offense is found in civil service laws and rules which have no application to administrative cases involving judges or justices of the lower courts. In the recent case of *Boston Finance and Investment Corporation v. Gonzalez*[11] *(Boston Finance),* the Court *En Banc* had definitively settled, *inter alia,* that "in resolving administrative cases against judges or justices of the lower courts, **reference need only be made to Rule 140 of the Rules of Court** as regards the charges, as well as the imposable penalties."[12] Likewise, it held that "[i]f the respondent judge or justice of the lower court is found guilty of **multiple offenses** under Rule 140 of the Rules of Court, the Court shall impose separate penalties for each violation," to wit:

> (a) **Rule 140 of the Rules of Court shall exclusively govern administrative cases involving judges or justices of the lower courts. If the respondent judge or justice of the lower court is found guilty of multiple offenses under Rule 140 of the Rules of Court, the Court shall impose separate penalties for each violation;** and

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[10] See *id*. at 6-7.

[11] See A.M. No. RTJ-18-2520, October 9, 2018.

[12] See *id*.

(b) The administrative liability of court personnel (who are not judges or justices of the lower courts) shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules. If the respondent court personnel is found guilty of multiple administrative offenses, the Court shall impose the penalty corresponding to the most serious charge, and the rest shall be considered as aggravating circumstances.[13] (Emphasis and underscoring supplied)

In light of the foregoing guidelines and pursuant to the power of the Court *En Banc* to discipline judges of lower courts, and even order their dismissal, if warranted,[14] the Court now determines the administrative liability of Judge Salvador.

II.

In an effort to streamline the processing of applications for optional retirement filed by officials and employees of the Judiciary, the Court issued Administrative Circular No. 43-2004,[15] pertinent portions of which read:

WHEREFORE, the following new guidelines in the filing of applications for OPTIONAL retirement are hereby adopted **for strict compliance** by all concerned:

1. All applications for optional retirement shall **specify the date of effectivity thereof** and should not make it effective "upon approval by the Court."

x x x x x x x x x

3. The application should be **filed at least SIX (6) MONTHS prior to the effectivity date of the retirement** indicated in the application.

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[13] See *id*.

[14] See Section 11, Article VIII of the Constitution.

[15] Entitled "ADOPTING NEW GUIDELINES ON THE FILING OF APPLICATIONS FOR OPTIONAL RETIREMENT" dated September 6, 2004 and signed by then Chief Justice Hilario G. Davide, Jr.

5. <u>If on the date specified in the application as the date of the effectivity of the retirement, the applicant has not yet received any notice of approval or denial of his application, he shall cease working and discharging his functions unless directed otherwise</u>.

x x x x x x x x x

(Emphases and underscoring supplied)

In this case, the Court notes that while Judge Salvador complied with the first guideline by indicating the effectivity date of his optional retirement on January 31, 2018, he violated: *(a)* the third guideline as he filed his application for optional retirement only on January 22, 2018, or a mere nine (9) days — not six (6) months as required — prior to the effectivity date of his optional retirement; and *(b)* the fifth guideline as he specified, in his application, January 31, 2018 as the effectivity date of his optional retirement and yet, still continued to discharge his functions as Presiding Judge and Acting Presiding Judge of the RTC-Laoag and the RTC-Batac, respectively, even after the said date. This constitutes the less serious charge of Violation of Supreme Court Rules, Directives, and Circulars under Section 9 (4), Rule 140 of the Rules of Court.

Moreover, by presiding over cases and even issuing orders and resolutions even after his optional retirement on January 31, 2018, the Court finds that Judge Salvador committed multiple counts[16] of Gross Ignorance of the Law, which is a serious charge under Section 8 (9), Rule 140 of the Rules of Court. In *OCA v. Alaras,*[17] the Court eloquently explained the nature of this administrative offense, to wit:

<u>Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence.</u> Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within

[16] Detailed in pages 7-10 of this Decision. See also *rollo,* pp. 2-6.

[17] See A.M. No. RTJ-16-2484, July 23, 2018.

the parameters of tolerable misjudgment. Such, however, is not the case with Judge Mislang. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. **A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions.**

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. **When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both cases, the judge's dismissal will be in order.**[18] (Emphases and underscoring supplied)

It is an elementary rule that a judge has no authority to act on a case once he has retired from office. Undoubtedly, retirement is one of the recognized modes of severing one's public employment. Retirement has been defined as a withdrawal from

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[18] See *id*., citing *Department of Justice v. Mislang,* 791 Phil. 219, 227-228 (2016).

office, public station, business, occupation, or public duty.[19] In this regard, jurisprudence states that when a judge retires, all his authority to decide any case, *i.e.,* to write, sign and promulgate the decision thereon, also 'retires' with him. In other words, he had lost entirely his power and authority to act on all cases assigned to him prior to his retirement.[20] However, despite his optional retirement on January 31, 2018, Judge Salvador continued to discharge his previous functions as Presiding Judge and Acting Presiding Judge of the RTC-Laoag and the RTC-Batac, respectively. Clearly, such actions exhibited his utter lack of conversance about a basic tenet of law and procedure. As such, he should be held administratively liable for Gross Ignorance of the Law, which infraction he is considered to have committed for every case he had presided over/decided beyond the effective date of his retirement.

III.

Anent the proper penalty to be meted on Judge Salvador, Section 11 (A), Rule 140 of the Rules of Court provides that a serious charge, such as Gross Ignorance of the Law, may be punishable by: *(a)* **dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;** *(b)* suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or *(c)* a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

On the other hand, Section 11 (B) of the same Rule provides that a less serious charge, such as Violation of Supreme Court Rules, Directives, and Circulars, may be punishable by: *(a)* suspension from office without salary and other benefits

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[19] *Brion v. South Philippine Union Mission of the Seventh Day Adventist Church,* 366 Phil. 967, 974 (1999).

[20] See *City of Taguig v. City of Makati,* 787 Phil. 367, 397 (2016); citations omitted.

for not less than one (1) nor more than three (3) months; or *(b)* **a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.**

Considering that Judge Salvador has been found guilty of multiple counts of Gross Ignorance of the Law under Rule 140 of the Rules of Court, the Court, pursuant to *Boston Finance,* shall impose the penalty of dismissal, each for his multiple acts of Gross Ignorance of the Law, and separately, a fine of ₱20,000.00 for his Violation of Supreme Court Rules, Directives, and Circulars.

However, since Judge Salvador had already retired and can no longer be dismissed from the service as penalty for his multiple acts of Gross Ignorance of the Law, the Court deems it proper to instead, forfeit all his retirement benefits, except accrued leave credits. Indeed, similar to cases of supervening death during the pendency of an administrative case, it is still within the Court's power to forfeit an erring judge's retirement benefits although the penalty of dismissal could no longer be implemented.[21] Likewise, following existing jurisprudence,[22] the accessory penalty of disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations, is imposed against Judge Salvador.

Meanwhile, for his Violation of Supreme Court Rules, Directives, and Circulars, the Court hereby imposes on him a fine of ₱20,000.00, to be deducted by the OCA from his accrued leave credits. In case his leave credits are found to be insufficient, the OCA is ordered to direct Judge Salvador to pay, within ten (10) days from notice, the said amount or the remaining balance thereof, if any.[23]

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[21] See *Report on the Financial Audit Conducted in the Municipal Trial Court in Cities in Tagum City, Davao del Norte,* 720 Phil. 23, 55 (2013). See also *OCA v. Chavez,* A.M. No. RTJ-10-2219 and A.M. No. 12-7-130-RTC, March 7, 2017, 819 SCRA 446, 463-480.

[22] See *OCA v. Chavez, id.*

[23] See *Office of the Court Administrator v. Umblas,* A.M. No. P-09-2649, August 1, 2017, 833 SCRA 502, 514-516.

IV.

As adverted to earlier, Judge Salvador acted on ten (10) cases in RTC-Laoag and fifteen (15) cases in RTC-Batac despite the effectivity of his retirement on January 31, 2018. These cases are as follows:

RTC-Laoag

Case Number	Accused/Title	Nature	Date of Decision/ Resolution Terminating Case
Criminal Case No. 15630	Roy Navarrete	Section 11, RA 9165	Decision dated March 20, 2018 wherein the court opted to consider the disposition of the plea bargain of the accused in the decision to be rendered. Guilty beyond reasonable doubt of Section 15 of RA 9165 for illegal use of prohibited drugs for the second time and sentenced to imprisonment to an indeterminate sentence of 6 years & 1 day to 8 years and a fine of Php 50,000.00.

Criminal Case No. 16079	Rommel Pablo	Section 11, RA 9184	Decision dated April 10, 2018 wherein accused Rommel Pablo, Larry Matute, Jefferson Bungubong and Myra Mateo were acquitted.
Criminal Case Nos. 17141 & 17142	Kenneth Santella	Sections 5 & 11, RA 9184	Decision dated March 26, 2018 wherein the accused was acquitted. *Entry of Judgment dated April 10, 2018
SCA No. 17161	National Grid vs. Visitacion Salvador-Labayog, et al.	Expropriation	Order dated March 15, 2018 wherein the order of expropriation was ordered to be issued.
Civil Case No. 15282-13	Ricardo Caday, substituted by His Heirs, Rolando Caday, et al. vs. Heirs of Eusebio Delos Santos, et al.	Annulment of TCT No. 021-201000312 and other documents with prayer for issuance of Preliminary injuction and temporary restraining order	Decision dated March 26, 2018 wherein the case was dismissed for failure of plaintiff to prove his claim.
Civil Case No. 16090-13	Heirs of Esteban Corrales, et al vs. Ireneo Corrales	Judicial Partition of Real Estate	Order dated February 27, 2018 wherein the case was ordered dismissed upon

			motion of plaintiffs who asked to dismiss the case for failure to implead other heirs without prejudice of refiling.
Civil Case No. 15430	Marita T. Palalay vs. ECG Square Lending Corp.	Nullity of Mortgage	Order dated February 28, 2018 wherein the case was provisionally dismissed upon failure of plaintiff to present evidence.
Cad No. 46	Pasion vs. Acting Registrar of Deeds, Laoag City	Petition for Correction of Transfer of Certificate of Title	Decision dated February 27, 2018 wherein in the petition was granted.
Cad No. 16	Barangan vs. Register of Deeds, Laoag City	Petition for Issuance of Second Owner's Duplicate Copy of Title	Decision dated February 28, 2018 wherein the petition was granted.
Cad No. 14	Aguinaldo vs. Register of Deeds of Laoag City	Petition for Issuance of Second Owner's Duplicate Copy of Title	Decision dated March 27, 2018 wherein the petition was granted.

RTC-Batac

Case Number	Accussed/Title	Nature	Date of Decision/ Resolution Terminating Case

LRC No. N-441-17	Spouses Joedy Alibuyog and Melgene Alibuyog vs. Louella Agdeppa, et al.	Issuance of New Certificate of Lost Original Certificate of Title	Decision dated February 26, 2018 wherein petition was granted. Entry of Judgment dated May 17, 2018
Civil Case No. 5582	Rufino Pe Benito Pabico vs. Estrella a.k.a. Nini Pe Benito, et al.	Accion Publiciana	Order dated February 26, 2018 wherein the motion to withdraw the complaint was granted. The case was considered withdrawn and dismissed.
LRC No. N-434	Alexander Balanay, et al vs. RD of Ilocos Norte	Amendment/ Correction of TCT	Decision dated February 26, 2018 wherein the petition was granted.
LRC No. N-450-17	Elvina Tayament vs. RD of Batac, Ilocos Norte	Petition for issuance of Second Owner's Duplicate Copy of Title	Decision dated February 26, 2018 wherein the petition was granted.
LRC No. N-428-17	Nieves Ramos, et al. vs. RD of District II, Ilocos Norte	Petition for issuance of Second Owner's Duplicate Copy of Title	Decision dated February 26, 2018 wherein the petition was granted.
LRC No. N-452-17	Nelson Cabulera, et al. vs. RD of Ilocos Norte	Petition for issuance of Second Owner's Duplicate Copy of Title	Decision dated February 26, 2018 wherein the petition was granted.

LRC No. N-453-17	Antolin Beltran, Jr. v. RD Ilocos Norte	Petition for issuance of Second Owner's Duplicate Copy of Title	Decision dated April 23, 2018 wherein the petition was granted.
LRC No. N-331-17	Dionisia Pasion-Medina vs. OIC RD of Ilocos Norte	Petition for issuance of Second Owner's Duplicate Copy of Title	Decision dated March 26, 2018 wherein the petition was granted.
SP Proc. No. 5590-17	UBA vs. Local Civil Registrar of Batac City, Ilocos Norte	Correction of Entry in the Birth Records, etc.	Decision dated March 20, 2018 wherein the petition was granted.
Criminal Case No. 5510	Gerry Duco	Frustrated Homicide	Order dated March 5, 2018 wherein the case was dismissed due to the execution of an affidavit of desistance by the complainant.
Criminal Case No. 5433	Tony Laurelio	Violation of RA 9516	Order dated March 12, 2018 wherein the accused was found guilty but will be released on the ground that he has already served his sentence.
Criminal Case Nos. 5387 & 5388	R. Delos Santos	Violation of RA 10591	Decision dated March 12, 2018 wherein accused was found guilty.
Criminal Case No. 4806	Molina and Tabucbuc	Frustrated Murder	Order dated March 12, 2018 wherein accused

			Molina was found guilty and to be released on the ground that he has already served his sentence.
Criminal Case No. 4869	Bogasol and Bingayen	Violation of PD 705 and RA 9175	Decision dated March 12, 2018 wherein accused Bingayen was found guilty.
Criminal Case No. 5486	Grace Florida	Theft	Decision dated March 19, 2018 wherein the accused was found guilty.

Since Judge Salvador had already lost his authority to act on the cases assigned to his *salas* by virtue of his retirement, his actions on the foregoing affected cases ought to be declared null and void.[24] However, considering that this case is only administrative/disciplinary in nature and hence, revolves only around the issue of Judge Salvador's administrative liability, it escapes the parameters of the Court's jurisdiction over this case to make a wholesale declaration of nullity herein. **Instead, the Court finds it prudent to direct, through the OCA, RTC-Laoag and RTC-Batac, as the case may be, to duly notify the parties involved in the above-mentioned cases of Judge Salvador's lack of authority as of January 31, 2018 so that they may avail of the appropriate procedural relief to nullify the proceedings/rulings rendered by him as of the said date.**

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[24] See *Re: Report on the Judicial Audit in RTC-Branch 15, Ozamiz City (Judge Pedro L. Suan; Judge Resurrection T. Inting of Branch 16, Tangub City),* 481 Phil. 710, 719-723 (2004). See also *Nazareno v. Court of Appeals,* 428 Phil. 32, 40-43 (2002).

Notably, the foregoing observation holds true even for the criminal cases presided over/decided by Judge Salvador as of January 31, 2018 since double jeopardy attaches only when "the accused was convicted or acquitted or the case was dismissed without his express consent" by "a *court of competent jurisdiction.*"[25] It is well-settled that "double jeopardy will not attach x x x when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction,"[26] as in the case of Judge Salvador who presided over the proceedings in the above-enumerated cases despite his lack of authority as of January 31, 2018.

As a final note, it must be stressed that time and again, this Court has declared that the image of a court of justice is mirrored by the conduct, official or otherwise, of its personnel — from the judge to the lowest of its rank and file — who are all bound to adhere to the exacting standard of morality and decency in both their professional and private actions.[27] Judges are held to higher standards of integrity and ethical conduct than other persons not vested with public trust and confidence. Judges should uplift the honor of the judiciary rather than bring it to disrepute.[28] Their acts and omissions, therefore, should not only be circumscribed with the heavy burden of responsibility but at all times be the embodiment of competence, integrity, and independence.[29]

WHEREFORE, the Court finds Judge Philip G. Salvador (Judge Salvador) **GUILTY** of Gross Ignorance of the Law. In lieu of the penalty of dismissal from service which may no longer be imposed due to Judge Salvador's retirement, the Court hereby **FORFEITS** all his retirement benefits, except accrued leave credits. He is further **DISQUALIFIED** from any

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[25] See *People v. Alejandro,* G.R. No. 223099, January 11, 2018.

[26] See *id*.

[27] See *De Los Santos v. Vasquez,* A.M. No. P-18-3792, February 20, 2018.

[28] *Tuvillo v. Laron,* 797 Phil. 449, 467.

[29] Rule 1.01, Canon 1 of the Code of Judicial Conduct.

reemployment or appointment in any branch or instrumentality of the government, including government-owned and controlled corporations and financial institutions.

The Court likewise finds Judge Salvador **GUILTY** of Violation of Supreme Court Rules, Directives, and Circulars. Accordingly, he is meted with a **FINE** of ₱20,000.00, to be deducted by the Office of the Court Administrator (OCA) from his accrued leave credits. In case his leave credits are found to be insufficient, the OCA is **ORDERED** to direct Judge Salvador to pay, within ten (10) days from notice, the said amount or the remaining balance thereof, if any.

Finally, the OCA is hereby **ORDERED** to issue the appropriate directives to the Regional Trial Courts of Laoag City, Ilocos Norte, Branch 13 and Batac City, Ilocos Norte, Branch 17 to notify the parties in the cases presided over and/or resolved by Judge Salvador as discussed in this Decision.

SO ORDERED.

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

Gesmundo, J., on official leave.

THIRD DIVISION

[A.C. No. 9057. July 3, 2019]
(Formerly CBD Case No. 12-3413)

ARLENE O. BAUTISTA, *complainant, vs.* **ATTY. ZENAIDA M. FERRER,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; PROHIBITION AGAINST USING ABUSIVE, OFFENSIVE OR IMPROPER LANGUAGE; VIOLATED WHEN LAWYER HURLED OFFENSIVE WORDS AGAINST A PERSON WHILE HOLDING A PAIR OF SCISSORS. —** [I]t was clearly established, and in fact admitted by Ferrer, that she uttered the derogatory remarks. x x x This fact, standing alone, already violates Rule 8.01 of Canon 8 of the Code of Professional Responsibility which prohibits a lawyer from using language which is abusive, offensive, or otherwise improper. It is not amiss to add, moreover, that Ferrer was even thrusting a pair of scissors making a move to throw it in anger. x x x The fact that she angrily hurled offensive words at Bautista while holding a pair of scissors was enough to threaten and intimidate the latter. As the Investigating Commissioner held, these words surely have no place in the mouth of a lawyer in a high government office such as Ferrer, an Assistant Regional State Prosecutor no less.

2. **ID.; ID.; DUTY TO UPHOLD THE CONSTITUTION AND THE LAWS; VIOLATED IN CASE AT BAR WHEN LAWYER DEPRIVED A PERSON OF HER PERSONAL EFFECTS WITHOUT DUE PROCESS OF LAW. —** [T]he Court agrees with the Investigating Commissioner's finding that Ferrer's taking of Bautista's cellphone, even if it was eventually returned later on, and refusal to release the personal effects of Bautista is tantamount to confiscation, or depriving Bautista of something that is hers without due process of law. This is in clear breach of the Bill of Rights, particularly the principle that no person shall be deprived of life, liberty, or property without due process of law. Under Canon 1 of the Code of Professional Responsibility, lawyers, such as Ferrer, are mandated to uphold the Constitution and the laws. The Court is of the opinion, therefore, that Ferrer's withholding of Bautista's personal property not only runs counter to her duty to uphold the law, it is also equivalent to putting the law into her own hands.

3. **ID.; ID.; PROHIBITION AGAINST A LAWYER IN GOVERNMENT FROM USING HIS/HER POSITION OR INFLUENCE TO PROMOTE OR ADVANCE HIS/HER**

PRIVATE INTERESTS; VIOLATED IN CASE AT BAR. — Rule 6.02, Canon 6 of the Code of Professional Responsibility prohibits a lawyer in government from using his/her public position or influence to promote or advance his/her private interests. On this score, let Us not forget that Ferrer was the Assistant Regional State Prosecutor of San Fernando City, La Union, at the time of the incident and that Bautista was well aware of such fact. Let Us also not forget that Bautista was questioned at the police station from 2:30 p.m. to 7:00 p.m., or almost 5 hours. But despite this, Ferrer did not file any complaint against Bautista, insisting that she merely wanted to talk to Bautista in front of the police authorities. These police authorities searched Bautista's belongings looking for any clue as to the whereabouts of Ferrer's money as well as the debtors who borrowed the same. Thus, even assuming that Ferrer did not really kick, punch, or repeatedly slap Bautista's head, the fact that Bautista surrendered her cellphone and allowed herself to be brought by Ferrer from one place to another, from early morning until the evening, shows how Ferrer succeeded in using her high and powerful position in the government to intimidate Bautista, a mere manicurist and lessee of her property.

4. **ID.; RULES OF COURT ON DISBARMENT OR SUSPENSION OF ATTORNEYS; GROUNDS THEREFOR.** — Section 27, Rule 138 of the Rules of Court provides that a member of the bar may be removed or suspended from his office as attorney by the Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilfull 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. In addition, the failure to live up to the provisions of the Code of Professional Responsibility is, likewise, a ground for disciplinary action.

5. **ID.; ID.; ID.; WHETHER IN THEIR PROFESSIONAL OR IN THEIR PRIVATE CAPACITY, LAWYERS MAY BE DISBARRED OR SUSPENDED FOR MISCONDUCT.** — [W]hether the dispute between the parties is a private matter is of no moment. In *Gonzalez v. Atty. Alcaraz*, We held that "whether in their professional or in their private capacity, lawyers

may be disbarred or suspended for misconduct. This penalty is a consequence of acts showing their unworthiness as officers of the courts, as well as their lack of moral character, honesty, probity, and good demeanor. When the misconduct committed outside of their professional dealings is so gross as to show them to be morally unfit for the office and the privileges conferred upon them by their license and the law, they may be suspended or disbarred."

6. ID.; ID.; VINDICTIVE BEHAVIOR WARRANTED THE PENALTY OF ONE (1) YEAR SUSPENSION FROM THE PRACTICE OF LAW. — [W]hile Ferrer had every right to demand the return of her investments, the appropriate course of action should have been to file a collection case against Bautista. But instead, she chose to put the law into her own hands x x x This vindictive behavior must be met with suspension from the practice of law for a period of one (1) year.

APPEARANCES OF COUNSEL

Susan Munzing for complainant.

D E C I S I O N

PERALTA, *J.*:

Before the Court is an Affidavit-Complaint[1] dated July 11, 2011 filed by complainant Arlene O. Bautista charging respondent Atty. Zenaida M. Ferrer with Violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics.

The antecedent facts are as follows:

In her complaint, Bautista alleged that she had recently accused Ferrer, Assistant Regional State Prosecutor, Office of the Prosecutor, Region 1, San Fernando City, La Union, with grave coercion, grave threats, grave oral defamation, unlawful arrest, violation of Republic Act (*R.A.*) No. 7438, entitled *An Act*

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

Defining Certain Rights of Person Arrested, Detained or under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof, theft, and attempted homicide. As borne by the records, Bautista suggests that she once owed Ferrer ₱200,000.00, but the latter is now claiming that the amount is already ₱440,000.00.

Bautista narrated that in the morning of March 28, 2011, Ferrer, who was very furious, came to her house she was renting from the latter and uttered derogatory remarks such as "*punyeta ka! Ang kapal ng mukha mo!*" and threatened her with the words, "*kung hindi lang ako naawa sa anak mo, tuluyan kita!*" Ferrer then brought out a handgun from a bag being held by her driver, forced her to leave the house she was renting, illegally searched her bag, and forcibly took her Nokia cellular phone. When her live-in partner and the latter's sister arrived on a tricycle, she also harassed them and took the key thereto from him.

Thereafter, Bautista recalled that at around 9:00 a.m. of the same day, Ferrer forcibly brought her to the City Hall of San Fernando supposedly to identify those people who she lent Ferrer's money to. Upon arriving thereat, however, Ferrer not only identified her debtors, but also placed Bautista in public ridicule in exclaiming that she was a member of the "*Budol-budol*" gang.

Unsatisfied with said deed, Bautista alleged that at around 2:30 p.m., Ferrer next detained and delivered her to the custody of the Philippine National Police (*PNP*), San Fernando City, La Union, without any legal grounds. At the police station, she was subjected to an investigation where she was again asked about those persons who were indebted to Ferrer. When she finally disclosed the names, Ferrer kicked, punched, and repeatedly slapped her head. Then, Ferrer bragged that the police was under her control and ordered Police Officer (*PO*) 2 Maricar Godoy to search her bag who consequently searched her wallet and got the list of debtors therein. It was only upon the intercession of a certain Johnny Go that she was released from the custody of the PNP.

Finally, at the end of the day, Bautista recalled that Ferrer evicted her and her family from the house they were renting from Ferrer and prevented them from taking their personal belongings therein. These personal belongings, which includes a television set and a refrigerator, were taken out of the rented house and brought to one of the rooms in Ferrer's house, which Ferrer refused to return until Bautista paid the alleged sum of money.

Bautista further narrates that on May 23, 2011, she went to Ferrer's office with Jose Mari Almeida, a Supervisor from the Department of Education (*DepEd*), to beg for the release of her personal belongings as well as a computer belonging to Almeida. But Ferrer got angry and told her "*Putang ina mo Arlene ayusin mo ako bago mo muna makuha mga gamit mo!*" She then picked a pair of scissors on top of her table and thrust it towards Bautista but was subdued by Almeida. According to Bautista, she made another attempt to beg for the release of her personal belongings amounting to ₱38,700.00, but was again rejected by Ferrer.

In the end, Bautista maintains that as a result of her family's displacement, she had no choice but to allow her former husband to bring their 13-year-old daughter with him to Isabela where he succeeded in raping the latter. Thus, she blames Ferrer for her daughter's misfortune.[2]

In her Comment,[3] Ferrer denied the accusations against her. Ferrer recalls that Bautista, known as "*Sudsud*" for being the familiar manicurist of the employees at the City Hall of San Fernando, rented one of her houses in December 2010. Since then, Bautista would frequent her place to do her nails and even help her out around her house. As a result, Bautista eventually gained her trust and confidence. Ferrer later learned that Bautista was in the business of lending money to people and was being financed by a rich Chinese businessman. From Bautista's representations, it appeared to Ferrer that Bautista

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[2] *Id*. at 1-6.

[3] *Id*. at 48-59.

was well-connected and that her business was very lucrative. Consequently, Ferrer soon gave Bautista capital who re-lent the money to several government employees. To allay Ferrer's fears, Bautista assured her that her rich Chinese financer would be arriving soon and would readily pay all the sums of money she gave Bautista amounting to a total of ₱440,000.00. Bautista, however, failed to pay.

Thus, in the morning of March 28, 2011, Ferrer decided to seriously talk with Bautista, bringing with her her carpenter who is close to Bautista and the wife of another one of her carpenters. In front of said persons, Ferrer asked Bautista to remit her collections, but Bautista said that she has not yet made any collections. Instead, Bautista suggested that they go to the DepEd and City Hall so Ferrer could personally talk with the debtors. Before proceeding thereto, Ferrer and Bautista passed by the latter's rented house where she voluntarily gave Ferrer her cellphone. Ferrer, however, returned it the same day. According to Ferrer, the encounter between her and Bautista was peaceful and smooth. It was not true that she pointed a gun at Bautista.

It was also untrue that Ferrer caused Bautista scandal and humiliation at the DepEd and City Hall. On the contrary, Ferrer was nothing but professional when she asked the debtors about the amounts that they owed her. In fact, she remained calm and composed despite her discovery of several inconsistencies between Bautista's claims and those of her debtors at the said government offices.[4]

Ferrer further denied the truth to Bautista's assertions that she forcibly detained her at the police station where she verbally and physically abused her. According to Ferrer, they went to the police station merely for the purpose of talking about Bautista's obligations in front of the police authorities. In support of said contention, Ferrer submitted a letter of the police officer stationed at the time confirming the fact that no confrontation or anything untoward occurred between the parties therein. In fact, the certain Johnny Go who supposedly helped in the release

[4] *Id.* at 52-56.

of Bautista disproved in his sworn statement Bautista's claims when he narrated how in a telephone conversation between him and another alleged debtor, Ferrer discovered that Bautista lied again as to the amount of money said debtor owes.

With respect to the claim of theft in detaining Bautista's personal properties, Ferrer insists that Bautista voluntarily left the same and would only totally vacate the rented premises when she settles her obligations to Ferrer. The only reason why the refrigerator was transferred from Bautista's rented house to Ferrer's was because it needed cleaning and safekeeping since said rented house was abandoned.[5]

Finally, as to Bautista's allegation that Ferrer pointed a pair of scissors at her, Ferrer presented the Affidavit of Jose Mari Almeida, the DepEd Supervisor who accompanied Bautista to Ferrer's office. In said document, Almeida retracted his allegations in his original Sworn Statement submitted by Bautista to the effect that his previous statement that Ferrer pointed a pair of scissors at Bautista did not accurately reflect the events that transpired that day. Instead, Almeida declared that while Ferrer uttered the words "*putang ina mo Arlene, ang kapal ng mukha mo. Ayusin mo muna ako bago mo makuha ang mga gamit mo*," she never pointed the pair of scissors at Bautista but merely made a move to throw it in anger which was not in the direction of Bautista.[6] Ferrer added that it was just her mannerism to play with the things she holds alternately with her two hands, like when she is teaching, she always holds a pen and plays with it like one would play ping pong.[7]

In the end, Ferrer insists that the complaint filed against her is merely an attempt on Bautista's part to pressure her into withdrawing her complaint against Bautista for Estafa. She adds that to blame her for her daughter's rape is completely misguided and is the highest form of unfairness.[8]

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[5] *Id*. at 54.

[6] *Id*. at 69.

[7] *Id*. at 55.

[8] *Id*. at 57.

In a Report and Recommendation[9] dated November 12, 2012, the Investigating Commissioner of the Commission on Bar Discipline (*CBD*) of the Integrated Bar of the Philippines (*IBP*) recommended that Ferrer be reprimanded and warned that a similar show in the future of the tendency to take the law into her own hands and/or careless use of her public office or influence to advance, or even to vindicate a purely private interest, and/or the careless use of abusive, offensive or otherwise improper language will be dealt with more severely.[10]

In a Resolution[11] dated August 9, 2014, however, the Board of Governors (*BOG*) of the IBP approved, with modification, the Report and Recommendation of the Investigating Commissioner and suspended Ferrer from the practice of law for one (1) year.

But in another Resolution[12] dated June 7, 2015, the BOG granted the Motion for Reconsideration of Ferrer and resolved to set aside its earlier resolution and adopt the recommendation of the Investigating Commissioner. Thus, the BOG reprimanded Ferrer and warned her that a similar conduct in the future shall be dealt with more severely.

The Court's Ruling

In view of the circumstances of the instant case, the Court finds that Ferrer must be suspended from the practice of law for a period of one (1) year, as originally found by the BOG in its August 9, 2014 Resolution.

It may be true that Bautista was, and may still be, indebted to Ferrer and that the former may not have been completely honest about where exactly the latter's money went. This fact, however, does not give Ferrer unbridled authority to act the way that she did. As stated by the Investigating Commissioner,

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[9] *Id.* at 363-374.

[10] *Id*. at 371-374.

[11] *Id*. at 362.

[12] *Id*. at 437-438.

not only is there something wrong with the means employed by Ferrer in her efforts to recover what Bautista may have owed her, said means violated her duties under the Code of Professional Responsibility.

First of all, it was clearly established, and in fact admitted by Ferrer, that she uttered the derogatory remarks "*putang ina mo Arlene, ang kapal ng mukha mo. Ayusin mo muna ako bago mo makuha ang mga gamit mo*" in the confines of her own office. This fact, standing alone, already violates Rule 8.01 of Canon 8 of the Code of Professional Responsibility which prohibits a lawyer from using language which is abusive, offensive, or otherwise improper. It is not amiss to add, moreover, that Ferrer was even thrusting a pair of scissors making a move to throw it in anger. To the Court, Ferrer's excuse that she did not point the same in the direction of Bautista and that it is simply her mannerism to hold things with her hands does not absolve her from administrative liability. The fact that she angrily hurled offensive words at Bautista while holding a pair of scissors was enough to threaten and intimidate the latter. As the Investigating Commissioner held, these words surely have no place in the mouth of a lawyer in a high government office such as Ferrer, an Assistant Regional State Prosecutor no less.

Second, it was also clearly proven that Ferrer went to Bautista early morning on March 28, 2011 to inquire about the sum of money and that before proceeding to the government offices to talk to the alleged debtors, Ferrer took Bautista's cellphone. Moreover, while Ferrer insists that she did not physically prohibit Bautista from taking her personal property and that she only urged her to settle her obligations before she can totally vacate the leased premises, evidence show that said personal properties are really being held until payment of obligations. As the witnesses Johnny Go and Almeida stated in their affidavits, Ferrer allowed the removal of the properties only after Bautista returns Ferrer's investment. In fact, Ferrer even admitted that she said the following words to Bautista: "*putang ina mo Arlene, ang kapal ng mukha mo. Ayusin mo muna ako* ***bago mo makuha ang mga gamit mo****."*

Thus, the Court agrees with the Investigating Commissioner's finding that Ferrer's taking of Bautista's cellphone, even if it was eventually returned later on, and refusal to release the personal effects of Bautista is tantamount to confiscation, or depriving Bautista of something that is hers without due process of law. This is in clear breach of the Bill of Rights, particularly the principle that no person shall be deprived of life, liberty, or property without due process of law. Under Canon 1 of the Code of Professional Responsibility, lawyers, such as Ferrer, are mandated to uphold the Constitution and the laws. The Court is of the opinion, therefore, that Ferrer's withholding of Bautista's personal property not only runs counter to her duty to uphold the law, it is also equivalent to putting the law into her own hands.

Finally, it was, likewise, established that in her quest to inquire about the money she had given Bautista, Ferrer did not stop at merely dropping by Bautista's house. As the records show, Ferrer began her confrontation early in the morning at Bautista's place where she confiscated the latter's cellphone, then proceeded with Bautista to the government offices to talk to the debtors, and finally ended up at the police station where she further questioned Bautista about the same issue concerning the money she had given her. In hindsight, this interrogation practically persisted the entire day, beginning early in the morning of March 28, 2011 up until 7 o'clock in the evening. Thus, Ferrer may insist that she only wanted to "talk about Bautista's obligations in front of the police authorities," but We agree with the Investigating Commissioner when he said that Ferrer's actuations gave Bautista the impression that she was arrested and detained, and worse, that government agencies were being used to advance her private interests.

Rule 6.02, Canon 6 of the Code of Professional Responsibility prohibits a lawyer in government from using his/her public position or influence to promote or advance his/her private interests. On this score, let Us not forget that Ferrer was the Assistant Regional State Prosecutor of San Fernando City, La Union, at the time of the incident and that Bautista was well aware of such fact. Let Us also not forget that Bautista was questioned at the police station from 2:30 p.m. to 7:00 p.m., or

almost 5 hours. But despite this, Ferrer did not file any complaint against Bautista, insisting that she merely wanted to talk to Bautista in front of the police authorities. These police authorities searched Bautista's belongings looking for any clue as to the whereabouts of Ferrer's money as well as the debtors who borrowed the same. Thus, even assuming that Ferrer did not really kick, punch, or repeatedly slap Bautista's head, the fact that Bautista surrendered her cellphone and allowed herself to be brought by Ferrer from one place to another, from early morning until the evening, shows how Ferrer succeeded in using her high and powerful position in the government to intimidate Bautista, a mere manicurist and lessee of her property.

In view of the foregoing, Section 27, Rule 138 of the Rules of Court provides that a member of the bar may be removed or suspended from his office as attorney by the Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilfull 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. In addition, the failure to live up to the provisions of the Code of Professional Responsibility is, likewise, a ground for disciplinary action.[13]

Moreover, whether the dispute between the parties is a private matter is of no moment. In *Gonzalez v. Atty. Alcaraz*,[14] We held that "whether in their professional or in their private capacity, lawyers may be disbarred or suspended for misconduct. This penalty is a consequence of acts showing their unworthiness as officers of the courts, as well as their lack of moral character, honesty, probity, and good demeanor. When the misconduct committed outside of their professional dealings is so gross as to show them to be morally unfit for the office and the privileges

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[13] *Collantes v. Atty. Renomeron*, 277 Phil. 668, 674 (1991).

[14] 534 Phil. 471 (2006).

conferred upon them by their license and the law, they may be suspended or disbarred."[15]

The rationale for this is found in *Cordon v. Balicanta*,[16] to wit:

> x x x If the practice of law is to remain an honorable profession and attain its basic ideal, those enrolled in its ranks should not only master its tenets and principles but should also, in their lives, accord continuing fidelity to them. Thus, the requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning. Lawyers are expected to abide by the tenets of morality, not only upon admission to the Bar but also throughout their legal career, in order to maintain one's good standing in that exclusive and honored fraternity. Good moral character is more than just the absence of bad character. Such character expresses itself in the will to do the unpleasant thing if it is right and the resolve not to do the pleasant thing if it is wrong. This must be so because 'vast interests are committed to his care; he is the recipient of unbounded trust and confidence; he deals with his client's property, reputation, his life, his all.'"[17]

Accordingly, We ruled in *Olazo v. Justice Tinga*[18] that "since public office is a public trust, the ethical conduct demanded upon lawyers in the government service is more exacting than the standards for those in private practice. Lawyers in the government service are subject to constant public scrutiny under norms of public accountability. They also bear the heavy burden of having to put aside their private interest in favor of the interest of the public; their private activities should not interfere with the discharge of their official functions."[19]

Thus, while Ferrer had every right to demand the return of her investments, the appropriate course of action should have been to file a collection case against Bautista. But instead, she

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[15] *Id*. at 483.

[16] 439 Phil. 95 (2002).

[17] *Id*. at 115-116.

[18] 651 Phil. 290 (2010).

[19] *Id*. at 299.

chose to put the law into her own hands by personally questioning Bautista, bringing her to the police station, and confiscating her personal belongings. To the Court, Ferrer's acts evinces a certain vindictiveness, an undesirable trait in any individual, and as extensively discussed above, these actuations violated multiple provisions of the Code of Professional Responsibility. Hence, Ferrer may have been in the government service for many years, but such fact may not extinguish her administrative liability.

In *Santiago v. Oca*,[20] We ruled that "the Court may suspend or disbar a lawyer for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor, whether in his profession or private life because good character is an essential qualification for the admission to the practice of law and for the continuance of such privilege."[21]

Indeed, the possession of good moral character is both a condition precedent, and a continuing requirement, to warrant admission to the Bar and to retain membership in the legal profession. This proceeds from the lawyer's duty to observe the highest degree of morality in order to safeguard the Bar's integrity. Consequently, any errant behavior on the part of a lawyer, be it in the lawyer's public or private activities, which tends to show deficiency in moral character, honesty, probity or good demeanour, is sufficient to warrant suspension or disbarment.[22]

In *Canlapan v. Atty. Balayo*,[23] *Sangalang v. Intermediate Appellate Court*,[24] *Atty. Torres v. Atty. Javier*[25] and *Re: Complaints of Mrs. Milagros Lee and Samantha Lee against Atty. Gil Luisito R. Capito*,[26] the Court suspended erring lawyers

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[20] A.C. No. 10463 (Notice), July 1, 2015.

[21] *Id.*

[22] *Id.*

[23] 781 Phil. 63 (2016).

[24] 257 Phil. 930 (1989).

[25] 507 Phil. 397 (2005).

[26] 640 Phil. 11 (2010).

for periods ranging from one (1) month to three (3) months for their insulting, offensive, and improper language. In the present case, however, Ferrer not only exclaimed foul words and expletives directed at Bautista, she practically took matters into her own hands in detaining and confronting Bautista in the police station as well as in depriving her of her belongings without due process of law. This vindictive behavior must be met with suspension from the practice of law for a period of one (1) year in line with *Spouses Saburnido v. Madroño*,[27] *Gonzalez v. Atty. Alcaraz*,[28] and *Co v. Atty. Bernardino*.[29]

WHEREFORE, for violation of Canon 1, Rule 6.02 of Canon 6, and Rule 8.01 of Canon 8 of the Code of Professional Responsibility, Atty. Zenaida M. Ferrer is hereby **SUSPENDED** from the practice of law for a period of one (1) year, effective upon her receipt of this Decision, and **WARNED** that commission of the same or similar acts in the future will be dealt with more severely.

Let copies of this Decision be furnished the Secretary of Justice, the Prosecutor General, the Office of the Bar Confidant, and the Integrated Bar of the Philippines, for their information and guidance.

SO ORDERED.

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

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[27] 418 Phil. 241 (2001).

[28] *Supra* note 14.

[29] 349 Phil. 16 (1998).

SECOND DIVISION

[G.R. No. 202097. July 3, 2019]

DEPARTMENT OF EDUCATION,[1] *petitioner, vs.* **RIZAL TEACHERS KILUSANG BAYAN FOR CREDIT, INC., represented by TOMAS L. ODULLO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; WRIT OF *MANDAMUS*; PROPER ONLY TO COMPEL PERFORMANCE OF MINISTERIAL DUTIES; DISCUSSED. — For the writ of *mandamus* to prosper, the applicant must prove by preponderance of evidence that "there is a clear legal duty [or a ministerial duty] imposed [by law] upon the office or the officer sought to be compelled to perform an act, and when the party seeking *mandamus* has a clear legal right to the performance of such act." x x x ***Padilla v. Congress, et al.,*** emphasized that "*[m]andamus* never issues in doubtful cases. While it may not be necessary that the ministerial duty be absolutely expressed, it must however, be clear. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed." Further, ***Umali v. Judicial and Bar Council*** distinguished a ministerial act from a discretionary act, *viz:* "A purely ministerial act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or

[1] Please note that as early as August 13, 2004, the trial court had already ordered the substitution of former Secretary Raul Roco and former Undersecretary Ernesto Pangan as parties-respondents after they ceased holding the posts. They were to be replaced by then incumbent Secretary Edilberto C. De Jesus and Undersecretary Juan Miguel M. Luz. But the substitutions were not effected. Thus, to avoid the injustice of including these former officials as respondents in their official capacities when they had long ceased to be, this Court has *motu proprio* corrected the case title to conform to present circumstances and the presumed intent of both courts below and the parties in the case.

impropriety of the act done. On the other hand, if the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment. Clearly, the use of discretion and the performance of a ministerial act are mutually exclusive." Conversely, *mandamus* will not compel a public official to do anything which is not his or her duty or otherwise give the applicant anything to which he or she is not entitled to under the law.

2. ID.; ID.; ID.; ID.; RTKBCI HAS NO CLEAR LEGAL RIGHT TO DEMAND THAT DEPED ACT AS ITS COLLECTING AND REMITTING AGENT FOR THE LOANS RTKBCI EXTENDED TO PUBLIC SCHOOL TEACHERS; CASE AT BAR. — Here, [respondent] RTKBCI must prove that a law or regulation compels DepEd to continue as RTKBCI's collecting and remitting agent for the loans the latter extended to public school teachers and that RTKBCI is, by such law or regulations, entitled to the collection and remittance of these payments. x x x [However,] RTKBCI *has failed to prove* that a writ of *mandamus* is the appropriate legal remedy to compel DepEd as a matter of legal obligation to collect and remit on its behalf payments from concerned public school teachers. x x x RTKBCI has no clear legal right to demand that DepEd act as its collecting and remitting agent. [T]his is not one of DepEd's power, duties, and functions. Rather, it is an accommodation that DepEd does — not for the benefit of any private lending agency but as a means to protect and promote the teachers' welfare.

3. ID.; ID.; ID.; ID.; ID.; NEITHER ESTOPPEL NOR PRACTICE ENGENDERS A CLEAR LEGAL DUTY FOR DEPED TO ACT AS RTKBCI'S COLLECTION AND REMITTANCE AGENT; WRIT OF *MANDAMUS* NOT A PROPER REMEDY IN CASE AT BAR. — Neither estoppel nor practice engenders a clear legal duty for DepEd to act as RTKBCI's collection and remittance agent. As held in ***Peña v. Delos Santos,*** "[e]stoppel is a principle in equity and pursuant to Article 1432, *Civil Code,* it is adopted insofar as it is not in conflict with the provisions of the *Civil Code* and other laws." Estoppel, thus, cannot supplant and contravene the provision of law clearly

applicable to a case, and conversely, it cannot give validity to an act that is prohibited by law or one that is against public policy. DepEd cannot be held in estoppel to ascribe upon it a clear legal duty to act in situations where the paramount consideration mandated DepEd to protect and promote of the teachers' welfare in accordance with its power, duties, and functions under Section 7, RA 9155. It is both against law and public policy to uphold the collection and remittance accommodation afforded to private lending institutions when to do so was and would be prejudicial to its express mandate under RA 9155 to protect and promote the teachers' welfare.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Roxas & Roxas Law Offices for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

May the Department of Education (DepEd) be compelled by writ of mandamus to collect, by salary deductions, the loan payments of public school teachers and remit them to the Rizal Teachers Kilusang Bayan for Credit, Inc. (RTKBCI)?

This petition for review assails the *Decision* dated May 30, 2012 of the Court of Appeals[2] in CA-G.R. SP No. 106515 entitled *"Rizal Teachers Kilusang Bayan for Credit, Inc., represented by Tomas L. Odullo v. Department of Education, Hon. Secretary Raul S. Roco and Undersecretary Ernesto S. Pangan"* which affirmed, in the main, the *Decision*[3] dated January 23, 2008 of the Regional Trial Court (RTC)-Branch 19, Manila in Civil

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[2] Penned by Associate Justice Hakim S. Abdulwahid with Associate Justice Franchito N. Diamante and Associate Justice Leoncia Real-Dimagiba, concorring, *rollo,* pp. 58-67.

[3] *Rollo,* pp. 220-228.

Case No. 01-102346 granting the writ of *mandamus* prayed for therein directing DepEd and its responsible offices or divisions to release to RTKBCI the amount of ₱111,989,006.98 representing the loan payments of public school teachers and to continue implementing the payroll deduction scheme on RTKBCI's behalf until the loans would have been fully paid.

Antecedents

For the benefit of public school teachers, DepEd devised and implemented a payroll deduction scheme for the loans they secured from DepEd's duly accredited private lenders. RTKBCI was among DepEd's accredited private lenders which availed of the latter's payroll deduction scheme. To facilitate DepEd's collections and remittances, RTKBCI was assigned Deduction Codes 209 and 219. DepEd was also paid two percent of the total monthly deductions as administrative fees.

By Memorandum dated July 4, 2001, DepEd Undersecretary Ernesto S. Pangan directed Dr. Blanquita D. Bautista, Chief Accountant and Officer-in-Charge, Finance and Management Service to hold the remittance of the collections for February to June 2001; and suspend as well the salary deduction scheme for RTKBCI pending resolution of the teachers' numerous complaints against RTKBCI's alleged unauthorized excessive deductions and connivance with some DepEd's personnel in charge of effecting these deductions.[4] Some of these letters read:

"February 24, 2001

Hon. Raul Roco
Secretary, Department of Education, Culture and Sports
DECS Complex, Meralco Avenue
Pasig City

S i r:

x x x x x x x x x

x x x Ako at ang aking asawa ay nag utang sa nasabing kooperatiba, Ako po ang utang ko ay ₱10,000.00 at ang aking asawa na ang pangalan

[4] *Id.* at 59.

nya ay Santiago G. Gurrobat, guro din ay ₱15,000.00 noong 1996. Ako po noong binawasan ng ₱800.00 sa loob ng dalawang taon. Pagkatapos ng dalawang taon (nahinto) na ito dahil ganoon ang nakalagay sa Payroll. Masaya na po ako dahil (nahinto) na. Akala ko po bayad na ako sa ₱10,000.00 na utang ko sa loob ng dalawang taon. Ang halagang naibawas sa akin ay ₱19,200.00, di bayad na dahil ₱10,000.00 lamang ang inutang ko. Pero pagkaraan naman ng ilang buwan, dalawa o tatlo, binawasan na naman ako sa halagang hindi parehas. Kung minsan ₱2,000.00 o ₱3,000.00 o ₱6,000.00 na hindi parehas buwan-buwan. Hanggang umabot ng ₱41,211.00.

x x x x x x x x x

Ganoon din sa asawa ko, noong ibinabawas ay mababang halaga, kung misan ₱800.00, ₱700.00 at ₱500.00 hanggang sa umabot ng dalawang taon dahil (iyon) ang nakalagay sa Payroll at nahinto sa sinasaad ng payroll. Akala po namin tapos na dahil kung ang ibinawas sa loob ng dalawang taon ay sobra-sobra na sa halagang inutang kasali na iyong interest. Pero sa hindi inaasahan, bumalik naman ulit pagkaraan ng dalawang buwan. Ganoon din ang ginawa ng asawa ko sumulat sa mga tao na aking nabanggit sa itaas, umaasang matulungan kami, pero hindi dahil inihinto ng dalawang buwan o tatlo at ibinalik na naman ng DECS-IBM ang bawas sa payroll at ang nakalagay sa payroll ay walang kataposan. Sa ngayon ang nakalakip sa Certificate of Deduction sa payroll ng Division of Catanduanes ay ₱59,074.00. Kung hindi ito (mahihinto) at hintayin ang mahabang taon ay aabot ng ₱100,000.00 sa halagang inutang ng asawa ko na ₱15,000.00.

x x x x x x x x x

Ano kaya ang milagrong ibinibigay ng R.T.K.B.C, Inc. sa In Charge ng Catanduanes sa DECS-IBM kung bakit madaling maibalik ang ibinabawas sa madaling panahon, hindi na hinihintay ang (tatlong) buwan hindi na sinusunod ang kahilingan ng guro at ang masaklap pa nito ipinahihinto ng Chief ng DECS-IBM ang mga iba pang deductions na hindi sa R.T.K.B.C, Inc.

Sir, siguro kung hindi ito maihinto sa susunod na buwan mamamatay na kami sa gutom. Biro mo Sir, sa isang buwan ang aking take home pay ay ₱3,200.00 sa aking asawa ay ₱2,000.00, sapat na ba ito sa isang buwan na walo kaming kumakain? Ang sa aking ₱3,000.00 ibinabayad ko sa personal kong utang buwan-buwan dahil namatay ang Nanay ko wala po naman kaming perang panggastos sa kanyang pagkamatay noon Agosto, 2000. Ang sa kabaong hindi po naming

na bayaran ng (buo). Inireklamo na po kami sa Barangay Captain namin. Ano naman ang ibabayad na ang natira ay ₱2,000.00. Iyon ₱3,000.00 na suweldo ko ibinabayad ko dahil ang utang ko ay ₱20,000.00 matatapos ito sa Mayo 2001.

x x x x x x x x x

Very truly yours,

VIOLETA T. GURROBAT

SANTIAGO G. GURROBAT

LUCILA TAPEL"

"March 09, 2001

Hon. Raul Roco
Secretary of Education, Culture, and Sports
ULTRA, Pasig City

Sir:

x x x x x x x x x

This has reference to the attached letter of complaint of Mrs. Rosario Rono against me, for having paid in part as one of two co-makers with my personal loan with the Rizal Teachers Kilusang Bayan or RTKB located at Bangbang St., Sta. Cruz, Manila.

x x x x x x x x x

If you would only spare a little of your time to look into the attached Statement of Account herewith, you will maybe agree with me, Your Honor, that RTKB had done enormous injustice to the three of us, because of the exorbitant penalties and interests they charged against my loan in not so long interval from the moment I transferred station to the time they deducted my co-makers(') payments. Besides, I barely received a net proceeds of ₱15,000.00 from my ₱22,000.00 loan through their agent. With the sum that I already paid them and the sum paid by my co-makers, it clearly appeared that my loan is already overpaid.

x x x We live on a hand-to-mouth subsistence, me being the breadwinner. I am sending my four sons to school, three of whom are in college, one in high school. I feel desperate about the situation because Mrs. Rono is asking me to pay her immediately the sum of ₱30,000.00 plus. I don't know where to get the money to pay her. I have barely ₱2,116.00 in my monthly check. I only depend on your intervention so that this big problem will be solved.

x x x x x x x x x

Very truly yours,

MRS. OSMANA M. SALOMON
Teacher
Tayabas West District
Tayabas, 4327, Quezon"

"July 12, 2001

Dear Sir,

Good day. I would like to inform you about my deductions in RTKBC.

Last Jan. 6, 1997 I have a loan. My loan was ₱20,000.00 but the cash given me was only ₱16,000.00.

My payments were begun/started last Dec. 1997 amounting ₱334.00, then April 1998 to May 1999 ₱889.00, then June 1999 and July ₱2,224.00, Aug to March 2000 ₱2,524.00, then April 2000 ₱1,635, until now I have a deduction of ₱3,323.00 Jan. 2001 to July 2001, so how many all in all. It amounts of ₱62,316.00.

Kaya wala nang katapusan and deduction kong ito bakit kaya, may balance pa raw ako na ₱20,000.00. Sobra na sila sa ginagawa nila sa akin, sila na nga ang nakikinabang sa aking sahod lahat na lang sa kanila.

x x x x x x x x x

Very truly yours,

NATIVIDAD B. RAMIREZ"

"March 3, 2001

Hon. Raul S. Roco
Secretary
Department of Education, Culture and Sports
2/F Rizal Building I, University of Life
Meralo (sic) Ave., Pasig City

Sir,

x x x x x x x x x

Totoo po akong nakautang ng halagang ₱8,000.00 sa RTKB noong 1993, Agosto ngunit nabawas nilang lahat ito. (Kalakip po nito ang detalye na nakatala A.) Nagpa transfer po ako dito sa lalawigang ito mula NCR noong October 1994. Sa hindi ko po inaasahan ay biglang

may lumabas na bawas ang RTKB ng buwan ng Agosto, 1999. (Ang detalye po nito ay kalakip bilang B). Dahil nga po sa wala na akong utang, nagrequest po ako sa IBM na ihinto ang pagbabawas at nangyari po ito saloob (sic) ng limang buwan dahil sa pagdating muli ng buwan ng October, 2000 ay nagsimula na naman pong magbawas ang RTKB sa iba't-ibang halaga hanggang ngayon Pebrero, 2001 at maaaring sa mga susunod pang buwan ay magpatuloy itong walang katapusan. Napakalaki na po ang nabawas nila sa aking sahod na umaabot na po sa Forty-eight thousand one hundred seventy-nine (₱48,179).

x x x x x x x x x

Lubos na gumagalang,

LUZVIMINDA Z. RUENATA
Employee NO. 4618708
Div. 035 Sta. 010"

Responding to Undersecretary Pangan's directive, RTKBCI wrote[5] the former demanding the release of the collections. By letter dated September 12, 2001, Undersecretary Pangan denied[6] the demand. He asserted that the suspension of the salary deduction scheme was necessary to protect the concerned public school teachers.

Proceedings before the Trial Court

On November 29, 2001, RTKBCI filed with RTC-Manila the petition for *mandamus*[7] to compel DepEd and then Secretary Raul Roco and Undersecretary Pangan to remit to RTKBCI the loan collections and continue with the salary deduction scheme until the loans of the public school teachers should have been fully paid. The petition was raffled to Branch 19.

RTKBCI claimed it was among DepEd's accredited lending agencies and had a standing arrangement with the latter to avail of the payroll deduction scheme under Codes 209 and 219. Section 36 of RA 8760, *General Appropriations Act of 2000,* authorizing agencies and offices with existing deduction

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[5] Record, pp. 15-16.

[6] *Id.* at 17.

[7] *Rollo,* pp. 68-71.

arrangements with private lenders to continue the same until the teachers' loans should have been fully paid.

The petition also sought actual damages of ₱5,000,000.00 and ₱500,000.00 for attorney's fees.[8]

Meantime, then Secretary Roco and Undersecretary Pangan resigned from their respective posts. DepEd manifested that these officials were replaced by then Secretary Edilberto C. De Jesus and Undersecretary Juan Miguel M. Luz. On August 13, 2004, the trial court ordered the substitution of parties-respondents in the case title but no action was made to implement it. Hence, as stated, the Court has *motu proprio* dropped Secretary Roco and Undersecretary Pangan as respondents and retained DepEd as the only party-respondent in the case title.

RTKBCI presented as its lone witness its consultant and liaison officer William G. Hernandez. He testified that DepEd acted arbitrarily and without due notice when it refused to remit the collections it had and eventually stopped the payroll deduction scheme in RTKBCI's favor.[9]

The Trial Court's Ruling

By *Decision* dated January 23, 2008,[10] the trial court granted the writ of *mandamus* prayed for and ordered DepEd to release to RTKBCI the collections amounting to ₱111,989,006.98. DepEd was also ordered to pay actual damages of ₱5,000,000.00 and attorney's fees of ₱500,000.00.

The Court of Appeals' Ruling

On DepEd's appeal, the Court of Appeals, under *Decision* dated May 30, 2012, affirmed in the main, but deleted the award of actual damages:

WHEREFORE, the assailed Decision dated January 23, 2008 of the RTC, Branch 19, City of Manila is AFFIRMED with MODIFICATION to read, as follows:

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[8] *Id.* at 71.

[9] TSN, September 20, 2007, pp. 14-24.

[10] *Rollo,* pp. 220-228.

> WHEREFORE, judgment is rendered in favor of petitioner Rizal Teachers Kilusang Bayan for Credit, Inc. and against respondents Department of Education and its responsible officers/ division. Accordingly, let a writ of mandamus issue, ordering said respondents to release in favor of petitioner the amount of ₱111,989,006.98, representing withheld remittances and to allow petitioner to proceed with its deductions under the payroll deductions scheme until the sums due as payment of the loans to petitioner are satisfied. Further, respondents are ordered to pay petitioner the amount of ₱500,000.00 as attorney's fees.
>
> SO ORDERED.

The Court of Appeals sustained the alleged clear legal right of RTKBCI to receive the payments which DepEd had already collected through the payroll deduction scheme. The Court of Appeals acknowledged that the payroll deduction scheme started as a privilege but became a property right of RTKBCI after DepEd authorized RTKBCI to avail of the scheme and actually collected the payments for RTKBCI's account.

The Present Petition

Petitioner DepEd now invokes the Court's discretionary appellate jurisdiction to review and reverse the Decision dated May 30, 2012 of the Court of Appeals. We present below the parties' conflicting arguments, *viz:*

DepEd	RTKBCI
1. DepEd's payroll deduction scheme is prohibited by law and contrary to the welfare of public school teachers. Hence, the writ of *mandamus* does not lie to compel DepEd to provide the relief sought by RTKBCI. 2. RTKBCI's accreditation by DepEd as a lending agency for public school teachers and its enrolment in DepEd's payroll	1. The continuous implementation of the payroll deduction scheme conformed with Section 36, RA 8760 (GAA FY 2000) and RA 4760, both authorizing government offices to continue with their existing salary deduction scheme with private lenders until all outstanding loans or policy premiums would have been paid. DepEd violated these statutes when it

deduction scheme under Deduction Code Nos. 209 and 219 do not create a clear legal property right in favor of RTKBCI and a clear legal duty on DepEd to recognize and enforce such alleged right. 3. DepEd has already refunded the amounts collected as loan payments from concerned public school teachers to the latter. 4. The numerous complaints by affected public school teachers against RTKBCI's alleged unauthorized or over-deductions rendered RTKBCI without any clear legal right to seek relief from and under DepEd's payroll deduction scheme.	suspended the salary deduction scheme despite their clear directives to carry one with such scheme. 2. After DepEd itself granted accreditation to RTKBCI to collect payment through payroll deduction and charged 2% of the monthly collections as administrative fees, the former should be deemed estopped from asserting that it was a prohibited arrangement. 3. Although as a rule a writ of *mandamus* will not lie to compel the performance of an act involving the exercise of discretion, the exception is when there is grave abuse of discretion or when manifest injustice or palpable excess of authority will cause a petitioner to lose the right he or she is entitled to. In this case, the exception exists because DepEd unilaterally deprived RTKBCI of its property right arising from RTKBCI's loan transactions with concerned public school teachers.

The parties both agree that the collection and remittance of the payments may only be authorized by law. Their arguments, though hinge on the interpretation of laws and regulations, if any, pertaining to the payroll deduction scheme.

Core Issue

May DepEd, by writ of *mandamus*, be compelled to continue to collect and remit on RTKBCI's behalf loan payments from public school teachers?

Ruling

We first reckon with the rules governing the writ of *mandamus*:

One. For the writ of *mandamus* to prosper, the applicant must prove by preponderance of evidence that "there is a clear legal duty imposed upon the office or the officer sought to be compelled to perform an act, and when the party seeking *mandamus* has a clear legal right to the performance of such act."[11] As explained in ***Pacheco v. Court of Appeals:***[12]

> Mandamus lies to compel the performance of a clear legal duty or a ministerial duty imposed by law upon the defendant or respondent to perform the act required that the law specifically enjoins as a duty resulting from office, trust or station. A clear legal right is one that is founded or granted by law. Unless the right to relief is clear, mandamus will not issue. If there is any discretion as to the taking or non-taking of the action sought, there is no clear legal duty.

Padilla v. Congress, et al.,[13] emphasized that "*[m]andamus* never issues in doubtful cases. While it may not be necessary that the ministerial duty be absolutely expressed, it must however, be clear. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed."

Further, ***Umali v. Judicial and Bar Council***[14] distinguished a ministerial act from a discretionary act, *viz:* "A purely ministerial act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to

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[11] *Knights of Rizal v. DMCI Homes, Inc., et al.,* 809 Phil. 453, 527 (2017).

[12] 389 Phil. 200, 203 (2000).

[13] G.R. No. 231671, July 25, 2017, 832 SCRA 282, 370.

[14] G.R. No. 228628, July 25, 2017, 832 SCRA 194, 225-226.

the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. On the other hand, if the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment. Clearly, the use of discretion and the performance of a ministerial act are mutually exclusive."

Conversely, *mandamus* will not compel a public official to do anything which is not his or her duty or otherwise give the applicant anything to which he or she is not entitled to under the law.[15]

Here, RTKBCI must prove that a law or regulation compels DepEd to continue as RTKBCI's collecting and remitting agent for the loans the latter extended to public school teachers and that RTKBCI is, by such law or regulations, entitled to the collection and remittance of these payments.

Two. DepEd and RTKBCI have enumerated the following laws and regulations involving the collection and remittance of the loan payments of public school teachers:

(a) Section 21, RA 4670 *(The Magna Carta for Public School Teachers)*;[16]
(b) Section 36, RA 8760, *(General Appropriations Act (GAA) FY2000)*;[17]

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[15] See *Star Special Watchman and Detective Agency, Inc., et al. v. Puerto Princesa City, et al.,* 733 Phil. 62, 77 (2014).

[16] Deductions Prohibited. No person shall make any deduction whatsoever from the salaries of teachers except under specific authority of law authorizing such deductions: *Provided, however,* That upon written authority executed by the teacher concerned, (1) lawful dues and fees owing to the Philippine Public School Teachers Association, and (2) premiums properly due on insurance policies, shall be considered deductible.

[17] Authorized Deductions. — Deductions from salaries, emoluments or other benefits accruing to any government employee may be allowed for the payment of obligations due or owing to government lending institutions such as government banks, the Government Service Insurance System, duly licensed insurance companies, savings and loans associations, and those organized for, and managed by, government employees. Deductions under Section 21 of R.A. No. 4670, otherwise known as the

(c) Section 54, PD 807 *(Civil Service Decree)*;[18]
(d) Section 262, Volume I of the *Government Auditing and Accounting Manual issued by the Commission on Audit;*[19]
(e) Circular No. 21, S. 1969[20] issued by Director of Public Schools Juan L. Miguel *"Prohibiting the Payment*

Magna Carta for Public School Teachers may be allowed, including such deductions representing amortizations arising from educational loan for tuition fees, reasonable amount for textbooks and other school obligations granted by insurance companies duly licensed by the Insurance Commission: PROVIDED, That such deductions shall not reduce the employee's monthly take home pay to an amount lower than Two Thousand Pesos (₱2,000.00), after deducting all other statutory deductions: PROVIDED, FURTHER, That the agencies and offices with existing deductions arrangements with private lenders shall continue such deductions until the credits/loans outstanding or the premiums of the policies in force at the date of passage of this Act shall have been fully paid.

[18] Section 54. *Liability of Disbursing Officers.* Except as may otherwise be provided by law, it shall be unlawful for a treasurer, or other fiscal officer to draw or retain from the salary due an officer or employee any amount for contribution or payment of obligations other than those due the government or its instrumentalities.

[19] a. withholding tax;
b. premium for GSIS and retirement insurance, Medicare and PAG-IBIG contributions;
c. settlement of government claims against the employee;
d. disallowance from accounts;
e. allotment of fixed monthly amount to members of the family or a dependent relation of an officer or employee upon written authorization for the same to the disbursing officer; and
f. deposits and repayment of loans owing to government lending institutions or associations organized and managed by government employees upon written authorization for the same to the disbursing officer.

[20] PROHIBITING PAYMENT OF SALARY TO PERSONS OTHER THAN THE EMPLOYEE CONCERNED

To Superintendents:

1. Quoted hereunder is Memorandum Order No. 93 dated February 5, 1968, of the Executive Office entitled "Prohibiting Payment of Salary to Any Person Other Than the Employees Concerned, Except As Provided Herein."

It has been observed that some employees delegate the collection of their salaries to attorneys-in-fact on the strength of powers of attorney or other forms of authority in favor of other persons, evidently in satisfaction of obligations contracted by them. This practice should be discouraged in view of its adverse effects on the efficiency and morale of employees whose incentive to work is necessarily impaired, since their salary or a portion thereof goes to other persons.

To curb this unwholesome practice, it is hereby directed that henceforth no cashier or disbursing officer shall pay to attorneys-in-fact or other persons who may be authorized under a power of attorney or other forms of authority to collect the salary of an employee,

of Salary to Persons Other than the Employee Concerned," which circular was upheld in the 1983 case *Tiro vs. Hontanosas*;

(f) DECS Order No. 44, S. 1997[21] issued by Secretary Ricardo T. Gloria on May 6, 1997, reiterating the policy under Circular No. 21;

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except when the persons so designated and authorized is an immediate member of the family of the employee concerned, and in all other cases, except upon proper authorization of the Assistant Executive Secretary for Legal and Administrative Matters, with the recommendation of the Financial Assistant.

All orders or regulations inconsistent herewith are hereby revoked.

This order shall take effect immediately.

2. Accordingly, it is desired that, henceforth, cashiers or disbursing officers pay the salary due any school employee or issue the treasury warrant of any teacher direct to such employee or teacher, except when authority to collect the salary or treasury warrant has been given to another person, and the person so authorized is an immediate member of the family of the employee or teacher concerned.

3. Any previous regulation issued by this Office inconsistent with this Circular is hereby revoked.

[21] 1. Background. This Office has observed the proliferation of unauthorized lending groups or persons involved in lending activities within the DECS system. Noted also is the collusion between and among some DECS personnel and lending groups, persons, DECS officials and other personnel involved In lending activities to facilitate the collection of the salaries/cheques of teachers and other personnel, in whole or in part, through unauthorized deduction or withholding schemes, evidently in satisfaction of obligations contracted with them. These activities have reduced some of our personnel to collection agents who are given certain percentage for the Job, and denigrated the efficiency and morale of our teachers and other personnel, especially those in the field offices.

Time and again, this particular problem has cropped up and this Department has consistently addressed the problem and maintained its stand against these practices.

2. Policy Statement. In view thereof and in line with our commitment to stop graft and corrupt practices and to bring back the dignity of teachers, the Department establishes its policy against all forms of unauthorized salary deductions, withholding of checks and lending activities within the DECS system. It shall provide guidelines on the release of the cheques/salaries of teachers and other personnel as herein set forth.

3. Prohibitions. Henceforth, the Department promulgates the following prohibitions against Its officials and other personnel, to wit:

a. No lending activities in any form shall be allowed within the DECS system in all levels unless authorized by law or by the Secretary;

b. No person shall make any deduction whatsoever from the salaries, cheques of teachers and other personnel except under specific authority of law authorizing such deductions provided, however, that upon written authority executed by the teacher concerned, lawful dues and fees owing to the Philippine Public School Teachers Association, Teachers'

Three. DepEd Order No. 049-17 is relevant.

DEPED ORDER NO. 049-17 *(Revised Guidelines on Accreditation and Re-Accreditation of Private Lending Institutions under the Automatic Payroll Deduction System Program)*

I. RATIONALE

These guidelines are issued to enhance the existing rules and criteria set under DepEd Memorandum No. 228, s. 2011, on the Department's Accreditation/Re-accreditation of Private Lending Institutions (PLIs), for continuous systems improvement.

II. LEGAL BASIS

A. Only entities expressly authorized by law may avail of the privileges under APDS, in view of the following:

1. Section 21 of RA 4670 re: Magna Carta for Public School Teachers which states that "No person shall make any deduction whatsoever from the salaries of teachers except under specific authority of law authorizing such deductions";
2. Section 66, Title I (A), Book V of the Administrative Code of 1987, which stipulates that "Except as may otherwise be provided by law, it shall be unlawful for a treasurer or other fiscal officer to draw or retain from the salary due an officer or employee, any amount for contribution or payment of obligations other than those due the government or its instrumentalities:"
3. General Provisions, Section 47. Authorized Deductions (General Appropriations Act for FY 2017) which states that "Deductions from salaries and other benefits accruing to any government employee, chargeable against the appropriations for Personnel Services, may be allowed for the payment of an individual employee's contributions or obligations due the following, and in the order of preference stated below:

a. The BIR, PHILHEALTH, GSIS and HDMF;
b. Non-stock savings and loan associations and mutual benefits associations duly operating under existing laws and

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Cooperatives of which they are members, and premiums properly due on insurance policies, shall be deductible;

c. No DECS officials or personnel shall introduce, operate, support or abet, directly or indirectly, any form of lending activities within the DECS system;

cooperatives which are managed by and/or for the benefit of the government employees;
c. Associations or provident funds organized and managed by government employees for their benefit and welfare;
d. GFIs authorized by law and accredited by appropriate government regulating bodies to engage in lending;
e. Licensed insurance companies; and
f. Thrift banks and rural banks accredited by the BSP."[22]

4. Department of Justice (DOJ) Opinion No. 36, s. 2008 signed by former DOJ Secretary Raul M. Gonzales, stating that financing companies are duly qualified to participate in the APDS by virtue of the Financing Company Act, as amended.

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IV. POLICY STATEMENT

1. The grant of automatic payroll deduction for loans extended to DepEd teachers/personnel and the issuance of a "lending code" to private lending institutions (PLIs) is a privilege extended by the Department and not a right to be invoked by any party and shall be subject to DepEd regulations.
2. The DepEd shall regulate the use of its APDS to protect and secure its employees' welfare. Specifically, this shall translate into:

    2.1 Accreditation/Re-accreditation of PLIs specifically authorized by law to make deductions from the salaries of government employees (particularly DepEd personnel). Such organizations shall be duly registered with the proper government regulatory bodies;
    2.2 Provision of a ceiling on interest rates, service charges, and other fees charged by lending institutions participating in the scheme in order to prevent usurious lending; and
    2.3 Prevention and/or elimination of illegal and unauthorized deductions from DepEd personnel's salaries.

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[22] Note that this provision is subject to conditional implementation in accordance with the President's Veto Message, December 19, 2017, Volume I-B, pages 649-650, R.A. No. 10964.

9. Entities participating in the APDS shall also conform with the ceilings on interest and non-interest rates on loans as shown below. Only loans with term of up to three (3) years will be accommodated under the APDS. Illustrations for the loan computations from one (1) to three (3) years are attached and marked as Enclosures "A-l" to "A-3". The said rates may be adjusted anytime by the Department depending on the prevailing market rates and other policy considerations.

Particulars	Ceilings
Contractual Interest Rates (based on diminishing/declining principal balance)	1 year — 7.500% per annum (p.a.) or 0.625% per month 2 years — 9.000% p.a. or 0.750% per month 3 years — 9.660% p.a. or 0.805% per month
One-time Other Charges (Must be itemized in the Disclosure Statement)	6.000%, deducted upfront from the principal amount of loan
Effective Interest Rates (EIR) p.a.	1 year — 21.091% 2 years — 16.351% 3 years — 14.886%

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VII. MONITORING AND EVALUATION

A. Monitoring the compliance of APDS accredited entities with these guidelines and the APDS-MOA, including addressing issues that arise in the implementation thereof, shall be undertaken by DepEd through the APDS Task Forces and the APDS Secretariat.

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VIII. FINAL PROVISIONS

A. REPEALING CLAUSE
All rules, regulations and issuances, which are inconsistent with these guidelines are hereby repealed or modified accordingly.

B. PENALTY CLAUSE
Violation of any provision of these revised guidelines or parts thereof shall be dealt with accordingly.

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- DM No. 540, s. 2009 — Re-opening of Accreditation of Private Lending Institutions under the Department's Automatic Payroll Deduction System
- DM No. 228, s. 2011 — Re-opening of Accreditation/Re-accreditation of the Private Lending Institutions (PLIs) under the DepEd Automatic Payroll Deduction System (APDS) Clean-up Program
- DM No. 229, s. 2012 — Re-opening of Accreditation of Private Lending Institutions under the Department's Automatic Payroll Deduction System

Four. Section 7 of RA 9155 *(Governance of Basic Education Act of 2001)* sets forth the power, duties and functions of DepEd and the different levels of supervision and regulation of educational activities.[23] Notably, DepEd's activities as collection

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[23] SECTION 7. Powers, Duties and Functions. — The Secretary of the Department of Education shall exercise overall authority and supervision over the operations of the Department.

A. National Level
In addition to his/her powers under existing laws, the Secretary of Education shall have authority, accountability and responsibility for the following:
(1) Formulating national educational policies;
(2) Formulating a national basic education plan;
(3) Promulgating national educational standards;
(4) Monitoring and assessing national learning outcomes;
(5) Undertaking national educational research and studies;
(6) Enhancing the employment status, professional competence, welfare and working conditions of all personnel of the Department; and
(7) Enhancing the total development of learners through local and national programs and/or projects.

The Secretary of Education shall be assisted by not more than four (4) undersecretaries and not more than four (4) assistant secretaries whose assignments, duties and responsibilities shall be governed by law. There shall be at least one undersecretary and one assistant secretary who shall be career executive service officers chosen from among the staff of the Department.

B. Regional Level
There shall be as many regional offices as may be provided by law. Each regional office shall have a director, an assistant director and an office staff for program promotion and support, planning, administrative and fiscal services.
Consistent with the national educational policies, plans and standards, the regional director shall have authority, accountability and responsibility for the following:
(1) Defining a regional educational policy framework which reflects the values, needs and expectations of the communities they serve;

and remittance agent for accredited private lending institutions are not among its core power, duties, and functions.

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(2) Developing a regional basic education plan;
(3) Developing regional educational standards with a view towards benchmarking for international competitiveness;
(4) Monitoring, evaluating and assessing regional learning outcomes;
(5) Undertaking research projects and developing and managing regionwide projects which may be funded through official development assistance and/or other funding agencies;
(6) Ensuring strict compliance with prescribed national criteria for the recruitment, selection and training of all staff in the region and divisions;
(7) Formulating, in coordination with the regional development council, the budget to support the regional educational plan which shall take into account the educational plans of the divisions and districts;
(8) Determining the organization component of the divisions and districts and approving the proposed staffing pattern of all the employees in the divisions and districts;
(9) Hiring, placing and evaluating all employees in the regional office, except for the position of assistant director;
(10) Evaluating all schools' division superintendents and assistant division superintendents in the region;
(11) Planning and managing the effective and efficient use of all personnel, physical and fiscal resources of the regional office, including professional staff development;
(12) Managing the database and management information system of the region;
(13) Approving the establishment of public and private elementary and high schools and learning centers; and
(14) Performing such other functions as may be assigned by proper authorities.

C. Division Level

A division shall consist of a province or a city which shall have a schools division superintendent, at least one assistant schools division superintendent and an office staff for programs promotion, planning, administrative, fiscal, legal, ancillary and other support services.

Consistent with the national educational policies, plans and standards, the schools division superintendents shall have authority, accountability and responsibility for the following:

(1) Developing and implementing division education development plans;
(2) Planning and managing the effective and efficient use of all personnel, physical and fiscal resources of the division, including professional staff development;
(3) Hiring, placing and evaluating all division supervisors and schools district supervisors as well as all employees in the division, both teaching and non-teaching personnel, including school heads, except for the assistant division superintendent;
(4) Monitoring the utilization of funds provided by the national government and the local government units to the schools and learning centers;
(5) Ensuring compliance of quality standards for basic education programs and for this purpose strengthening the role of division supervisors as subject area specialists;

Five. A *General Appropriations Act* such as RA 8760 would automatically lapse at the end of such fiscal year for which it

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(6) Promoting awareness of and adherence by all schools and learning centers to accreditation standards prescribed by the Secretary of Education;
(7) Supervising the operations of all public and private elementary, secondary and integrated schools, and learning centers; and
(8) Performing such other functions as may be assigned by proper authorities.

D. Schools District Level
Upon the recommendation of the schools' division superintendents, the regional director may establish additional schools district within a schools' division. Schools districts already existing at the time of the passage of this law shall be maintained. A schools' district shall have a schools' district supervisor and an office staff for program promotion.

The schools district supervisor shall be responsible for:
(1) Providing professional and instructional advice and support to the school heads and teachers/facilitators of schools and learning centers in the district or cluster thereof;
(2) Curricula supervision; and
(3) Performing such other functions as may be assigned by proper authorities.

E. School Level
There shall be a school head for all public elementary schools and public high schools or a cluster thereof. The establishment of integrated schools from existing public elementary and public high schools shall be encouraged.
The school head, who may be assisted by an assistant school head, shall be both an instructional leader and administrative manager. The school head shall form a team with the school teachers/learning facilitators for delivery of quality educational programs, projects and services. A core of non-teaching staff shall handle the school's administrative, fiscal and auxiliary services.
Consistent with the national educational policies, plans and standards, the school heads shall have authority, accountability and responsibility for the following:
(1) Setting the mission, vision, goals and objectives of the school;
(2) Creating an environment within the school that is conducive to teaching and learning;
(3) Implementing the school curriculum and being accountable for higher learning outcomes;
(4) Developing the school education program and school improvement plan;
(5) Offering educational programs, projects and services which provide equitable opportunities for all learners in the community;
(6) Introducing new and innovative modes of instruction to achieve higher learning outcomes;
(7) Administering and managing all personnel, physical and fiscal resources of the school;
(8) Recommending the staffing complement of the school based on its needs;
(9) Encouraging staff development;
(10) Establishing school and community networks and encouraging the active participation of teachers' organizations, nonacademic personnel of public schools, and parents-teachers-community associations;
(11) Accepting donations, gifts, bequests and grants for the purpose of upgrading teachers'/learning facilitators' competencies, improving and expanding

has been enacted by operation of law.[24]

Gauged by the foregoing rules, RTKBCI *has failed to prove* that a writ of *mandamus* is the appropriate legal remedy to compel DepEd as a matter of legal obligation to collect and remit on its behalf payments from concerned public school teachers. Consider:

First. It is true that DepEd can no longer argue that it is powerless to institute a payroll deduction scheme for accredited private lending institutions. The reason is DepEd's continuous interpretation of statutes that it has the power to do so not only as a privilege and accommodation to private lending institutions but also as a scheme to protect and promote the teachers' welfare.

DepEd, nonetheless, has no legal duty to act as a collecting and remitting agent for RTKBCI. The latter has not shown that it remains an accredited private lending institution entitled to avail of the payroll deduction system. Assuming that RTKBCI is still DepEd accredited, DepEd is not precluded from suspending its activities under the payroll deduction scheme *vis-à-vis* a private lending agency such as RTKBCI. The payroll deduction scheme expressly describes the services it offers as a privilege. As such, DepEd may act as a collecting and remitting agent for a private lending agency, but doing so must always

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school facilities and providing instructional materials and equipment. Such donations or grants must be reported to the appropriate district supervisors and division superintendents; and

(12) Performing such other functions as may be assigned by proper authorities.

The Secretary of Education shall create a promotions board, at the appropriate levels, which shall formulate and implement a system of promotion for schools' division supervisors, schools district supervisors, and school heads. Promotion of school heads shall be based on educational qualification, merit and performance rather than on the number of teachers/learning facilitators and learners in the school.

The qualifications, salary grade, status of employment and welfare and benefits of school heads shall be the same for public elementary, secondary and integrated schools.

No appointment to the positions of regional directors, assistant regional directors, schools' division superintendents and assistant schools' division superintendents shall be made unless the appointee is a career executive service officer who preferably shall have risen from the ranks.

[24] *Philippine Constitution Association, Inc. v. Gimenez,* 154 Phil. 594, 598 (1974).

be in consonance with DepEd's power, duties, and functions under Section 7 of RA 9155.

RTKBCI has no clear legal right to demand that DepEd act as its collecting and remitting agent. To reiterate, this is not one of DepEd's power, duties, and functions. Rather, it is an accommodation that DepEd does - - - not for the benefit of any private lending agency but as a means to protect and promote the teachers' welfare. Hence, the only feasible characterization of this activity its being a mere privilege. To otherwise characterize this activity is to demean and degrade the stature of DepEd as the sovereign regulator and supervisor of basic education and to reduce it to being a mere collection and remittance agency for private lending institutions.

Further, a dubious case is antithetical to the requirement of a clear legal right in *mandamus* cases. Here, there have been unresolved complaints against RTKBCI for overpayments, excessive deductions and even connivance between RTKBCI and DepEds' own personnel in charge of implementing the salary deduction scheme. DepEd had also long decided to return the collected payments to the teachers concerned. These two circumstances, therefore, make RTKBCI's demand no longer feasible in terms of clarity and exactness of the right and the practicability of its recognition and enforcement.

Second. Neither estoppel nor practice engenders a clear legal duty for DepEd to act as RTKBCI's collection and remittance agent.

As held in ***Peña v. Delos Santos,***[25] "[e]stoppel is a principle in equity and pursuant to Article 1432, *Civil Code,* it is adopted insofar as it is not in conflict with the provisions of the *Civil Code* and other laws." Estoppel, thus, cannot supplant and contravene the provision of law clearly applicable to a case, and conversely, it cannot give validity to an act that is prohibited by law or one that is against public policy.[26]

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[25] 782 Phil. 123 (2016).

[26] *Id.* at 134.

DepEd cannot be held in estoppel to ascribe upon it a clear legal duty to act in situations where the paramount consideration mandated DepEd to protect and promote of the teachers' welfare in accordance with its power, duties, and functions under Section 7, RA 9155. It is both against law and public policy to uphold the collection and remittance accommodation afforded to private lending institutions when to do so was and would be prejudicial to its express mandate under RA 9155 to protect and promote the teachers' welfare.

In any event, RTKBCI is hard-pressed to establish the essential elements of estoppel. In relation to the party sought to be estopped, these are: 1) a clear conduct amounting to false representation or concealment of material facts or, at least, calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; 2) an intent or, at least, an expectation, that this conduct shall influence, or be acted upon by, the other party; and 3) the knowledge, actual or constructive, by him of the real facts.[27] With respect to the party claiming estoppel, the conditions he or she must satisfy are: 1) lack of knowledge or of the means of knowledge of the truth as to the facts in question; 2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and 3) action or inaction based thereon of such character as to change his position or status calculated to cause him injury or prejudice.[28]

It has not been shown that DepEd intended to conceal the actual facts concerning the nature of its role as a collection and remittance agent of RTKBCI as a privilege and as an accommodation to the latter on one hand, and a protective and promotive mechanism for the welfare of teachers, on the other. More important, RTKBCI has been shown not to be totally unaware of the aforementioned nature of DepEd's role and its primary responsibility to teachers, among other stakeholders,

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[27] See *Shopper's Paradise Realty & Development Corp. v. Rogue,* 464 Phil. 116, 124-125 (2004).

[28] *Id.* at 125.

and only secondarily and subsidiarily to private lending institutions such as RTKBCI.

Continued practice in domestic legal matters does not rise to the level of a legal obligation. The first sentence of Article 7 of the *Civil Code* states, "[l]aws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary." There can be no clear legal duty and clear legal right where to do so would compel DepEd to violate its power, duties, and functions under Section 7 of RA 9155, specifically toward the protection and promotion of the teachers' welfare. In the latter case, no practice, continued or otherwise, would establish and validate such clear legal duty and clear legal right.

In terms of international law where practice could give rise to a legally binding rule, ***Bayan Muna v. Romulo***[29] explained:

> Customary international law or international custom is a source of international law as stated in the Statute of the ICJ. It is defined as the "general and consistent practice of states recognized and followed by them from a sense of legal obligation. In order to establish the customary status of a particular norm, two elements must concur: State practice, the objective element; and opinio juris sive necessitates, the subjective element.
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> State practice refers to the continuous repetition of the same or similar kind of acts or norms by States. It is demonstrated upon the existence of the following elements: (1) generality; (2) uniformity and consistency; and (3) duration. While, opinio juris, the psychological element, requires that the state practice or norm "be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it."

RTKBCI has failed to show that DepEd's alleged practice of acting as a collector and remitter of loan payments on its behalf was general and consistent, much less, that DepEd did so as a sense of legal obligation. DepEd, on the contrary, has been adamant that it acted as collector and remitter only by way of accommodation and privilege.

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[29] 656 Phil. 246, 302-303 (2011).

Third. RTKBCI cannot rely on Section 36 of RA 8760 to anchor its claim of clear legal duty. As for the GAA FY 2000, by operation of law, it automatically lapsed by the end of such fiscal year.

In the modern world, education is considered a basic human right for it is a powerful tool by which people from socially and economically marginalized countries can be lifted out of poverty. This is the reason behind the State's mandate to make education accessible to all its citizens. Its importance cannot be overemphasized and is now in the same league of national concerns as national defense, economic growth, and international relations of the country. Section 5(5),[30] Article XIV of the *Constitution* has directed that education be accorded the highest budgetary priority.

The State has also made it part of its national policy to ensure that teachers achieve advancement in their career, for they are, after all, the partners of the State in fulfilling its mandate of providing quality education. The *Constitution,* thus, provides:

> (4) The State shall enhance the right of teachers to professional advancement. Non-teaching academic and non-academic personnel shall enjoy the protection of the State.[31]

But professional growth cannot be achieved if teachers are not doing well in their personal lives. The personal and professional well-being of teachers must go hand-in-hand. The State must, therefore, enforce laws, formulate rules and implement programs intended to promote the general interest of teachers. This is in accord with the State's duty to ensure its citizens with dignity, welfare, and security.

Further, teachers have no one else to turn to for protection of their welfare except the State itself. For its part, the State is

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[30] The State shall assign the highest budgetary priority to education and ensure that teaching will attract and retain its rightful share of the best available talents through adequate remuneration and other means of job satisfaction and fulfillment.

[31] Article XIV, Section 5(4), Constitution.

duty bound to render such protection in observance of its duty under the doctrine of *parens patriae. Parens patriae* means parent of his or her country. It refers to the State in its role as "sovereign" or the State in its capacity as a provider of protection to those unable to care for themselves. In fulfilling this duty, the State may resort to the exercise of its inherent powers: police power, eminent domain and power of taxation.[32] In implementing the payroll deduction system, DepEd performed a function only secondarily to favor RTKBCI as a private lending institution and primarily to protect and promote the welfare of teachers and institutions of basic education.

ACCORDINGLY, the petition for review on *certiorari* is **GRANTED.** The *Decision* dated May 30, 2012 of the Court of Appeals[33] in CA-G.R. SP No. 106515, entitled *"Rizal Teachers Kilusang Bayan for Credit, Inc., represented by Tomas L. Odullo v. Department of Education, Hon. Secretary Raul S. Roco and Undersecretary Ernesto S. Pangan,"* is **REVERSED** and **SET ASIDE,** and the Complaint for *Mandamus* and Damages in Civil Case No. 01-102346, **DISMISSED.**

SO ORDERED.

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

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[32] See *Southern Luzon Drug Corporation v. The Department of Social Welfare and Development, et al.,* 809 Phil. 315, 339 (2017). [citations omitted]

[33] Penned by Justice Hakim S. Abdulwahid with Justice Franchito N. Diamante and Justice Leoncia Real-Dimagiba, concurring; *rollo,* pp. 58-67.

FIRST DIVISION

[G.R. No. 205022. July 3, 2019]

CARLITO L. MIRANDO, JR., *petitioner, vs.* **PHILIPPINE CHARITY SWEEPSTAKES OFFICE and MANOLITO MORATO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL UNDER RULE 45; PERTAINS TO QUESTIONS OF LAW AND NOT TO FACTUAL ISSUES. —** It is settled that a Rule 45 petition pertains to questions of law and not to factual issues. A question of law arises when there is doubt as to what the law is on a certain state of facts. There is a question of fact, on the other hand, when the doubt arises as to the truth or falsity of the alleged facts, or when the query necessarily invites a calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.

2. **ID.; ID.; ID.; ID.; FINDINGS OF THE TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED. —** A determination of whether a matter has been established by a preponderance of evidence is, by definition, a question of fact as it entails an appreciation of the relative weight of the competing parties' evidence. Since a question of fact is not the office of a Rule 45 petition, we have no choice but to deny the petition. Moreover, it has been established that the findings of the trial court, especially when affirmed by the CA, are conclusive on this Court when supported by the evidence on record. The Supreme Court will not assess and evaluate all over again the evidence, testimonial and documentary, adduced by the parties to an appeal particularly where, such as here, the findings of both the trial court and the appellate court coincide. While there are exceptions to this rule, none of them is palpable in this case. We are convinced that the RTC and the CA independently scrutinized the record and substantiated their respective decisions with relevant evidence showing that petitioner's complaint was bereft of factual and legal bases.

APPEARANCES OF COUNSEL

Sy Flores Law Office for petitioner.
Office of the Government Corporate Counsel for respondent.

D E C I S I O N

JARDELEZA, *J.*:

A determination of where the preponderance of evidence lies entails an appreciation of the relative weight of the competing parties' evidence. It is a factual issue which, as a rule, cannot be entertained in a Rule 45 petition.

On March 9, 1996, respondent Philippine Charity Sweepstakes Office (PCSO) drew the lottery that yielded the following winning numbers: 15-22-23-24-34-36. It later announced that there was one winner of the jackpot prize of ₱120,163,123.00, who purchased the winning ticket at the Zenco Footsteps, Libertad, Pasay City lotto outlet (Zenco outlet).[1]

Petitioner claimed that he is the owner of the winning ticket. On March 10, 1996, after he allegedly saw the winning numbers on a newspaper, he immediately went to the ACT Theater lotto outlet in Cubao, Quezon City where he purchased the ticket and handed it to the lady in the lotto booth. The latter fed the ticket in the lotto machine, after which the words "Congratulations, you win the jackpot prize" appeared on the monitor screen.[2] Since it was a Sunday and the PCSO was closed, petitioner decided to go to Baliuag, Bulacan where he was working as a coco lumber agent. Thereafter, three months from the draw, he went to Aurora province and informed his family of the good news. After a week, or on March 18, 1996, he, together with his *kumpare*, went to the PCSO. He met with respondent Manolito Morato (Morato), former PCSO Chairman, to whom he presented his ticket to claim the prize.[3] Morato allegedly asked him to

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[1] *Rollo*, pp. 10-11.

[2] *Id.*

[3] *Rollo*, p. 11.

sign the back of the lotto ticket then went inside his office with the ticket. After an hour, Morato told petitioner that he can no longer claim the prize because it was already claimed by someone else. Petitioner left the PCSO and later discovered that his ticket was altered.[4]

On July 3, 1996, petitioner, through Atty. Renan Castillo, wrote a letter to PCSO requesting for the release of the jackpot prize. In a letter dated July 17, 1996, Morato replied that the sole winning ticket was sold at the Zenco outlet and the prize had already been claimed. He warned that should petitioner pursue his false claim, PCSO will charge him of attempted *estafa* through falsification of government security.[5]

After almost five years, or on September 22, 2000, petitioner filed a complaint for damages against PCSO and Morato (respondents) before the Quezon City Regional Trial Court (RTC), where he sought payment of the lotto jackpot prize, moral and exemplary damages, and attorney's fees.[6]

For their part, respondents denied that petitioner was a *bona fide* holder of the winning ticket. They argued that a computer verification made at the PCSO main computer center showed that the winning ticket was sold to a lone winner from Batangas, who bought his ticket at the Zenco outlet.[7] No bet and purchase of a lotto ticket with the winning numbers for the March 9, 1996 draw was ever made at the ACT Theater lotto outlet.[8] Respondents also belied petitioner's claim that the latter visited the PCSO on March 18, 1996, stating that it was only through his July 3, 1996 letter that petitioner first represented himself to be the winner of the jackpot prize. However, the supposed original ticket was not presented and only a photocopy was attached to the letter.[9]

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

[5] *Id.* at 12, 110.

[6] Records, pp. 6-l0.

[7] *Rollo*, p. 12.

[8] Records, p. 159.

[9] *Rollo*, p. 12.

Respondents moreover argued that petitioner's belated claim is contrary to human behavior because a person in his right mind would hurriedly present the original ticket at the soonest possible time. On the contrary, petitioner waited for four months and sought the assistance of his lawyer to write a letter to PCSO rather than personally claim the prize. After Morato warned petitioner in the July 17, 1996 letter, petitioner did not pursue his claim until after over four years, by filing a complaint for damages.[10]

During trial, petitioner presented eight witnesses including himself, while respondents presented two.[11] On April 27, 2005, the RTC rendered a Decision[12] dismissing the complaint for lack of legal and factual bases. It held that after evaluating the evidence presented by both parties, it became morally convinced that petitioner's claim was without basis. *First*, respondents had sufficiently established that the winner of the March 9, 1996 draw was not petitioner, based on the backup tapes from the main computer center where all transactions of lotto outlets are recorded. Moreover, the end of day reports generated in relation to all transactions of the lottery outlets showed that the winning ticket was purchased from the Zenco outlet and that the jackpot prize had been claimed.[13] *Second*, respondents have proven that regardless of the kind of lotto machine used, the words "Congratulations, you win the jackpot prize" do not appear on the monitor screen. Instead, once a winning ticket is inserted in the machine, a prize claim ticket will come out. Petitioner was unable to present his prize claim ticket. *Third*, contrary to the claim of petitioner's witnesses that the Zenco

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[10] *Id.* at 13.

[11] *Id.* at 105-118. Witnesses for petitioner: Edwin Alibuyog, Judge Luisito Cortez, Atty. Renan Castillo, Janet Rebusio-Ducayag, Rosanella Luna, Senior State Prosecutor Teresita Reyes-Domingo and Atty. Sotero Hernandez.

Id. at 118-123. Witnesses for respondents: Roy Ledesma and Jonathan Garingo.

[12] *Id.* at 102-130.

[13] *Id.* at 124.

outlet was not yet operational on March 9, 1996, respondents have proven that a lotto machine had already been installed at the Zenco outlet as early as 1994.[14]

On the other hand, the RTC held that petitioner's evidence left much to be desired. *First*, petitioner claimed to have validated his ticket on March 10, 1996, but failed to explain why it took him a week, or until March 18, 1996, before going to the PCSO. That he continued with his daily work and did not promptly claim the prize make his case incredible, especially in light of his assertion that he is poor.[15] *Second*, the National Bureau of Investigation (NBI) Questioned Document Division rendered a report stating that petitioner's lotto ticket was tampered.[16] Petitioner attributed the tampering to Morato. However, the RTC opined that if Morato or his subordinates tampered with the ticket and had no intention of honoring it, petitioner would not have been asked to sign it in the first place. The RTC concluded that it was petitioner who actually tampered with the ticket, *i.e.*, he bought the ticket after the draw, placed a bet on the winning combination after it was announced, erased the date and security code, and finally laid claim to the prize.[17]

Petitioner filed a motion for reconsideration, but it was denied. Hence, he filed an appeal before the Court of Appeals (CA).

On January 31, 2012, the CA rendered its Decision[18] which affirmed the RTC ruling *in toto*. Additionally, the CA anchored

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[14] *Id.* at 126.

[15] *Id.* at 127-128.

[16] *Id.* at 128. According to the report, "[t]here is evidence of alteration by mechanical erasure (rubbing-off) on the area/portion where the date of draw, date of purchase and on the printed entries on the third line underneath the date of draw as well as on the security code found on the left side margin of the Lotto ticket, as shown by disturbance in the reflective quality of paper surface and fiber disturbance. The original entry could not be deciphered due to extensive erasures."

[17] *Id.* at 128-129.

[18] *Id.* at 9-29; penned by Associate Justice Danton Q. Bueser, with Associate Justices Rosmari D. Carandang (now a Member of this Court) and Ricardo R. Rosario concurring.

its findings on the following observations: *First*, petitioner's witness confirmed that the winning lotto ticket came from the DM Flipper type machine, which is the kind of machine installed at the Zenco outlet, and not the DM 20E machine that was installed at the ACT Theater lotto outlet.[19] *Second*, when demonstration[20] was made in open court showing how a lotto machine validates a winning ticket, no objections, manifestations or irregularities were raised by petitioner.[21] *Third*, the testimonies of the majority of petitioner's witnesses dealt with observations and opinions that they had on the demeanor of and statements made by petitioner pertaining to the alleged unjustified denial of his claim by the PCSO. While honest and straightforward, these testimonies dwelt on collateral matters and not on the main issue of who actually won the lottery drawn on March 9, 1996.[22] *Fourth*, petitioner failed to prove his alleged visit to the two lotto outlets with NBI agents. Petitioner claimed that he, together with three NBI agents, went to the ACT Theater lotto outlet in December 1996 to interview its manager. The latter allegedly affirmed that the winning ticket came from the said outlet but refused to sign an affidavit because Morato might get mad at them. Petitioner and the NBI allegedly went to the Zenco outlet next. There, they spoke to a certain Tony Yap who denied that the winning ticket for the March 9, 1996 lotto draw came from that outlet since it only started operations on April 28, 1996. The CA concluded that these are bare allegations. Petitioner failed to identify or present the NBI agents, or even an incident report or written statement on the outcome of the investigation to confirm his narration.[23] *Fifth*, some of petitioner's

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

[20] *Id.* at 20. The CA noted that there are two ways to validate a winning ticket. Upon manual verification, the machine did not generate the word "Congratulations!" on the monitor, as petitioner asserted. Only the number "0" appeared. Machine validation, on the other hand, yielded two tickets—the first containing the prize and serial number and the other containing the instruction on where to claim the prize.

[21] *Id.*

[22] *Rollo*, p. 22.

[23] *Id.* at 23.

witnesses claimed that their lives have been threatened because of their affiliation with petitioner. However, they did not present any police report, police blotter or any proof that the incidents they complained of actually happened.[24] *Sixth*, petitioner's *kumpare* who allegedly went to the PCSO with him on March 18, 1996 and met with Morato did not execute a statement to prove that such meeting actually took place. The CA opined that petitioner alleged circumstances of prejudice caused to him by respondents, yet failed to prove any.[25] Hence, it did not find strong and valid reasons to disturb the RTC's findings.[26]

Petitioner sought reconsideration, but it was denied.[27] Hence, this petition.

The Court initially denied the petition after finding that the CA did not commit any reversible error in affirming *in toto* the RTC Decision.[28] However, we subsequently granted petitioner's motion for reconsideration and reinstated the petition.[29]

We deny the petition.

Petitioner comes before the Court through a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure. He pleads for us to reconsider the consistent rulings of the CA and the RTC that the preponderance of evidence lies with respondents who were able to establish that petitioner was not the winner of the lottery drawn on March 9, 1996, and raises the following errors allegedly committed by the CA:

(i)

THE COURT OF APPEALS ERRED AND FAILED TO GIVE FULL WEIGHT AND MERIT TO THE CREDIBILITY, MATERIALITY, RELEVANCE, CORROBORATIVENESS (*sic*),

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[24] *Id.* at 24.

[25] *Id.*

[26] *Rollo*, p. 26.

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

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

[29] *Id.* at 203.

AND COHESIVENESS OF PETITIONER'S TESTIMONIAL EVIDENCE AND DOCUMENTARY EVIDENCE, WHICH FAR OUTWEIGHED AND EMASCULATED RESPONDENTS' EVIDENCE, CONTRARY TO LAW AND THE EVIDENCE ADDUCED

(ii)

THE COURT OF APPEALS ERRED AND FAILED TO CONSIDER APPLICABLE AND APPROPRIATE LAWS, PROVISIONS OF THE RULES OF COURT, JURISPRUDENCE INVOKED BY PETITIONER IN HIS FORMAL OFFER OF EVIDENCE; COMMENT/OPPOSITION TO RESPONDENTS' FORMAL OFFER OF EVIDENCE, CONTRARY TO LAW AND THE EVIDENCE ADDUCED[30] (Emphasis in the original.)

It is settled that a Rule 45 petition pertains to questions of law and not to factual issues.[31] A question of law arises when there is doubt as to what the law is on a certain state of facts. There is a question of fact, on the other hand, when the doubt arises as to the truth or falsity of the alleged facts,[32] or when the query necessarily invites a calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.[33]

To resolve the issue of whether petitioner was the jackpot prize winner of the lotto drawn on March 9, 1996, it will be necessary for the Court to look into the records of the case, evaluate the documentary and testimonial evidence presented by the parties, and decide on which side the preponderance of evidence lies. A determination of whether a matter has been established by a preponderance of evidence is, by definition, a question of fact as it entails an appreciation of the relative

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[30] *Id.* at 44-45.

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

[32] *Tongonan Holdings and Development Corporation v. Escaño, Jr.*, G.R. No. 190994, September 7, 2011, 657 SCRA 306, 314, citing *Republic v. Malabanan*, G.R. No. 169067, October 6, 2010, 632 SCRA 338, 345.

[33] *DST Movers Corporation v. People's General Insurance Corporation*, G.R. No. 198627, January 13, 2016,780 SCRA 498, 507. Citation omitted.

weight of the competing parties' evidence.[34] Since a question of fact is not the office of a Rule 45 petition, we have no choice but to deny the petition.

Moreover, it has been established that the findings of the trial court, especially when affirmed by the CA, are conclusive on this Court when supported by the evidence on record. The Supreme Court will not assess and evaluate all over again the evidence, testimonial and documentary, adduced by the parties to an appeal particularly where, such as here, the findings of both the trial court and the appellate court coincide. While there are exceptions to this rule, none of them is palpable in this case. We are convinced that the RTC and the CA independently scrutinized the record and substantiated their respective decisions with relevant evidence showing that petitioner's complaint was bereft of factual and legal bases.

At the end of the day, what petitioner has in his possession is a tampered lotto ticket, which by no stretch of the law he should benefit from. Petitioner does not deny the fact that the ticket was tampered, but accuses Morato of altering the ticket on the day they supposedly met at the PCSO on March 18, 1996. We agree with the RTC and the CA that neither the meeting nor the alleged tampering by Morato was proven by petitioner. Basic is the rule that he who alleges a fact has the burden of proving it, and a mere allegation is not evidence.[35]

WHEREFORE, the petition is **DENIED**. The January 31, 2012 Decision and November 15, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 86399 are **AFFIRMED**.

SO ORDERED.

Bersamin, C.J. (Chairperson), del Castillo (Working Chairperson), and *Reyes, A. Jr.*,[*] *JJ.*, concur.

Gesmundo, J., on official leave.

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[34] *Id.* at 508.

[35] *MOF Company, Inc. v. Shin Yang Brokerage Corporation*, G.R. No. 172822, December 18, 2009, 608 SCRA 521, 527.

[*] Designated as Additional Member per Raffle dated June 19, 2019 in lieu of Associate Justice Rosmari D. Carandang.

SECOND DIVISION

[G.R. No. 212520. July 3, 2019]

COCA-COLA BOTTLERS PHILIPPINES, INC., *petitioner, vs.* **ANTONIO P. MAGNO, JR. and MELCHOR L. OCAMPO, JR.,** *respondents.*

SYLLABUS

1. LABOR LAW AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; REINSTATEMENT; IMMEDIATELY EXECUTORY, EVEN PENDING APPEAL; ELUCIDATED. — The third paragraph of Article 229 of the Labor Code provides: "In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work **under the same terms and conditions prevailing prior to his dismissal** or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein." Article 294 of the Labor Code further provides: "x x x 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."

2. ID.; ID.; ID.; ID.; ACCRUED BACKWAGES, DISCUSSED; CASE AT BAR. — Our jurisprudence has been consistent as to what should constitute accrued backwages. In *Paramount Vinyl Products Corp. v. NLRC*, we ruled that "the **base figure to be used in the computation of backwages** due to the employee **should include not just the basic salary, but also the regular allowances that he had been receiving, such as the emergency living allowances and the 13th month pay mandated under the law**." In *United Coconut Chemicals, Inc. v. Valmores*, we ruled that "[t]he base figure to be used in

reckoning full backwages is the **salary rate of the employee at the time of his dismissal**. The amount **does not include the increases or benefits granted during the period of his dismissal** because time stood still for him at the precise moment of his termination, and move forward only upon his reinstatement." Entitlement to such benefits must be proved by submission of proof of having received the same at the time of the illegal dismissal. Increases are thus excluded from backwages. Subject to submission of proof of receipt of benefits at the time of their dismissal, Magno's and Ocampo's accrued backwages should include their basic salary as well as the allowances and benefits that they have been receiving at the time of their dismissal. In accordance with the claims previously put forward by Magno and Ocampo, accrued backwages may include, but are not limited to, allowances and benefits such as transportation benefits, cellphone allowance, 13th month pay, sick leave, and vacation leave in the amounts at the time of their dismissal. Magno and Ocampo should also prove that they have been receiving the amounts that correspond to merit or salary increases, incentive pay, and medicine at the time of their dismissal so that they may validly qualify for receipt of such as part of their accrued backwages.

3. **ID.; ID.; ID.; ID.; ID.; PERIOD COVERED BY THE AWARD OF ACCRUED BACKWAGES; CASE AT BAR. —** In *Pfizer, Inc. v. Velasco*, we ruled that an order for reinstatement entitles an employee to receive his accrued backwages from the moment the reinstatement order was issued up to the date when the same was reversed by a higher court without fear of refunding what he had received. *Wenphil Corporation v. Abing*, further clarified *Pfizer*: the start of the computation of the backwages should be on the day following the last day when the dismissed employee was paid backwages, and end on the date that a higher court reversed the LA's ruling of illegal dismissal. The date of reversal should be the end date, and not the date of the ultimate finality of such reversal. Considering that the kind of monetary awards granted to Magno and Ocampo have differed throughout the course of the present case, the LA should determine the day following the last day when Magno or Ocampo received the amount for such allowance or benefit. In any event, the last day of the period of computation of Magno's and Ocampo's backwages should be **27 July 2010**. This is the date of promulgation of the NLRC Decision which ruled that Magno

and Ocampo were legally dismissed. This Court's Entry of Judgment in G.R. No. 202141 on 31 October 2012 should not have any bearing on the determination of the last day of the period of computation. The LA is tasked to determine the specific allowances and benefits, as well as the corresponding amounts, that Magno and Ocampo have been receiving at the time of their dismissal. The LA should also determine the last day when Magno or Ocampo received the amount for such allowance or benefit. Following this computation, the LA should then deduct the amount that Coca-Cola previously paid Magno and Ocampo in the course of this case. The resulting amount, being in the form of a judgment for money, shall earn interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo for petitioner.
Randolfo L. Fajardo for respondents.

R E S O L U T I O N

CARPIO, *J.*:

The Case

G.R. No. 212520 is a petition[1] assailing the Court of Appeals (CA) Resolutions in CA-G.R. SP No. 122684 promulgated on 4 February 2014[2] and on 9 May 2014.[3] This case involves the same parties in G.R. No. 202141 (*Ocampo and Magno v. Coca-Cola Bottlers Phils., Inc., et al.*), which was denied in a Resolution dated 30 July 2012.

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[1] *Rollo*, pp. 8-33. Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Id.* at 526-528. Penned by Associate Justice Normandie B. Pizarro, with Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Manuel M. Barrios concurring.

[3] *Id.* at 543-544. Penned by Associate Justice Normandie B. Pizarro, with Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Manuel M. Barrios concurring.

Antecedent Facts

In its Decision[4] dated 27 July 2010, the National Labor Relations Commission (NLRC) stated the facts of the case as follows:

> Complainant-[a]ppellee [Melchor L. Ocampo, Jr., or] Ocampo alleged that he was hired by [Coca-Cola] on 1 May 1988. During the course of his employment he was rewarded with promotions and incentives until he reached the position of District Sales Supervisor with a basic monthly salary of ₱45,900.00, cellular phone subsidy, gas allowance and incentive pay.
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> Complainant-[a]ppellee [Antonio P. Magno, Jr., or] Magno was employed on 15 December 1988. His last position was as Territory Sales Manager with a basic monthly pay of ₱76,410.00, cellphone subsidy, gas allowance and other incentive pay.
>
> In January 2007, complainants-appellees were meted a suspension for one month because of the charge that two (2) hauler trucks belonging to one Tirso B. Tablang (Tablang), a dealer of [Coca-Cola's] products, and whose operation is under Ocampo's district and Magno's territory, were found to be distributing soon-to-expire products in Manila, which is outside of his dealership area.
>
> Complainants-[a]ppellees claimed that the said incident happened at a time when respondent company's products were not doing well in the market and this decrease in the sales would result to the expiration of the products stored in the warehouses. The expiration of the products on [sic] storage would in turn translate to financial losses to respondent company.
>
> On 29 April 2008, the services of complainant-appellee Ocampo was terminated. On 14 May 2008, complainants-appellees filed a complaint for illegal dismissal of Ocampo. Furthermore, they prayed for an order of reinstatement and payment of backwages and other incentives, damages and attorney's fees.
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> On 18 June 2008, complainants-appellees filed a supplemental position paper alleging that Antonio Magno was likewise terminated from work on 29 May 2008 when he was not allowed to enter company premises for no reason at all.

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[4] *Id*. at 424-436. Penned by Commissioner Isabel G. Panganiban-Ortiguerra, with Presiding Commissioner Benedicto R. Palacol and Commissioner Nieves Vivar-De Castro concurring.

Upon the other hand and by way of controversion, respondents-appellants alleged that the local sales market of the company is geographically divided into areas, territories and districts. This scheme is meant to protect each dealer's area and prevent unfair dealings. Thus, the company has a "no encroachment policy" for strict compliance by sales personnel, the violation of which is a ground for the termination of dealership agreement and/or the services of employees involved (Annex "I", pp. 107-109, Records).

Complainants-[a]ppellees were assigned in the Nueva Ecija and Aurora province areas. The head of this area is individual respondent Jaime Ronquillo. Complainant-[a]ppellee Magno is the Territory Sales Manager for Cabanatuan City and San Leonardo, Nueva Ecija and Baliuag, Bulacan, who directly reported to Ronquillo. In turn, complainant-appellant [sic] Ocampo was a District Sales Supervisor assigned to Aurora District who reported to Magno.

Respondents-[a]ppellants claimed that Magno and Ocampo who were charged with engaging in fictitious sales transactions and violation of the "no encroachment" policy; were placed on preventive suspension and dismissed from service in accordance with the provisions of Sections 10 and 12, Rule 005-85 of the CCBPI Rules in relation to Article 282 of the Labor Code on loss of trust and confidence.

Respondents-[a]ppellants related that complainants-appellees committed the infractions in connivance with the company's dealer-partner in Casiguran and Dipaculao, Aurora province, Tirso B. Tablang (Tablang). Tablang was under complainant-appellee Ocampo's district and he sourced his products from Cabanatuan Sales Office, which was covered by Magno's territory.

Sometime in December 2006, respondent company received reports that some products purportedly hauled from Cabanatuan Sales Office under the name and by authority of Tablang were not actually delivered to Casiguran or Dipaculao but were diverted to other outlets in Metro Manila or other district in Nueva Ecija. The products were hauled using Tablang's delivery trucks/haulers. The company conducted a surveillance of Tablang's trucks and on 28 December 2006 they were able to track down REH 597. Nine hundred cases of soft drinks were pulled out from Cabanatuan Sales Office, but instead of proceeding to Casiguran or Dipaculao, Aurora, the driver proceeded to Manila. The surveillance team trailed the truck up to Tambo, Parañaque and saw the products being unloaded from said truck.

When Tablang was confronted, he stated that complainants-appellants [sic] Magno and Ocampo used his facilities to buy company products at discounted rates, only to dispose them outside their territory. Ocampo convinced him to issue a signed blank authorization form so that the former can pull out stocks from the Cabanatuan Sales Office. These stocks were included as part of Tablang's account with the respondent company. As payment for the stocks, complainants-appellees [sic] would issue checks to Tablang to cover the amount corresponding to the stocks that they pulled out.

After further review of the records, respondents-appellants served a Notice to Explain and Preventive Suspension to Magno on 19 January 2007 and to Ocampo on 24 January 2007 (Annexes "15" and "16", pp. 142-143, Records).

In his letter of explanation, Magno argued that the company did not incur any losses, instead he prevented the same when he was able to sell and dispose of the soon-to-expire products stored in the warehouse.

Ocampo, on the other hand, admitted that the plan to dispose of the stocks in the manner that they did was a strategy devised by Magno in order to protect the interest of the company.

However, they did not attend the administrative hearings scheduled on 9 and 12 February 2007. The hearing was again set for 13 February 2007 for Ocampo and 19 February 2007 for Magno. Still, complainants-appellee [sic] failed to appear. The meeting was again reset to 22 February 2007, but despite notice, they did not attend. Thus, the hearing was conducted in their absence and the witnesses present thereat were questioned and were asked to submit their verified statements.

After evaluation of the records and the statements of both parties, management came to a decision that Ocampo was guilty as charged and decided to terminate his services on 29 April 2008 through a Notice of Termination dated 23 April 2008. In view of Magno's position in the company and his long years of service, he was given a Fourth Notice to Explain which was also unheeded. Thus he was given his termination papers on 29 May 2008.[5]

Antonio Magno, Jr. (Magno) and Melchor Ocampo, Jr. (Ocampo) filed a complaint for illegal suspension and money

[5] *Id.* at 427-431.

claims before the Labor Arbiter (LA) on 7 March 2008.[6] On 5 June 2008, the complaint was amended to include a prayer for reinstatement, backwages, damages and attorney's fees and payment of their salaries corresponding to their suspension.[7]

Coca-Cola Bottlers Philippines, Inc. (Coca-Cola), on the other hand, claims that Magno and Ocampo were legally dismissed for cause. Magno and Ocampo allegedly violated Sections 10 and 12, Rule 005-85 of Coca-Cola's Code of Disciplinary Rules and Regulations (the CCBPI Rules), which provided penalties for fictitious sales transactions and analogous cases.[8]

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[6] *Id*. at 36.

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

[8] Sec. 10. Fictitious sales transactions; Falsifications of Company records/data/documents/invoices/reports; fictitious issuance of TCS/TDI/COL; misappropriation or embezzlement of Company funds, withholding of funds due to the Company, kiting of collections or of Company funds; unauthorized retrieval of empties by converting the same to cash for personal use; unremitted or short remittance of collections; non-issuance or mis-issuance of invoices and/or receipt as well as commercial documents to dealers; forgery, misuse, abuse or defalcation of funds for market development program and/or Company funds conspiring or conniving with, directing others to commit any of the foregoing, other anomalies similar or analogous to the foregoing whether committed within a calendar year or not; analogous cases.

(a) Each transaction shall constitute one offense:

First offense	6 days suspension
Second offense	15 days suspension
Third offense	30 days suspension
Fourth offense	DISCHARGE

(b) For violation of Section 10 of Rule 005-85, where the damage or loss to the Company is incurred:

Each transaction or the total transaction where the amount involved is ₱500 or less

- 15 days suspension with restitution

Each transaction or the total transaction where the amount involved is more than ₱500 but not more than ₱2,000

- 30 days suspension with restitution

Each transaction or the total transaction where the amount involved is more than ₱2,000

- DISCHARGE with restitution

x x x x x x x x x

The Ruling of the Labor Arbiter

On **30 October 2008**, the LA, in NLRC Case No. RAB-III-03-13268-08,[9] declared Coca-Cola guilty of illegally suspending and dismissing Magno and Ocampo. The LA ordered payment of salaries and benefits for the one month suspension. The LA also ordered reinstatement, as well as payment to both Magno and Ocampo of their respective backwages, transportation benefits, cellphone benefits, incremental increase, and annual incentive pay. The LA also awarded payment of moral damages, exemplary damages, and attorney's fees. The dispositive portion of the Decision reads:

WHEREFORE, judgment is hereby rendered declaring respondents guilty of illegally suspending and dismissing complainants.

Sec 12. (a) Other acts of negligence or inefficiency in the performance of duties or in the care, custody and/or use of Company property, funds and/or equipment; or blatant disregard of or deviation from established control and other policies and procedures including but not limited to the care, custody and/or use of Company property, funds or equipment; similar or analogous acts or omissions, whether committed within a calendar year or not; analogous cases.

Each act of [sic] omission constitute [sic] one offense:

First offense	6 days suspension
Second offense	15 days suspension
Third offense	30 days suspension
Fourth offense	DISCHARGE

(b) For violation of the provisions of Section 12 of Rule 005-85, where the damage or loss to the Company is incurred:

If the amount of damage or loss is not more than ₱1,000
-10 days suspension with restitution

If the amount of damage or loss is more than ₱1,000 but not more than ₱3,000
- 15 days suspension with restitution

If the amount of damage or loss is more than ₱3,000 but not more than ₱5,000
- 30 days suspension with restitution

If the amount of damage or loss is more than ₱5,000
- DISCHARGE with restitution

(c) In the application of the proper penalties for violation of Section 12 of Rule 005-85, subsection (a) thereof where any of the elements of sub-section (b) thereof is/are present in each case, the heavier penalty shall be imposed.

[9] *Rollo*, pp. 36-58. Penned by Labor Arbiter Reynaldo V. Abdon.

Concomitantly, they are hereby ordered to pay complainants their salaries and other benefits during the time of their suspension as follows:

1. for complainant Magno:
   a. Salary for one month suspension in the amount of ₱76,100.00;
   b. Transportation benefits for one month in the amount of ₱15,000.00;
2. for complainant Ocampo:
   a. Salary for one month suspension in the amount of ₱45,900.00;
   b. Transportation benefits for one month in the amount of ₱10,000.00.

Further considering that complainants' dismissals are illegal, respondents are also hereby ordered to reinstate complainants to their former positions under the same terms and conditions prevailing during the time of their employment without loss of seniority rights and privileges. The reinstatement is immediately executory and respondent Coca-Cola is directed to submit a report of compliance thereof within ten (10) calendar days from receipt of this decision pursuant to the provisions of paragraph 2, Section 14, Rule V of the 2005 NLRC Revised Rules of Procedure.

Respondents are further ordered to pay herein complainants the following:

3. for complainant Magno:
   a. Backwages from May 29, 2008 up to the date of this Decision computed in the amount of ₱380,500.00;
   b. Transportation benefits from the time it was withheld from them commencing [i]n February 2007 up to the time of this Decision = 21 months x ₱15,000 or in the total amount of ₱315,000.00;
   c. Cellphone benefits in the amount of ₱17,500.00;
   d. Incremental increase for 2008 equivalent to ₱3,000 a month for 10 months = ₱30,000.00;
   e. Annual Incentive Pay which he earned for his accomplishments in 2007 in the amount of ₱300,000.00;
4. for complainant Ocampo:
   a. Backwages from April 29, 2008 up to the date of this Decision computed in the amount of ₱275,400.00;

b. Transportation benefits from the time it was withheld from them commencing [i]n February 2007 up to the time of this Decision = 21 months x ₱10,000 or in the total amount of ₱210,000.00;
c. Cellphone benefits in the amount of ₱25,000.00;
d. Incremental increase for 2008 equivalent to ₱4,200 a month for 10 months = ₱42,000.00;
e. Variable Incentive Pay from January 2007 up to the date of this Decision in the amount of ₱550,000.00.

For having suffered besmirched reputation, sleepless nights and serious anxiety, not to mention the presence of bad faith, respondents are also ordered to pay complainants Magno and Ocampo, moral damages in the amount of ₱3,000,000.00 and ₱2,000,000.00, respectively.

In order to deter anyone similarly inclined to commit such illegal and malevolent acts, respondents are likewise ordered to pay exemplary damages in the amount of ₱2,000,000.00 for each complainant.

It is also apparent that complainants hired the services of a counsel to litigate their cause, respondents are also hereby ordered to pay attorney's fees equivalent to ten percent (10%) of the total award.

Finally, respondents are hereby ordered to expunge from their personnel records, all violations attributed to herein complainants.

SO ORDERED.[10]

On 5 December 2008, Coca-Cola filed a Memorandum of Appeal[11] with the NLRC, which was docketed as NLRC LAC No. 01-000034-09. Coca-Cola prayed that the NLRC declare valid Magno's and Ocampo's preventive suspension and dismissal from service.

During the pendency of the appeal in the NLRC, Magno and Ocampo filed motions for the issuance of a partial writ of execution before the LA on the following dates: 4 December 2008,[12]

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[10] *Id*. at 55-58.

[11] *Id*. at 59-118.

[12] *Id*. at 249-250, for benefits that accrued in favor of Ocampo and Magno after the issuance of the LA's Decision promulgated on 30 October 2008.

22 January 2009,[13] 3 August 2009,[14] 13 October 2009,[15] 15 December 2009,[16] and 2 March 2010.[17]

Coca-Cola filed the corresponding oppositions to these motions on the following dates: 5 January 2009,[18] 9 February 2009,[19] 20 August 2009,[20] 5 November 2009,[21] and 7 January 2010.[22] Coca-Cola also filed an opposition to Magno and Ocampo's 1 March 2010 motion for the issuance of a partial writ of execution. This opposition, however, is not in the records and was only mentioned in the LA's Order dated 26 March 2010.[23]

The LA granted Magno and Ocampo's motions for partial writ of execution in Orders released on the following dates: 9 January 2009,[24] 18 February 2009,[25] 2 September 2009,[26] 15 January 2010,[27] and 26 March 2010.[28] The LA denied Coca-Cola's Opposition of 5 November 2009 in an Order released on 20 November 2009.[29] The LA also released on 20 November

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[13] *Id*. at 276-279, for November 2008 to January 2009.

[14] *Id*. at 323-325, for June and July 2009.

[15] *Id*. at 336-338, for August and September 2009.

[16] *Id*. at 364-367, for October and November 2009.

[17] *Id*. at 394-397, for December 2009 and February 2010.

[18] *Id*. at 251-254, for deferral of execution of the 30 October 2008 Decision of the LA until such time that Coca-Cola's appeal has been resolved by the NLRC.

[19] *Id*. at 280-285.

[20] *Id*. at 326-331.

[21] *Id*. at 339-344.

[22] *Id*. at 368-377.

[23] *Id*. at 399.

[24] *Id*. at 255-258.

[25] *Id*. at 303-307.

[26] *Id*. at 332-335.

[27] *Id*. at 378-382.

[28] *Id*. at 398-401.

[29] *Id*. at 345-346.

2009 a separate Order[30] directing the Branch Manager of Metrobank, San Fernando City branch to release, in separate checks, the amount of ₱351,269.00 representing Magno's and Ocampo's reinstatement salaries and benefits for August and September 2009, and the amount of ₱4,790.00 representing execution and deposit fees.

Coca-Cola filed the corresponding memoranda of appeal before the NLRC on the following dates: 5 December 2008,[31] 2 February 2009,[32] 2 March 2009,[33] 24 November 2009,[34] 28 January 2010,[35] and 31 March 2010.[36]

On **26 March 2010**, the LA ordered Coca-Cola to reinstate Magno and Ocampo to their former positions without loss of seniority rights and privileges, and specified the amounts that they should be paid. The dispositive portion of the Order reads:

> WHEREFORE, let a Partial/Alias Writ of Execution be issued directing the respondents to reinstate the complainants to their former positions without loss of seniority rights and privileges and for the respondents to pay them their basic reinstatement wages for the months of December 2009, January 2010 and February 2010 and their sick and vacation leave credits as follows:
>
> | | **Basic Pay** | **SL&VL** | **TOTAL** |
> |---|---|---|---|
> | Antonio Magno, Jr. | ₱228,300.00 | ₱163,721.00 | ₱392,021.00 |
> | Melchor Ocampo, Jr. | 137,700.00 | 98,749.00 | 236,449.00 |
> | **TOTAL** | | | ₱628,470.00 |
>
> SO ORDERED.[37]

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[30] *Id*. at 347-348.

[31] *Id*. at 59-118.

[32] *Id.* at 259-269.

[33] *Id*. at 308-322.

[34] *Id*. at 349-363.

[35] *Id*. at 383-393.

[36] *Id*. at 402-422.

[37] *Id*. at 401.

There were six sets of these exchanges (motion for issuance of partial writ of execution, opposition, order granting the writ, memorandum of appeal) from December 2008 to March 2010. The amounts granted by the LA to Magno from 20 October 2008 to 26 March 2010 are summarized as follows:

	30 October 2008[38]	9 January 2009[39]	18 February 2009[40]	1 September 2009[41]	20 November 2009[42]	15 January 2010[43]	26 March 2010[44]
Salary for one-month suspension	~~₱~~76,100	-	-	-	-	-	-
Transportation benefits for one month	~~₱~~15,000	-	-	-	-	-	-
Backwages	~~₱~~380,500 From 29 May 2008 up to date of Decision	-	-	~~₱~~152,200 For June and July 2009	~~₱~~152,200 For August and September 2009	~~₱~~152,200 For October and November 2009	~~₱~~228,300 For December 2009 to February 2010
Transportation benefits	~~₱~~315,000 (~~₱~~15,000 x 21 months) From February 2007 up to date of decision	-	-	~~₱~~57,000 For June and July 2009	~~₱~~57,000 For August and September 2009	-	-
Cellphone benefits	~~₱~~17, 500	-	-	~~₱~~7,000	~~₱~~7,000	-	-
Incremental increase/ Salary increase	~~₱~~30,000 (~~₱~~3,000 x 10 months)	-	-	~~₱~~6,000	~~₱~~6,000	-	-

[38] *Id*. at 55-57.

[39] *Id*. at 257-258.

[40] *Id*. at 306.

[41] *Id*. at 325 (specific amounts from Motion for Issuance of Partial Writ of Execution), 335.

[42] *Id*. at 338 (specific amounts from Motion for Issuance of Partial Writ of Execution), 348.

[43] *Id*. at 381.

[44] *Id*. at 401.

Annual incentive pay	₱300,000 (For accomplishments in 2007)	-	-	-	-	-	-
Medicine	-	-	-	₱5,326	₱1,030	-	-
13th Month Pay	-	-	-	-	-	₱76,100	
Sick Leave and Vacation Leave	-	-	-	-	-	-	₱163,721
Statement	-	"[T]o effect the reinstatement of [Magno] to [his] former position without loss of seniority rights and privileges, either physically or in the payroll, at the option of [Coca-Cola]."	"[T]o collect the reinstatement wages of [Magno] x x x."	"[T]o collect from [Coca-Cola] the total amount of x x x (₱356,337.00) representing reinstatement wages."	"[T]o immediately release the amount of x x x ₱351,269.00) representing [Magno's] reinstatement salaries/ wages and benefits for the months of August and September 2009 x x x."	"[T]o reinstate [Magno] to [his] former position x x x and for [Coca-Cola] to PAY [Magno] [his] basic reinstatement wages for October 2009 and November 2009 and 13th month pay for the year 2009 x x x."	"[T]o reinstate [Magno] to [his] former position without loss of seniority rights and privileges and for [Coca-Cola] to pay them their basic reinstatement wages for the months of December 2009, January 2010 and February 2010 and their sick and vacation leave benefits x x x."

The amounts granted by the LA to Ocampo from 20 October 2008 to 26 March 2010 are summarized as follows:

	30 Oct 2008[45]	9 Jan 2009[46]	18 Feb 2009[47]	1 Sept 2009[48]	20 Nov 2009[49]	15 Jan 2010[50]	26 Mar 2010[51]
Salary for one-month suspension	~~₱~~45,900	-	-	-	-	-	-
Transportation benefits for one month	~~₱~~10,000	-	-	-	-	-	-
Backwages	~~₱~~275,400 From 29 April 2008 up to date of Decision	-	-	~~₱~~91,800 For June and July 2009	~~₱~~91,800 For August and September 2009	~~₱~~91,800 For October and November 2009	~~₱~~137,700 For December 2009 to February 2010
Transportation benefits	~~₱~~210,000 ~~₱~~10,000 x 21 months) From February 2007 up to date of Decision	-	-	~~₱~~20,000 For June and July 2009	~~₱~~20,000 For August and September 2009	-	-
Cellphone benefits	~~₱~~25,000	-	-	~~₱~~5,000	~~₱~~5,000	-	-
Merit increase/ Salary increase	~~₱~~42,000 (~~₱~~4,200 x 10 months)	-	-	~~₱~~8,400	~~₱~~8,400	-	-
Variable incentive pay	~~₱~~550,000 (From January 2007 up to date of Decision)	-	-	-	-	-	-

[45] *Id*. at 55-57.

[46] *Id*. at 257-258.

[47] *Id*. at 306.

[48] *Id*. at 325 (amounts from Motion for Issuance of Partial Writ of Execution), 335.

[49] *Id*. at 338 (specific amounts from Motion for Issuance of Partial Writ of Execution), 348.

[50] *Id*. at 381.

[51] *Id*. at 401.

Medicine	-	-	-	₱3,611	₱2,839	-	-
13th Month Pay	-	-	-	-	-	₱48,900	-
Sick Leave and Vacation Leave	-	-	-	-	-	-	₱98,749
Statement	-	"[T]o effect the reinstatement of [Ocampo] to [his] former position without loss of seniority rights and privileges, either physically or in the payroll, at the option of [Coca-Cola]."	"[T]o collect the reinstatement wages of [Ocampo] x x x."	"[T]o collect from [Coca-Cola] the total amount of x x x (₱356,337.00) representing reinstatement wages."	"[T]o immediately release the amount of x x x (₱351, 269.00) representing [Ocampo's] reinstatement salaries/ wages and benefits for the months of August and September 2009 x x x."	"[T]o reinstate [Ocampo] to [his] former position x x x and for [Coca-Cola] to PAY [Ocampo] [his] basic reinstatement wages for October 2009 and November 2009 and 13th month pay for the year 2009 x x x."	"[T]o reinstate [Ocampo] to [his] former position without loss of seniority rights and privileges and for [Coca-Cola] to pay them their basic reinstatement wages for the months of December 2009, January 2010 and February 2010 and their sick and vacation leave benefits x x x."

The Ruling of the NLRC

On **27 July 2010**, the NLRC promulgated a Decision which resolved Coca-Cola's appeal from the LA's Decision dated 30 October 2008. **The NLRC ruled that Magno and Ocampo were legally dismissed, but their suspension was illegal.**

The 27 July 2010 NLRC Decision adjusted the monetary awards granted by the LA to Magno and Ocampo. In contrast to the 30 October 2008 Decision, where the LA awarded Magno and Ocampo backwages, transportation benefits, cellphone benefits, incremental increase, annual incentive pay, moral damages, exemplary damages, and attorney's fees, the 27 July

2010 Decision of the NLRC limited the monetary awards to payment of salary for one month suspension and transportation benefits. The 27 July 2010 Decision also denied Magno's and Ocampo's claims for moral and exemplary damages and attorney's fees.

The dispositive portion of the NLRC's 27 July 2010 Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring that complainants-appellees have been legally dismissed. However, their suspension is declared illegal. Respondent-Appellant Coca-Cola Bottlers Philippines, Inc. is hereby ordered to pay their salaries and benefits during the period of their suspension, in the following grounds [sic]:
>
> 1. for Antonio P. Magno:
> a. Salary for one month suspension of ₱76,100.00
> b. Transportation benefits of ₱15,000.00
> 2. for Melchor L. Ocampo:
> a. Salary for one month suspension of ₱45,900.00
> b. Transportation benefits of ₱10,000.00
>
> The claims for moral and exemplary damages as well as attorney's fees are denied for lack of merit.
>
> SO ORDERED.[52]

Both parties filed their respective motions for reconsideration, and the NLRC denied both motions for lack of merit in a Resolution promulgated on **23 September 2010**.[53]

Magno and Ocampo filed a petition before the CA dated 8 December 2010 which questioned the NLRC's 27 July 2010 Decision, which ruled that their suspension was illegal but their dismissal was legal, and 23 September 2010 Resolution, which denied their motion for reconsideration of the 27 July 2010 Decision. **The CA petition was docketed as CA-G.R. SP No. 117180.**

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[52] *Id*. at 435. Penned by Commissioner Isabel G. Panganiban-Ortiguerra, with Presiding Commissioner Benedicto R. Palacol and Commissioner Nieves Vivar-De Castro concurring.

[53] *Id*. at 437-439.

While CA-G.R. SP No. 117180 was pending, the NLRC promulgated a Resolution on **25 April 2011**.[54] The NLRC dismissed Coca-Cola's appeal of the Labor Arbiter's 26 March 2010 Order, which reinstated Magno and Ocampo to their former positions without loss of seniority rights and privileges, and specified the amounts that they should be paid (that is, their basic reinstatement wages for the months of December 2009, January 2010 and February 2010, and their sick and vacation leave credits).

The NLRC's 25 April 2011 Resolution stated that "[t]he resolution of this appeal [of the Labor Arbiter's 26 March 2010 Order] is no longer necessary inasmuch as it has been rendered moot and academic by our Decision promulgated on July 27, 2010 which declared the dismissal of [Magno and Ocampo] as legal."[55]

Coca-Cola filed a motion for reconsideration of the NLRC's 25 April 2011 Resolution, which the NLRC subsequently denied in a Resolution dated **18 October 2011**.[56] The NLRC ruled that "[t]he declaration that complainants were legally dismissed did not render moot and academic the issue on excess payment of the accrued wages. There is no doubt that complainants [Magno and Ocampo] were entitled to accrued wages from the time the Labor Arbiter issued the 30 October 2008 Decision until its reversal by this Commission on 27 July 2010."[57] The NLRC declared that "[t]he instant appeal centers on whether [Magno and Ocampo] are entitled to vacation leaves and sick leaves."[58] The NLRC continued:

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[54] *Id*. at 440-445. Penned by Commissioner Isabel G. Panganiban-Ortiguerra, with Presiding Commissioner Benedicto R. Palacol and Commissioner Nieves Vivar-De Castro concurring.

[55] *Id*. at 444.

[56] *Id*. at 458-467. Penned by Commissioner Isabel G. Panganiban-Ortiguerra, with Commissioner Nieves Vivar-De Castro concurring.

[57] *Id*. at 459.

[58] *Id*. at 465.

Thus, it was mandatory on the part of respondents to actually reinstate the complainants or merely reinstate them in the payroll. Having failed to do so, respondents must pay the salaries they are entitled to, as if the complainants were immediately reinstated, from November 2008 to February 2010. Such judgment should mean "*backwages for the lay-off period, coupled with seniority or other rights and privileges*" attached to the status of the employees when they should have been reinstated. To put it differently, the affected employees should be treated as if they had not been absent from work and had been uninterruptedly working during the relevant period. This saving act is designed to stop a continuing threat or danger to survival or even the life of the dismissed employee and of his family. **The complainants are thus entitled to the salaries or wages plus all other benefits to which they should have been normally entitled to had they been immediately reinstated, either actual or in the payroll.** Had complainants been immediately reinstated, they should have been entitled not only to their basic wages for December 2009, January 2010, and February 2010 but also to all other benefits such as vacation and sick leave. Hence, respondents' argument that there is no basis for the inclusion of the vacation and sick leave pay in the accrued wages does not have a leg to stand on.[59] (Italicization in the original; boldfacing supplied)

The NLRC proceeded to deny Coca-Cola's appeal, and to affirm the 26 March 2010 Order of the Labor Arbiter *in toto*. On 29 December 2011, Coca-Cola filed a petition under Rule 65 of the Rules of Court before the CA. Coca-Cola sought to annul the **25 April 2011** and **18 October 2011** Resolutions of the NLRC. **The CA petition was docketed as CA-G.R. SP No. 122684.**

The Ruling of the CA

Both parties filed separate petitions concerning different matters before the CA.

As previously stated, Magno and Ocampo's petition before the CA, as CA-G.R. SP No. 117180, questioned the NLRC's 27 July 2010 Decision and 23 September 2010 Resolution. The

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[59] *Id*. at 465-466.

CA's **7 March 2012** Decision[60] **upheld the legality of Magno's and Ocampo's dismissal** and correspondingly denied for lack of merit Magno's and Ocampo's claims for reinstatement, backwages, moral and exemplary damages, and attorney's fees. The CA's 30 May 2012 Resolution[61] denied Magno and Ocampo's motion for reconsideration for lack of merit. On 21 June 2012, Magno and Ocampo filed a petition for review on *certiorari* before this Court. Their petition before this Court was docketed as G.R. No. 202141. On 30 July 2012, this Court issued a Resolution[62] denying Magno's and Ocampo's claims for failure to sufficiently show that the CA committed any reversible error in the challenged decision and resolution that would warrant the exercise of this Court's appellate jurisdiction. Entry of judgment was made on 31 October 2012.[63]

Coca-Cola's petition before the CA, CA-G.R. SP No. 122684, on the other hand, sought to annul the NLRC's **25 April 2011** and **18 October 2011** Resolutions. In a Resolution promulgated on 4 February 2014, the CA stated:

> The annulment of the first assailed *Resolution* sought by the Petitioner, which dismissed its appeal for being moot and academic, has been rendered superfluous and unnecessary because the NLRC had, in fact, subsequently reconsidered its stance thereon when it issued the second assailed *Resolution*. There is, therefore, no need to question the first assailed *Resolution* before this Court.
>
> As to the second assailed *Resolution*, the Petitioner failed to prove that the NLRC acted arbitrarily or capriciously in denying its appeal and in affirming the Labor Arbiter's finding that the Private Respondents are entitled to their basic wages for the periods of December 2009, January 2010, and February 2010, as well as to all

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[60] *Rollo* (G.R. No. 202141), pp. 33-49. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Mario V. Lopez and Socorro B. Inting concurring.

[61] *Id*. at 50.

[62] *Id*. at 412.

[63] *Id*. at 413.

other benefits to which they should have been normally entitled to had they been immediately reinstated, either actual or in the payroll, by the Petitioner. The arguments which the Petitioner relies upon to substantiate its claim of grave abuse of discretion are mere reiterations of the ones it had previously raised before the NLRC. The arguments have already been considered and resolved by the NLRC in accordance with prevailing law and jurisprudence, thereby negating the Petitioner's imputation of grave abuse of discretion on the part of the NLRC.

The failure of the Petitioner to point to any specific act on the part of the NLRC that can be construed as amounting to grave abuse of discretion must necessarily result in the dismissal of its petition for being patently without merit.

WHEREFORE, the petition for certiorari is DISMISSED.

SO ORDERED.[64]

Coca-Cola's motion for reconsideration[65] was denied for lack of merit in a Resolution promulgated on 9 May 2014.[66]

The Issue

Coca-Cola raises only one argument. It states that:

WITH DUE RESPECT, THE COURT OF APPEALS RULED CONTRARY TO LAW AND APPLICABLE JURISPRUDENCE WHEN IT SANCTIONED THE EXECUTION AGAINST THE COMPANY OF AMOUNTS IN EXCESS OF RESPONDENTS' ENTITLEMENT BY WAY OF ACCRUED REINSTATEMENT WAGES.[67]

Coca-Cola's main contention is that "any entitlement of [Magno and Ocampo] to accrued wages should be limited to their basic pay only."[68] Coca-Cola further states that "[t]here

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[64] *Rollo*, pp. 527-528.

[65] *Id*. at 529-541.

[66] *Id*. at 543-544.

[67] *Id*. at 23.

[68] *Id*. at 24.

is no factual or legal basis of the inclusion in [Magno's and Ocampo's] accrued wages of benefits and amounts in excess of their basic pay, including the supposed cash equivalent of their vacation and sick leave credits."[69] Coca-Cola prays that the CA's Resolutions in CA-G.R. SP No. 122684 promulgated on 4 February 2014 and on 9 May 2014 be annulled and set aside, and that judgment be rendered directing Magno and Ocampo to return to Coca-Cola "any and all amounts that they received as part of their accrued wages in excess of their basic pay."[70]

Our Ruling

We deny Coca-Cola's appeal for lack of merit. Coca-Cola's submissions are utterly bereft of legal basis. We shall now proceed to determine the components of Magno's and Ocampo's accrued backwages, as well as the period covered by the award of accrued backwages.

Components of Magno's and Ocampo's Accrued Backwages

The third paragraph of Article 229[71] of the Labor Code provides: "In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work **under the same terms and conditions prevailing prior to his dismissal** or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein."

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[69] *Id*. at 30.

[70] *Id*.

[71] Formerly Article 223. See Department of Labor and Employment Department Advisory No. 01, Series of 2015, Renumbering of the Labor Code of the Philippines, as Amended. http://ncmb.ph/Files/DOLE/Labor-Code-of-the-Philippines-Renumbered.pdf (visited 10 June 2019).

Article 294[72] of the Labor Code further provides: "x x x 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."

Our jurisprudence has been consistent as to what should constitute accrued backwages. In *Paramount Vinyl Products Corp. v. NLRC*,[73] we ruled that "the **base figure to be used in the computation of backwages** due to the employee **should include not just the basic salary, but also the regular allowances that he had been receiving, such as the emergency living allowances and the 13th month pay mandated under the law**." In *United Coconut Chemicals, Inc. v. Valmores*,[74] we ruled that "[t]he base figure to be used in reckoning full backwages is the **salary rate of the employee at the time of his dismissal**. The amount **does not include the increases or benefits granted during the period of his dismissal** because time stood still for him at the precise moment of his termination, and move forward only upon his reinstatement." Entitlement to such benefits must be proved by submission of proof of having received the same at the time of the illegal dismissal.[75] Increases are thus excluded from backwages.

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[72] Formerly Article 279. See Department of Labor and Employment Department Advisory No. 01. Series of 2015, Renumbering of the Labor Code of the Philippines, as Amended. http://ncmb.ph/Files/DOLE/Labor-Code-of-the-Philippines-Renumbered.pdf (visited 10 June 2019).

[73] 268 Phil. 558, 569-570 (1990). Cited in *United Coconut Chemicals, Inc. v. Valmores*, 813 Phil. 685 (2017). *Paramount*, in turn, cited the cases of *Pan-Philippine Life Insurance Corporation v. NLRC*, 200 Phil. 355 (1982); *Santos v. NLRC*, 238 Phil. 161 (1987); *Soriano v. NLRC*, 239 Phil. 119 (1987); *Insular Life Assurance Co., Ltd. v. NLRC*, 240 Phil. 703 (1987).

[74] 813 Phil. 685, 699 (2017).

[75] *Id*. at 699. See also *BPI Employees Union-Metro Manila v. BPI*, 673 Phil. 599 (2011).

Subject to submission of proof of receipt of benefits at the time of their dismissal, Magno's and Ocampo's accrued backwages should include their basic salary as well as the allowances and benefits that they have been receiving at the time of their dismissal. In accordance with the claims previously put forward by Magno and Ocampo, accrued backwages may include, but are not limited to, allowances and benefits such as transportation benefits, cellphone allowance, 13th month pay, sick leave, and vacation leave in the amounts at the time of their dismissal. Magno and Ocampo should also prove that they have been receiving the amounts that correspond to merit or salary increases, incentive pay, and medicine at the time of their dismissal so that they may validly qualify for receipt of such as part of their accrued backwages.

Period Covered by the Award of Accrued Backwages

In *Pfizer, Inc. v. Velasco*,[76] we ruled that an order for reinstatement entitles an employee to receive his accrued backwages from the moment the reinstatement order was issued up to the date when the same was reversed by a higher court without fear of refunding what he had received. *Wenphil Corporation v. Abing*,[77] further clarified *Pfizer*: the start of the computation of the backwages should be on the day following the last day when the dismissed employee was paid backwages, and end on the date that a higher court reversed the LA's ruling of illegal dismissal. The date of reversal should be the end date, and not the date of the ultimate finality of such reversal.

Considering that the kind of monetary awards granted to Magno and Ocampo have differed throughout the course of the present case, the LA should determine the day following the last day when Magno or Ocampo received the amount for such allowance or benefit. In any event, the last day of the period of computation of Magno's and Ocampo's backwages

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[76] 660 Phil. 434, 455 (2011).

[77] 731 Phil. 685 (2014).

should be **27 July 2010**. This is the date of promulgation of the NLRC Decision which ruled that Magno and Ocampo were legally dismissed. This Court's Entry of Judgment in G.R. No. 202141 on 31 October 2012 should not have any bearing on the determination of the last day of the period of computation.

The LA is tasked to determine the specific allowances and benefits, as well as the corresponding amounts, that Magno and Ocampo have been receiving at the time of their dismissal. The LA should also determine the last day when Magno or Ocampo received the amount for such allowance or benefit. Following this computation, the LA should then deduct the amount that Coca-Cola previously paid Magno and Ocampo in the course of this case. The resulting amount, being in the form of a judgment for money, shall earn interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

WHEREFORE, the petition is **DENIED**. We **AFFIRM** with **CLARIFICATION** the Court of Appeals' Resolutions in CA-G.R. SP No. 122684 promulgated on 4 February 2014 and on 9 May 2014. We **REMAND** this case to the Labor Arbiter for the computation, within thirty (30) days from receipt of this Resolution, of backwages, inclusive of allowances and other benefits due to Antonio P. Magno, Jr. and Melchor L. Ocampo, Jr. from the day following the last day of their receipt of the amount corresponding to a qualified monetary award until 27 July 2010. The Labor Arbiter should also deduct the amount that Coca-Cola previously paid Magno and Ocampo. Said backwages shall earn 6% *per annum* from the date of finality of this Resolution until fully paid.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.*, concur.

THIRD DIVISION

[G.R. No. 216949. July 3, 2019]

EDUARDO T. BATAC, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, TEDDY C. TUMANG, RAFAEL P. YABUT, and PANTALEON C. MARTIN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ABSENT GRAVE ABUSE OF DISCRETION, THE COURT GENERALLY SHALL NOT DISTURB THE OFFICE OF THE OMBUDSMAN'S DETERMINATION AS TO WHETHER PROBABLE CAUSE EXISTS THAT A CRIME HAS BEEN COMMITTED. —** Generally, this Court does not interfere with the Office of the Ombudsman's exercise of its prosecutorial and investigative powers, and in its determination of reasonable ground to believe a crime has been committed. Special civil actions for *certiorari* do not correct alleged errors of fact or law that do not constitute grave abuse of discretion. This Court only reviews the Office of the Ombudsman's determination of whether probable cause exists upon a clear showing of its abuse of discretion, or when it exercised it in an "arbitrary, capricious, whimsical[,] or despotic manner." x x x Absent the existence of grave abuse of discretion, this Court generally shall not disturb public respondent Office of the Ombudsman's determination as to whether probable cause exists in this case.

2. **CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT; DETERMINATION OF WHETHER RESPONDENTS CAUSED UNDUE INJURY EITHER TO THE GOVERNMENT OR TO THE PETITIONER, WHEN THEY HAULED LAHAR DEPOSITS FROM PETITIONER'S PROPERTY; UNDUE INJURY TO PETITIONER, NOT ESTABLISHED. —** The only element of violation of the Anti-Graft and Corrupt Practices Act under dispute here is whether respondents caused undue injury, either to the government or to petitioner, when they hauled the lahar deposits from petitioner's property. Claiming ownership over the lahar deposits, petitioner insisted that he suffered injury

due to respondent Mayor Tumang's refusal to pay the value of the lahar deposits. This claim of ownership is based on Article 440 of the Civil Code, which provides: ARTICLE 440. The ownership of property gives the right by accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially. Anchored solely on this provision, petitioner claims that the lahar deposits belonged to him, having naturally been attached to his land as a result of a volcano eruption. Public respondent, however, points out that natural resources are owned by the State. x x x [L]ahar deposits [are treated] as minerals, which are owned by the State and are covered by various laws on mining. Thus, on this matter, public respondent ruled that there was no undue injury: x x x Nonetheless, this Court notes that there could have been some injury to petitioner since: (1) as a landowner, he could have been granted a gratuitous permit to extract the lahar deposits under Section 50 of the Philippine Mining Act; and (2) the law contemplates compensating a surface owner like petitioner for damages done by mining right holders when conducting mining operations on the privately-owned land. However, the possibility of injury to petitioner is not sufficient to find grave abuse of discretion on the part of public respondent. x x x [T]o constitute undue injury under Section 3(e), the injury must be quantifiable and demonstrable.

3. ID.; ID.; ID.; UNDUE INJURY TO THE GOVERNMENT, NOT ESTABLISHED. — Petitioner did not present evidence or significant arguments relating to the undue injury of the government before public respondent. Similarly, his initial Complaint did not mention any mining laws, as it was premised on his claimed ownership over the lahar. This theory ignored injury to the State. x x x This Court entertains the idea that some injury to the government may have existed—there may have been fees and taxes for the quarrying of the lahar deposits, or the local government may have paid the full price of the road development, despite the lahar deposits having been obtained without any fee. However, the arguments and the paucity of evidence set forth here are insufficient to reverse the finding of public respondent on this matter.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

Absent a showing that the Office of the Ombudsman acted in an "arbitrary, capricious, whimsical[,] or despotic manner[,]"[1] this Court will not interfere with its exercise of discretion in determining the existence of probable cause.

This Court resolves a Petition for *Certiorari*[2] assailing the undated Joint Review Order[3] and November 27, 2014 Joint Order[4] of the Office of the Ombudsman, which reversed its earlier Resolution[5] and Decision,[6] and dismissed the charges against then Mexico, Pampanga Mayor Teddy C. Tumang (Mayor Tumang), then Barangay San Antonio Captain Rafael P. Yabut (Barangay Captain Yabut), and Pantaleon Martin (Martin).

On February 28, 2006, Eduardo T. Batac (Batac) filed before the Office of the Deputy Ombudsman for Luzon a Complaint[7]

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[1] *Joson v. Office of the Ombudsman*, G.R. Nos. 197433 and 197435, August 9, 2017, 836 SCRA 252, 287 [Per *J.* Leonen, Second Division].

[2] *Rollo*, pp. 3-19.

[3] *Id*. at 20-29. The Joint Review Order was signed by Graft Investigation and Prosecution Officer I Blesilda T. Ouano and approved by Ombudsman Conchita Carpio Morales.

[4] *Id*. at 30-45. The Joint Order was signed by Graft Investigation and Prosecution Officer I Jasmine Ann B. Gapatan and approved by Ombudsman Conchita Carpio Morales.

[5] *Id*. at 123-137. The Resolution was penned by Tanodbayan (Ombudsman) Ma. Merceditas N. Gutierrez.

[6] *Id*. at 31 and 33. The Decision was upheld and affirmed by the Order dated May 14, 2012 and approved by Overall Deputy Ombudsman Orlando C. Casimiro on May 22, 2012.

[7] *Id*. at 52-56.

against Mayor Tumang, Barangay Captain Yabut, and Martin. He averred that in May 2005, he was informed that his property in Barangay San Antonio, Mexico, Pampanga was being quarried without his consent, under the instructions of Mayor Tumang, and using Mayor Tumang's dump trucks.[8]

When he visited his property on June 21, 2005, Batac saw that it had been unevenly leveled and reduced to below ground level. On July 7, 2005, Batac wrote Mayor Tumang, asking why the property was being quarried without his permission and requesting that it be stopped. He also tried to contact Barangay Captain Yabut through text, but the latter did not reply.[9]

Meanwhile, in reply to Batac's letter, Mayor Tumang provided Batac a copy of a July 11, 2005 Affidavit executed by Martin. Claiming to be a tenant of the quarried property, Martin, in his Affidavit, asked the local government to quarry it since the lahar deposits on it had been preventing him from cultivating the land. Martin added that he did not inform Batac about this request because the land was being processed for land distribution.[10]

Replying to Mayor Tumang, Batac said that Martin had never been a tenant of his land. He pointed out that the land was not for distribution as its area was only three (3) hectares and the retention was given to his parents under the land reform law. He further asserted that a tenant does not have the authority to request that any part of the land be removed without the landowner's permission. Batac also demanded ₱600,000.00 as payment for the soil that Mayor Tumang and his co-perpetrators had taken from his property, as well as compensation for the depreciation of his property.[11]

Batac later sent another letter asking that Mayor Tumang meet with him, but received no reply.[12]

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[8] *Id*. at 52.

[9] *Id*. at 53.

[10] *Id*. at 53-54.

[11] *Id*. at 54.

[12] *Id*.

On August 25, 2005, Batac went to Mexico, Pampanga to talk to Martin. While he was there, he tried to get in touch with Mayor Tumang, but the mayor was out of town. Batac then wrote the mayor another letter to reiterate his demands, but when he still did not receive a reply, he sent a demand letter through his lawyer.[13]

Based on these allegations, Batac claimed that Mayor Tumang and his co-perpetrators committed the crime of theft and violated Republic Act No. 3019 and Republic Act No. 6713.[14]

In its November 8, 2010 Resolution,[15] the Office of the Ombudsman found probable cause against Mayor Tumang, Barangay Captain Yabut, and Martin for violation of Section 3(e) of Republic Act No. 3019. It found that Martin posed himself as a tenant of the property, provided no evidence of his tenancy, and exercised an act of ownership over the property.[16] The local officials, meanwhile, were found inexcusably negligent when they acceded to Martin's request without the property owner's consent. The Office of the Ombudsman further ruled that Batac was injured by the quarrying, because he was deprived from the use of the lahar deposits.[17]

However, the charges of theft and violation of Republic Act No. 3019, Section 3(a) were dismissed.[18]

The dispositive portion of the Resolution read:

WHEREFORE, having established probable cause for Violation of Sec. 3(e) of R.A. 3019, let the corresponding Information be **FILED**

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[13] *Id*.

[14] *Id*. at 55. The crime of theft is punished under Article 308 of the Revised Penal Code. Republic Act No. 3019 is also known as Anti-Graft and Corrupt Practices Act (1960), while Republic Act No. 6713 is also known as Code of Conduct and Ethical Standards for Public Officials and Employees (1989).

[15] *Id*. at 123-137.

[16] *Id*. at 134.

[17] *Id*. at 135.

[18] *Id*. at 135-136.

against Mayor Teddy C. Tumang, Barangay Captain Rafael P. Yabut and Pantaleon C. Martin.

The charges of Sec. 3(a) of R.A. 3019 and Theft are hereby **DISMISSED** for lack of merit.

SO RESOLVED.[19] (Emphasis in the original)

On November 8, 2010, the Office of the Ombudsman also issued a Decision on the administrative aspect of Batac's Complaint.[20] It found Mayor Tumang and Barangay Captain Yabut guilty of misconduct and violation of Section 5(a) of Republic Act No. 6713, and penalized them each with a three (3)-month suspension.[21]

Mayor Tumang, Barangay Captain Yabut, and Martin filed a Motion for Partial Reconsideration[22] of the Resolution, as did Batac.[23]

In its undated Joint Review Order,[24] the Office of the Ombudsman dismissed all charges against Mayor Tumang, Barangay Captain Yabut, and Martin.

In ruling that no corrupt practice under Section 3(e) of Republic Act No. 3019 had been committed, the Office of the Ombudsman reasoned that the element of undue injury to any party or giving a private party unwarranted benefits was absent. It found that Batac was not injured since he did not own the lahar deposits on his property. Neither was the government injured since the lahar was used for road development in San Antonio.[25]

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[19] *Id*. at 136.

[20] *Id*. at 33.

[21] *Id*. at 33.

[22] *Id*. at 138-145.

[23] *Id*. at 146-154.

[24] *Id*. at 20-29.

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

While acknowledging that the public officials could be held administratively liable for not securing a permit before quarrying, the Office of the Ombudsman nonetheless found the charges lacking in merit. It noted that after the Complaint had been filed in 2006, Mayor Tumang was re-elected in 2007 and 2010, which rendered the charge against him moot under the condonation doctrine. As for Barangay Captain Yabut, the record showed no evidence that he had conspired with Mayor Tumang in the unauthorized quarrying.[26]

Thus, the Office of the Ombudsman recommended that the following actions be taken:

1. **RECALL** and **SET ASIDE** the Resolution of 8 November 2010;
2. **DISMISS** the criminal aspect of the complaint for lack of merit;
3. **DISMISS** the administrative aspect of the complaint respecting respondent Teddy Tumang, applying the Condonation doctrine; and as to respondent Rafael Yabut, for lack of merit; and
4. a copy of this Joint Review Order be **furnished** the Commission on Elections, Department of [the] Interior and Local Government, and the Civil Service Commission for guidance and information.[27] (Emphasis in the original)

Then Ombudsman Conchita Carpio Morales (Ombudsman Carpio Morales) approved the Joint Review Order on November 23, 2012.[28]

In its November 27, 2014 Joint Order,[29] the Office of the Ombudsman denied Batac's Motion for Reconsideration. It explained that lahar deposits are minerals, which are owned by the State under Republic Act No. 7942, or the Philippine Mining Act of 1995.[30]

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[26] *Id*. at 25-27.

[27] *Id*. at 27.

[28] *Id*. at 28.

[29] *Id*. at 30-45.

[30] *Id*. at 41.

This Joint Order was similarly approved by Ombudsman Carpio Morales on December 16, 2014.[31]

Thus, Batac filed this Petition for *Certiorari*.[32] In turn, the Office of the Ombudsman filed its Comment,[33] while Mayor Tumang, Barangay Captain Yabut, and Martin jointly filed their Comment/ Opposition.[34] To these, Batac filed his Consolidated Reply.[35]

Petitioner asserts that public respondent Office of the Ombudsman acted with grave abuse of discretion when it rendered the undated Joint Review Order and November 27, 2014 Joint Order.[36] He maintains that, acting in conspiracy with respondent Martin, respondents Mayor Tumang and Barangay Captain Yabut acted with manifest partiality, evident bad faith, or gross inexcusable negligence that caused him undue injury when they broke into his property and removed the lahar deposits without his consent.[37] He claims that since the lahar deposits were found on private land, they are not minerals under the Philippine Mining Act. Instead, he insists that under Article 440 of the Civil Code, he, as the landowner, has the right to everything in his property, including the lahar deposits.[38]

Assuming that the lahar deposits are minerals under the law, petitioner asserts that respondents still had no permit to quarry or extract them.[39] Further assuming the lahar was owned by the State, he claims that respondents caused the State undue injury by quarrying it without the necessary permits.[40]

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[31] *Id*. at 45.

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

[33] *Id*. at 230-248.

[34] *Id*. at 220-228.

[35] *Id*. at 260-267.

[36] *Id*. at 8.

[37] *Id*. at 11.

[38] *Id*. at 10.

[39] *Id*. at 260.

[40] *Id*. at 262.

Public respondent, through the Office of the Solicitor General, emphasizes that an extraordinary writ of *certiorari* may be issued only in case of grave abuse of discretion, not against a mere error in the exercise of jurisdiction.[41] Nonetheless, it maintains that its finding of lack of probable cause for a violation of Section 3(e) of Republic Act No. 3019 is supported by law and substantial evidence.[42] It argues that since the lahar deposits are naturally-occurring inorganic substances, they are minerals and are, thus, owned by the State under Article XII, Section 2 of the Constitution and Section 4 of the Philippine Mining Act.[43] Petitioner, therefore, has no right to possess the lahar deposits, and cannot be injured by its hauling.[44]

Public respondent also asserts that there was no undue injury to the government because it was not disputed that the lahar deposits taken from the property were used for road development in San Antonio, Pampanga.[45]

For their part, respondents Mayor Tumang, Barangay Captain Yabut, and Martin maintain that removing the lahar deposits was consistent with the respondent public officers' power as local chief executives to promote general welfare under the Local Government Code.[46] They add that petitioner presented no evidence to show the element of undue injury.[47]

The issues for resolution are:

First, whether or not public respondent Office of the Ombudsman acted with grave abuse of discretion in not finding probable cause to file complaints against respondents Mayor Teddy C. Tumang, Barangay Captain Rafael P. Yabut, and

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[41] *Id*. at 237.

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

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

[44] *Id*. at 240.

[45] *Id*.

[46] *Id*. at 222-223.

[47] *Id*. at 224-225.

Pantaleon C. Martin for corrupt practices under Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act;

Second, whether or not undue injury was caused to petitioner Eduardo T. Batac when the lahar deposits were hauled without the necessary permits; and

Finally, whether or not undue injury was caused to the government when the lahar deposits were hauled without the necessary permits.

The Petition is dismissed.

I

Generally, this Court does not interfere with the Office of the Ombudsman's exercise of its prosecutorial and investigative powers, and in its determination of reasonable ground to believe a crime has been committed.[48]

Special civil actions for *certiorari* do not correct alleged errors of fact or law that do not constitute grave abuse of discretion.[49] This Court only reviews the Office of the Ombudsman's determination of whether probable cause exists upon a clear showing of its abuse of discretion, or when it exercised it in an "arbitrary, capricious, whimsical[,] or despotic manner."[50]

In *Dichaves v. Office of the Ombudsman*,[51] this Court explained the various policy reasons behind this deference:

An independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people[,] and [is] the preserver of the integrity of the public service." Thus, it has the

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[48] *Joson v. Office of the Ombudsman*, G.R. Nos. 197433 and 197435, August 9, 2017, 836 SCRA 252, 286 [Per *J.* Leonen, Second Division].

[49] *Miranda v. Sandiganbayan*, 502 Phil. 423, 441 (2005) [Per *J.* Puno, *En Banc*].

[50] *Joson v. Office of the Ombudsman*, G.R. Nos. 197433 and 197435, August 9, 2017, 836 SCRA 252, 287 [Per *J.* Leonen, Second Division].

[51] 802 Phil. 564 (2016) [Per *J.* Leonen, Second Division].

sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is *executive* in nature.

The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such *facts and circumstances* as would excite the belief, in a reasonable mind, *acting on the facts within the knowledge of the prosecutor*, that the person charged was guilty of the crime for which he [or she] was prosecuted."

The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.

Practicality also leads this Court to exercise restraint in interfering with the Office of the Ombudsman's finding of probable cause. Republic v. Ombudsman Desierto explains:

> [T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private [complainant].[52] (Emphasis in the original, citations omitted)

Absent the existence of grave abuse of discretion, this Court generally shall not disturb public respondent Office of the Ombudsman's determination as to whether probable cause exists in this case.

II

The only element of violation of the Anti-Graft and Corrupt Practices Act under dispute here is whether respondents caused undue injury, either to the government or to petitioner, when they hauled the lahar deposits from petitioner's property.

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[52] *Id*. at 589-591.

Claiming ownership over the lahar deposits, petitioner insisted that he suffered injury due to respondent Mayor Tumang's refusal to pay the value of the lahar deposits. This claim of ownership is based on Article 440 of the Civil Code, which provides:

> ARTICLE 440. The ownership of property gives the right by accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially.

Anchored solely on this provision, petitioner claims that the lahar deposits belonged to him, having naturally been attached to his land as a result of a volcano eruption.

Public respondent, however, points out that natural resources are owned by the State.[53] Article XII, Section 2 of the Constitution provides:

> SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State.

Meanwhile, Section 4 of the Philippine Mining Act of 1995 provides:

> SECTION 4. *Ownership of Mineral Resources*. — Mineral resources are owned by the State and the exploration, development, utilization, and processing thereof shall be under its full control and supervision. The State may directly undertake such activities or it may enter into mineral agreements with contractors.

Section 3 of the law defines "minerals" and "mineral resource":

> SECTION 3. *Definition of Terms*. — . . .
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> . . . .
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> (aa) "Minerals" refers to all naturally occurring inorganic substance in solid, gas, liquid, or any intermediate state excluding energy materials such as coal, petroleum, natural gas, radioactive materials, and geothermal energy.

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[53] *Rollo*, p. 23.

. . . . . .

(ad) "Mineral resource" means any concentration of minerals/rocks with potential economic value.

Furthermore, Executive Order No. 224, series of 2003, entitled, "Rationalizing the Extraction and Disposition of Sand and Gravel/Lahar Deposits in the Provinces of Pampanga, Tarlac and Zambales," provides:

WHEREAS, it is in the interest of the State that said sand and gravel/lahar deposits be properly utilized for the benefit of both local and the national governments and all concerned, with due regard to the environment.

. . . . . .

SECTION 1. Processing and Issuance of Mining Permits. — The issuance of permit to extract and dispose of industrial sand and gravel/lahar deposits by the MGB shall be governed by Chapter 8 of R.A. No. 7924.

The acceptance, processing and evaluation of applications for permits to extract industrial sand and gravel/lahar deposits in Pampanga, Tarlac and Zambales shall be undertaken through a Task Force composed of the MGB and the Provincial Governor.

These provisions treat lahar deposits as minerals, which are owned by the State and are covered by various laws on mining. Thus, on this matter, public respondent ruled that there was no undue injury:

It is respectfully submitted that the removal of the lahar deposits from the subject property did not amount to causing undue injury to complainant under Section 3 (e) of R.A. 3019, as amended. As reflected above, complainant does not own the lahar deposits which came about as a result of the Mount Pinatubo eruption. Therefore, complainant's contention that he incurred damages because respondent Tumang refused to pay him for the value of lahar deposits that were removed from his land has no leg to stand on. Neither did respondents cause undue injury to the government, as it is not disputed that the lahar removed from complainant's land were used for road development in San Antonio, Pampanga. Lastly, it cannot also be said that public

respondents gave unwarranted benefits, advance or preference to any private party.[54]

Petitioner has failed to address this head-on and explain, with legal or factual basis, why none of the foregoing provisions apply to the lahar deposits on his property. Consequently, this is not the appropriate case to resolve the issue of ownership of deposits accreted into one's property. Thus, his claim of injury, based on ownership of the lahar deposits, is doubtful.

Nonetheless, this Court notes that there could have been some injury to petitioner since: (1) as a landowner, he could have been granted a gratuitous permit to extract the lahar deposits under Section 50 of the Philippine Mining Act; and (2) the law contemplates compensating a surface owner like petitioner for damages done by mining right holders when conducting mining operations on the privately-owned land.[55]

However, the possibility of injury to petitioner is not sufficient to find grave abuse of discretion on the part of public respondent.

This Court explained at length the concept of injury under Section 3(e) of the Anti-Graft and Corrupt Practices Act in *Cabrera v. Sandiganbayan*:[56]

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

[55] Republic Act No. 7942 (1995), Sec. 76 provides:

SECTION 76. *Entry into Private Lands and Concession Areas*. — Subject to prior notification, holders of mining rights shall not be prevented from entry into private lands and concession areas by surface owners, occupants, or concessionaires when conducting mining operations therein: *Provided*, That any damage done to the property of the surface owner, occupant, or concessionaire as a consequence of such operations shall be properly compensated as may be provided for in the implementing rules and regulations: *Provided, further*, That to guarantee such compensation, the person authorized to conduct mining operation shall, prior thereto, post a bond with the regional director based on the type of properties, the prevailing prices in and around the area where the mining operations are to be conducted, with surety or sureties satisfactory to the regional director.

[56] 484 Phil. 350 (2004) [Per *J.* Callejo, Sr., *En Banc*].

In *Gallego v. Sandiganbayan*, the Court ruled that "unwarranted" means lacking adequate or official support; unjustified; unauthorized; or without justification or adequate reasons. "Advantage" means a more favorable or improved position or condition; benefit or gain of any kind; benefit from course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.

Section 3(e) of Rep. Act No. 3019, which was approved by Congress in Spanish reads:

> *(e) Causar algun perjuicio indebido a cualquiera, incluyendo al Gobierno, o dar a alguna persona particular cualesquier beneficios, vengaja o preferencia injustificados en el desempeño de sus funciones administrativas judiciales de indole oficial con manifiesta parcialidad, evidente mala fe o crasa negligencia inexcusable. Esta disposicion se aplicara a los funcionarios y empleados de oficinas o de las corporaciones del gobierno encargados de otorgar licencias o permisos u otras concesiones.*

"*Perjuicio*" means prejudice, mischief, injury, damages. Prejudice means injury or damage, due to some judgment or action of another. Mischief connotes a specific injury or damage caused by another. "*Indebido*" means undue, illegal, immoral, unlawful, void of equity and moderations. In *Pecho v. Sandiganbayan*, the Court *en banc* defined injury as "any wrong or damage done to another, either in his person, or in his rights, reputation or property; the invasion of any legally protected interests of another." It must be more than necessary or are excessive, improper or illegal. It is required that the undue injury caused by the positive or passive acts of the accused be quantifiable and demonstrable and proven to the point of moral certainty. Undue injury cannot be presumed even after a wrong or a violation of a right has been established.

In *Fonacier v. Sandiganbayan*, the Court *en banc* held that proof of the extent or quantum of damage is not essential. It is sufficient that the injury suffered or benefits received can be perceived to be substantial enough and not merely negligible.[57] (Citations omitted)

Thus, to constitute undue injury under Section 3(e), the injury must quantifiable and demonstrable.

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[57] *Id*. at 364-365.

Moreover, Section 50[58] of the Philippine Mining Act only provides that a landowner *may* be granted a gratuitous permit, but does not provide for any priority to be accorded to a landowner. This Court cannot assume that petitioner would have been granted a private gratuitous permit. By ignoring and bypassing the laws on lahar extraction, respondents eliminated the possibility of petitioner applying for a gratuitous permit. This injury to petitioner, however, is not quantifiable. There could have been quantifiable and demonstrable injury to petitioner by reason of damage to the surface level of his property, but given the evidence presented and arguments raised, it was not grave abuse of discretion on the part of public respondent when it found otherwise.

III

Petitioner's claim that there was injury to the government could have been persuasive. Unfortunately, as set forth here, it is insufficient for this Court to find that public respondent committed grave abuse of discretion, and to reverse its determination.

On the issue of injury to the State, the Joint Review Order read:

> Neither did respondents cause undue injury to the government, as it is not disputed that the lahar removed from complainant's land were used for road development in San Antonio, Pampanga.[59]

Petitioner did not present evidence or significant arguments relating to the undue injury of the government before public respondent. Similarly, his initial Complaint did not mention any mining laws, as it was premised on his claimed ownership over the lahar. This theory ignored injury to the State.

Likewise, before this Court, petitioner asserts:

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[58] Republic Act No. 7942 (1995), Sec. 50 provides:

SECTION 50. Private Gratuitous Permit. — Any owner of land may be granted a private gratuitous permit by the provincial governor.

[59] *Rollo*, pp. 24-25.

It is in the interest of the State that said sand and gravel/lahar deposits be properly utilized for the benefit of both local and the national governments and all concerned, with due regard to the environment. However, such extraction of lahar deposits must be made with the proper authority and/or permit from the MGB and the task force created under E.O. No. 224.[60] (Citation omitted)

This Court entertains the idea that some injury to the government may have existed—there may have been fees and taxes for the quarrying of the lahar deposits, or the local government may have paid the full price of the road development, despite the lahar deposits having been obtained without any fee. However, the arguments and the paucity of evidence set forth here are insufficient to reverse the finding of public respondent on this matter.

While it may have been preferable for public respondent to further address or investigate the possible injury to the government, its decision not to do so, given the arguments and evidence presented, cannot be the basis of granting the Petition. Having constitutional discretion and gravely abusing that discretion are two (2) entirely different concepts canonically established by jurisprudence.

Finally, this Court notes that there could have been an information filed for theft of minerals, which the Philippine Mining Act punishes with imprisonment:

SECTION 103. *Theft of Minerals*. — Any person extracting minerals and disposing the same without a mining agreement, lease, permit, license, or steals minerals or ores or the products thereof from mines or mills or processing plants shall, upon conviction, be imprisoned from six (6) months to six (6) years or pay a fine from Ten thousand pesos (₱10,000.00) to Twenty thousand pesos (₱20,000.00), or both, at the discretion of the appropriate court. In addition, he shall be liable to pay damages and compensation for the minerals removed, extracted, and disposed of. In the case of associations, partnerships, or corporations, the president and each of the directors thereof shall be responsible for the acts committed by such association, corporation, or partnership.

[60] *Id*. at 263.

However, again, this was not raised by the parties. Consequently, this Court cannot find grave abuse of discretion on the part of public respondent in not considering this point.

In light of these circumstances, public respondent's dismissal of the charges against respondents cannot be considered arbitrary. It found no probable cause that a crime had been committed, making it difficult to proceed with the case.

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The undated Joint Review Order and the November 27, 2014 Joint Order of the Office of the Ombudsman are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 217529. July 3, 2019]

DIGITEL EMPLOYEES UNION, *petitioner, vs.* **DIGITAL TELECOMS PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CERTIFICATION OF NON-FORUM SHOPPING; SUMMARY OF JURISPRUDENTIAL RULES GOVERNING THE SUBMISSION AND CONTENTS OF THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING. — The jurisprudential rules governing the submission and contents of the verification and certification of non-forum shopping were summarized in *Altres, et al. v. Empleo, et al.*, *viz.*: 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance

with the requirement on or submission of defective certification against forum shopping. 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby. 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct. 4) As to **certification against forum shopping, non-compliance therewith or a defect therein,** unlike in verification, **is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."** 5) **The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case**; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule. 6) Finally, **the certification against forum shopping must be executed by the party-pleader**, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.

2. ID.; ID.; ID.; ID.; THE PRESIDENT OF A CORPORATION HAS AUTHORITY TO SIGN A VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING. — [T]he Court finds the verification and certification of non-forum shopping in DEU's petition for *certiorari* to be substantially compliant with the Rules of Court. The petition was signed by Licardo as President of DEU. In *Cagayan Valley Drug Corp. v. Commissioner of Internal Revenue*, the Court recognized the authority of the President of a corporation to sign a verification and certification of non-forum shopping without authority from the board of directors. This recognition was extended to union presidents in *PNCC Skyway Traffic Mgm't. and Security Div.*

Workers Org. v. PNCC Skyway Corp., where the Court gave further consideration to the fact that the board of therein petitioner union subsequently passed a resolution authorizing the president to file the suit. The Court deemed this a ratification of the president's act of signing the verification and certification. Nevertheless, the recognition of the authority of the president of a juridical entity (whether a corporation or a union) to sign verifications and certifications without prior board approval is based on the role and function of a president within the juridical entity, such that the president is in a position to verify the truthfulness and correctness of the allegations in the petition. Furthermore, like in the *PNCC* case, Licardo's authority to sign the verification and certification was also given after the petition had been filed. It cannot therefore be said that Licardo was absolutely bereft of authority to sign the petition, considering that he is the president of DEU and the DEU board subsequently ratified his act.

APPEARANCES OF COUNSEL

Labor Advocates for Worker's Services Law Inc. for petitioner.
Siguion Reyna Montecillo & Ongsiako for respondent.

D E C I S I O N

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

This is a petition for review[1] under Rule 45 of the Revised Rules of Court dated April 21, 2015. The petition assails the Resolutions dated January 26, 2015[2] and March 11, 2015[3] of the Court of Appeals (CA) in CA-G.R. SP No. 137645, which declared Digitel Employees Union (DEU)'s petition for *certiorari* abandoned and dismissed.

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[1] *Rollo*, pp. 3-15.

[2] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Celia Librea-Leagogo and Amy C. Lazaro-Javier (now a member of this Court) concurring; *id*. at 29-31.

[3] *Id*. at 50.

The Facts

The present petition is a continuation of the protracted collective bargaining dispute within Digital Telecommunications Philippines, Inc. (DIGITEL), which has previously come before this Court in 2012.[4] To properly contextualize this petition, the Court hereby quotes from the aforementioned decision in G.R. Nos. 184903-04, dated October 10, 2012, *viz*.:

> By virtue of a certification election, [DEU] became the exclusive bargaining agent of all rank and file employees of [DIGITEL] in 1994. [DEU] and [DIGITEL] then commenced collective bargaining negotiations which resulted in a bargaining deadlock. [DEU] threatened to go on strike, but then Acting Labor Secretary Bienvenido E. Laguesma assumed jurisdiction over the dispute and eventually directed the parties to execute a CBA.
>
> However, no CBA was forged between [DIGITEL] and [DEU]. Some [DEU] members abandoned their employment with [DIGITEL]. [DEU] later became dormant.
>
> Ten (10) years thereafter or on 28 September 2004, [DIGITEL] received from Arceo Rafael A. Esplana (Esplana), who identified himself as President of [DEU], a letter containing the list of officers, CBA proposals and ground rules. The officers were respondents Esplana, Alan D. Licando (Vice-President), Felicito C. Romero, Jr. (Secretary), Arnold D. Gonzales (Treasurer), Reynel Francisco B. Garcia (Auditor), Zosimo B. Peralta (PRO), Regino T. Unidad (Sgt. at Arms), and Jim L. Javier (Sgt. at Arms).
>
> [DIGITEL] was reluctant to negotiate with [DEU] and demanded that the latter show compliance with the provisions of [DEU]'s Constitution and By-laws on union membership and election of officers.
>
> On 4 November 2004, Esplana and his group filed a case for Preventive Mediation before the National Conciliation and Mediation Board based on [DIGITEL]'s violation of the duty to bargain. On 25 November 2004, Esplana filed a notice of strike.
>
> On 10 March 2005, then Labor Secretary Patricia A. Sto. Tomas issued an Order assuming jurisdiction over the labor dispute.

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[4] *Digital Telecommunications Philippines, Inc. v. Digitel Employees Union (DEU), et al.*, 697 Phil. 132 (2012).

During the pendency of the controversy, Digitel Service, Inc. (Digiserv), a non-profit enterprise engaged in call center servicing, filed with the Department of Labor and Employment (DOLE) an Establishment Termination Report stating that it will cease its business operation. The closure affected at least 100 employees, 42 of whom are members of [DEU].

Alleging that the affected employees are its members and in reaction to Digiserv's action, Esplana and his group filed another Notice of Strike for union busting, illegal lock-out, and violation of the assumption order.

On 23 May 2005, the Secretary of Labor ordered the second notice of strike subsumed by the previous Assumption Order.

Meanwhile, on 14 March 2005, [DIGITEL] filed a petition with the Bureau of Labor Relations (BLR) seeking cancellation of [DEU]'s registration on the following grounds: 1) failure to file the required reports from 1994-2004; 2) misrepresentation of its alleged officers; 3) membership of [DEU] is composed of rank and file, supervisory and managerial employees; and 4) substantial number of [DEU] members are not [DIGITEL] employees.

In a Decision dated 11 May 2005, the Regional Director of the DOLE dismissed the petition for cancellation of union registration for lack of merit. The Regional Director ruled that it does not have jurisdiction over the issue of non-compliance with the reportorial requirements. He also held that [DIGITEL] failed to adduce substantial evidence to prove misrepresentation and the mixing of non-[DIGITEL] employees with [DEU]. Finally, he declared that the inclusion of supervisory and managerial employees with the rank and file employees is no longer a ground for cancellation of [DEU]'s certificate of registration.

The appeal filed by [DIGITEL] with the BLR was eventually dismissed for lack of merit in a Resolution dated 9 March 2007, thereby affirming the 11 May 2005 Decision of the Regional Director.

CA-G.R. SP No. 91719

In an Order dated 13 July 2005, the Secretary of Labor directed [DIGITEL] to commence the CBA negotiation with [DEU]. Thus:

> WHEREFORE, all the foregoing premises considered, this Office hereby orders:

1. DIGITEL to commence collective bargaining negotiation with DEU without further delay; and

2. The issue of unfair labor practice, consisting of union-busting, illegal termination/lockout and violation of the assumption of jurisdiction, specifically the return-to-work aspect of the 10 March 2005 and 03 June 2005 orders, be CERTIFIED for compulsory arbitration to the NLRC.

[DIGITEL] moved for reconsideration on the contention that the pendency of the petition for cancellation of [DEU]'s certificate of registration is a prejudicial question that should first be settled before the DOLE could order the parties to bargain collectively. On 19 August 2005, then Acting Secretary Manuel G. Imson of DOLE denied the motion for reconsideration, affirmed the 13 July 2005 Order and reiterated the order directing parties to commence collective bargaining negotiations.

On 14 October 2005, [DIGITEL] filed a petition, docketed as CA-G.R. SP No. 91719, before the [CA] assailing the 13 July and 19 August 2005 Orders of the DOLE Secretary and attributing grave abuse of discretion on the part of the DOLE Secretary for ordering [DIGITEL] to commence bargaining negotiations with [DEU] despite the pendency of the issue of union legitimacy.

CA-G.R. SP No. 94825

In accordance with the 13 July 2005 Order of the Secretary of Labor, the unfair labor practice issue was certified for compulsory arbitration before the NLRC, which, on 31 January 2006, rendered a Decision dismissing the unfair labor practice charge against [DIGITEL] but declaring the dismissal of the 13 employees of Digiserv as illegal and ordering their reinstatement. [DEU] manifested that out of 42 employees, only 13 remained, as most had already accepted separation pay. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the charge of unfair labor practice is hereby DISMISSED for lack of merit. However, the dismissal of the remaining thirteen (13) affected employees is hereby declared illegal and DIGITEL is hereby ORDERED to reinstate them to their former position with full backwages up to the time they are reinstated, computed as follows:

x x x x x x x x x

Upon motion for reconsideration filed by [DIGITEL], four (4) affected employees, namely Ma. Loreta Eser, Marites Jereza, Leonore Tuliao and Aline G. Quillopras, were removed from entitlement to the awards pursuant to the deed of quitclaim and release which they all signed.

In view of this unfavorable decision, [DIGITEL] filed another petition on 9 June 2006 in CA-G.R. SP No. 94825 before the Court of Appeals, challenging the above NLRC Decision and Resolution and arguing mainly that Digiserv employees are not employees of [DIGITEL].

Ruling of the [CA]

On 18 June 2008, the Tenth Division of the [CA] consolidated the two petitions in CA-G.R. SP No. 91719 and CA-G.R. SP No. 94825, and disposed as follows:

> **WHEREFORE**, the petition in CA-G.R. SP No. 91719 is **DISMISSED**. The July 13, 2005 **Order** and the August 19, 2005 Resolution of the DOLE Secretary are **AFFIRMED** *in toto*. With costs.
>
> The petition in CA-G.R. SP No. 94825 is partially **GRANTED**, with the effect that the assailed dispositions must be **MODIFIED**, as follows:
>
> 1) In addition to the order directing reinstatement and payment of full backwages to the nine (9) affected employees, Digital Telecommunications Philippines, Inc. is furthered **ORDERED**, should reinstatement is no longer feasible, to pay separation pay equivalent to one (1) month pay, or one-half (½) month pay for every year of service, whichever is higher.
>
> 2) The one hundred thousand (PhP 100,000.00) peso-fine imposed on Digital Telecommunications Philippines, Inc. is **DELETED**. No costs.

The [CA] upheld the Secretary of Labor's Order for [DIGITEL] to commence CBA negotiations with [DEU] and emphasized that the pendency of a petition for the cancellation of a union's registration does not bar the holding of negotiations for a CBA. The [CA] sustained the finding that Digiserv is engaged in labor-only contracting and that its employees are actually employees of [DIGITEL].

[DIGITEL] filed a motion for reconsideration but was denied in a Resolution dated 9 October 2008.

Hence, this petition for review on *certiorari*.

x x x x x x x x x

WHEREFORE, the Petition is **DENIED**. The Decision of the [CA] in CA-G.R. SP No. 91719 is **AFFIRMED**, while the Decision in CA-G.R. SP No. 94825 declaring the dismissal of affected union member-employees as illegal is **MODIFIED** to include the payment of moral and exemplary damages in amount of ₱10,000.00 and ₱5,000.00, respectively, to each of the thirteen (13) illegally dismissed union-member employees.

Petitioner [DIGITEL] is **ORDERED** to pay the affected employees backwages and separation pay equivalent to one (1) month salary, or one-half (½) month pay for every year of service, whichever is higher.

Let this case be **REMANDED** to the Labor Arbiter for the computation of monetary claims due to the affected employees.

SO ORDERED.[5] (Citations omitted and emphases in the original)

Redundancy declaration and termination of DIGITEL employees

In a Resolution dated January 21, 2013, the Court affirmed its decision in G.R. Nos. 184903-04. On January 28, 2013, DIGITEL announced that it was terminating all of its employees on the ground of redundancy arising from the acquisition by the Philippine Long Distance Telephone Company (PLDT) of DIGITEL's telecommunications network. In response, on February 7, 2013, DEU filed a Request for Preventive Mediation with the National Conciliation and Mediation Board (NCMB). DEU also filed with the Secretary of Labor and Employment (SOLE) an Urgent Motion to Prevent/Suspend PLDT/DIGITEL's Mass Termination, dated February 19, 2013. On February 22, 2013, DIGITEL filed its Opposition and Comment *Ad Cautelam* to DEU's February 19, 2013 motion, arguing in the main that the SOLE has no jurisdiction over the termination dispute because

[5] *Id.* at 138-142; 156-157.

the SOLE's previous Assumption of Jurisdiction only covers the D1GITEL-DEU collective bargaining dispute; and because the redundancy program is legal and made in *bona fide*.[6]

On March 13, 2013, DEU moved for a writ of execution to compel DIGITEL to commence collective bargaining agreement (CBA) negotiations with DEU. Meanwhile, the termination of DIGITEL's employees took effect on the same day that the Court's decision in G.R. Nos. 184903-04 became final and executory: March 15, 2013. It is alleged that most of DIGITEL's rank-and-file employees accepted DIGITEL's redundancy benefit package[7] and were re-hired as PLDT contractuals working on DIGITEL's network and performing essentially the same functions they had as regular employees of DIGITEL.[8] 86 DEU members refused to be re-hired as PLDT contractuals.[9]

On March 19, 2013, SOLE Rosalinda Dimapilis-Baldoz (Baldoz) granted DEU's motion for execution. In response, DIGITEL filed a Manifestation on March 26, 2013 stating that it can no longer initiate CBA negotiations because all of the employees in the bargaining unit represented by DEU, *i.e.*, the rank-and-file employees of DIGITEL, have been terminated as of March 15, 2013.[10]

After conciliation proceedings, on May 27, 2013, DIGITEL and DEU made a preliminary agreement to lift DEU's picket on the PLDT main office and to allow 88 former DIGITEL workers to apply for jobs with PLDT. However, DIGITEL alleged that PLDT was forced to back out of its commitment to interview the former DIGITEL workers because on June 11, 2013, DEU members joined by militant elements staged lightning pickets in PLDT facilities in San Fernando, Pampanga and Cebu City.[11]

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[6] Comment of DIGITEL, *rollo*, p. 65.

[7] Manifestation of DIGITEL dated August 15, 2016, *id*. at 579-781.

[8] Reply of DEU, *id*. at 543.

[9] *Id*.

[10] *Id*. at 66.

[11] *Id*. at 66-67.

On July 17, 2013, DEU filed a Manifestation and Motion praying for the suspension of the termination of the DIGITEL workers, the implementation of the Court's decision in G.R. Nos. 184903-04, and the reinstatement of DIGITEL workers in the payroll pending the implementation of the aforementioned decision.[12] On July 24, 2013, DIGITEL filed its Manifestation and Motion praying that the SOLE resolve DEU's motions either by denying them on the ground of the supervening event of redundancy declaration or by certifying the matter to the National Labor Relations Commission (NLRC) to resolve the issue of whether or not the redundancy declaration was valid.[13]

NLRC Decision on redundancy issue

In an Order dated July 30, 2013, SOLE Baldoz certified the matter to the NLRC to resolve the issue of whether or not the redundancy declaration was valid and ordered the 86 remaining DIGITEL employees to return to work. After due proceedings, the NLRC issued a Decision[14] dated March 18, 2014 upholding DIGITEL's redundancy declaration, *viz*.:

> WHEREFORE, IN VIEW OF THE FOREGOING PREMISES, the redundancy program undertaken by [DIGITEL] which resulted in the termination of the herein eighty-six (86) union members, subject of the instant certified case, is hereby declared Valid.
>
> Accordingly, [DIGITEL] is hereby ordered to pay the separation pay package of the herein eighty-six (86) complainants-union members corresponding to the benefits under the second phase of the Redundancy Program. They are also entitled to be paid their backwages from March 16 to July 30, 2013.
>
> The claims for moral and exemplary damages and attorney's fees are hereby ordered dismissed for lack of merit.
>
> **SO ORDERED.**[15]

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[12] *Id*. at 67.

[13] *Id*.

[14] Penned by Presiding Commissioner Raul T. Aquino, with Commissioners Teresita D. Castillon-Lora, and Erlinda T. Agus concurring; *id*. at 468-494.

[15] *Id*. at 493.

Both parties moved for reconsideration, which the NLRC denied in its Resolution[16] dated August 18, 2014.

Proceedings before the CA and the Supreme Court

On October 20, 2014, DEU filed a petition for *certiorari* with the CA, assailing the NLRC Decision and Resolution which upheld DIGITEL's redundancy program.

In its Resolution dated November 15, 2014, the CA ordered the submission of DEU's and DIGITEL's addresses, as well as the resolution authorizing the DEU President to sign and file the petition for *certiorari* on behalf of DEU.[17]

On January 26, 2015, the CA issued the first assailed Resolution[18] which dismissed DEU's petition. The Resolution reads:

> On November 25, 2014, We issued a resolution requiring petitioner to submit the following, within five (5) days from notice: a.) petitioner's and private respondent's respective addresses; and b.) the authority of Allan D. Licardo[19] to sign the verification/certification against Forum Shopping on behalf of petitioner Union.
>
> On January 7, 2015, the Case Management Information System (CMIS) reported that as of even date, no Compliance has been filed by petitioner.
>
> Rule 46, Section 3 of the Rules of Court partly states:
>
> **Section 3.** *Contents and filing of petition; effect of non-compliance with requirements*. — **The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved,**

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[16] Penned by Commissioner Gregorio O. Bilog III, with Presiding Commissioner Herminio V. Suelo and Commissioner Erlinda T. Agus concurring; *id*. at 496-503.

[17] *Id*. at 6.

[18] *Id*. at 29-31.

[19] Also referred to as Alan D. Licardo in other parts of the record.

the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

x x x x x x x x x

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

x x x x x x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. x x x

In view of the said CMIS report, the instant petition is considered **ABANDONED** hence dismissed.

SO ORDERED.[20] (Emphases and italics in the original)

DEU received the first assailed CA Resolution on February 12, 2015.[21] On February 27, 2015, DEU filed a motion for reconsideration, alleging that it submitted its compliance on December 15, 2014, as shown by the certificates of dispatch of the Mandaluyong and Manila post offices.[22] On March 11, 2015,

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[20] *Rollo*, pp. 29-30.

[21] *Id*. at 7.

[22] *Id*. at 32-35.

the CA issued the second assailed Resolution[23] noting without action DEU's Compliance in view of the Resolution dated January 26, 2015, which DEU received on April 6, 2015.[24]

Treating the CA's Resolution dated March 11, 2015 as a denial of its motion for reconsideration, DEU filed on April 21, 2015 a petition for review on *certiorari* with this Court, which was docketed as G.R. No. 217529. On April 22, 2015, DEU, through counsel, filed a Manifestation/Submission (of Verification/Certification Page) stating that it inadvertently left out the verification/certification page as the petition was being sorted out, hence, the same was submitted and is now sought to be admitted to form part of the petition. On July 13, 2015, the CA issued a Resolution which deemed abandoned DEU's motion for reconsideration, pursuant to Rule VI, Section 15, of the 2009 Internal Rules of the CA.[25] On September 23, 2015, the Court issued a Resolution,[26] which, *inter alia*, noted DEU's Manifestation/Submission (of Verification/Certification Page) and ordered DIGITEL to comment on the petition. DIGITEL filed its comment on November 27, 2015,[27] while DEU filed a reply on May 2, 2016.[28]

The Issues

DEU's petition raises the following issues:

I. WHETHER OR NOT THE CA SERIOUSLY AND MANIFESTLY ERRED IN DISMISSING DEU'S PETITION FOR *CERTIORARI* ON THE BASIS OF MISTAKEN ASSUMPTION THAT THE DEU ALLEGEDLY FAILED TO COMPLY WITH ITS RESOLUTION DATED NOVEMBER 25, 2014

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[23] *Id*. at 8.

[24] *Id*.

[25] Comment of DIGITEL, *id*. at 70.

[26] *Id*. at 58-59.

[27] *Id*. at 64.

[28] *Id*. at 522.

REQUIRING DEU TO SUBMIT ITS RESOLUTION AND THE ADDRESS OF DEU AND DIGITEL.

II. WHETHER OR NOT THE CA GRAVELY ABUSED ITS DISCRETION IN NOT FINDING THAT DEU ACTUALLY COMPLIED WITH THE AFORESAID ORDER AND SUBMITTED ITS COMPLIANCE ON DECEMBER 15, 2014.

III. WHETHER OR NOT THE CA COMMITTED GRAVE ABUSE OF DISCRETION IN SUMMARILY DISMISSING DEU'S MOTION FOR RECONSIDERATION DESPITE DEU'S SUBMISSION OF THE PROOF OF COMPLIANCE SUCH AS THE COMPLIANCE ITSELF AND THE CERTIFICATION OF MANDALUYONG, MANILA, AND MAKATI POST OFFICES.

IV. WHETHER OR NOT THE CA COMMITTED MANIFEST AND SERIOUS ERROR AND GRAVELY ABUSED ITS DISCRETION IN DISMISSING THE PETITION WHICH IF NOT CORRECTED WOULD CAUSE IRREPARABLE DAMAGE TO DEU AND THE WORKERS.[29]

Two major issues are discussed in the parties' pleadings: *first*, the threshold procedural issue regarding the propriety of the CA's dismissal of DEU's petition for *certiorari* for failure to submit the addresses of the parties and the DEU's resolution authorizing its president to sign the verification and certification of non-forum shopping; and *second*, the substantive issue regarding the validity of DIGITEL's redundancy program, which the company used as basis for the termination of its entire workforce. However, it must be emphasized that the CA had no opportunity to resolve the substantive issues of the case, for it refused to admit DEU's petition on *purely procedural* grounds. Furthermore, the substantive issue raised by this petition, *i.e.*, the existence of a valid redundancy sufficient to constitute

[29] *Id.* at 3-4.

a basis for termination of employees, is a question of fact that is not within the province of this Court to resolve, moreso when the appellate court has not had the opportunity to rule on the matter. Therefore, the sole issue for this Court's resolution is the propriety of the appellate court's dismissal of DEU's petition for *certiorari* for failure to submit the addresses of the parties and the DEU's resolution authorizing its president to sign the verification and certification of non-forum shopping.

Ruling of the Court

The petition is meritorious.

Timely filing of DEU's Compliance

In denying the petition for failure to submit the data required in its Resolution dated November 15, 2014, the CA relied merely on the Case Management Information System report to the effect that the data have not yet been submitted as of January 7, 2015. However, it cannot be denied that the appellate court received DEU's Compliance, for it noted the same without action in its Resolution dated March 11, 2015. To prove that the said Compliance was submitted on time, DEU submitted a copy thereof, which includes an Affidavit of Service executed by Jemarie S. Concepcion, which states that she filed and served the said Compliance on December 15, 2014, through registered mail. The same Affidavit of Service also indicates the registry receipt numbers of the mail sent to the following recipients, thus:

Recipient	Registry Receipt Number
SIGUION REYNA MONTECILLO & ONGSIAKO *Counsel for Digitel-Respondent*s 4th and 6th Floors, Citibank Center, 8741 Paseo de Roxas,Makati City	Registry Receipt # 12887 Issued in Mandaluyong CPO on December 15, 2014
NLRC (Second Division) PPSTA Building., Banaue cor. P. Florentino Streets, Quezon City	Registry Receipt # 12888 Issued in Mandaluyong CPO on December 15, 2014
OFFICE OF THE SOLICITOR GENERAL 134 Amorsolo Street, Legaspi Village, Makati City	Registry Receipt # 12889 Issued in Mandaluyong CPO on December 15, 2014

COURT OF APPEALS Special Fourteenth Division Ma. Orosa Street, Ermita, Manila	Registry Receipt # 12890 Issued in Mandaluyong CPO on December 15, 2014[30]

As further proof that the Compliance was filed through registered mail on December 15, 2014, DEU submitted the following documents:

1) Certification dated February 23, 2015, signed by Noel V. Dacasin, Postmaster, Mandaluyong Central Post Office, stating that the registered letter numbers 12887 and 12890 were posted at Mandaluyong Post Office and dispatched, respectively, to Makati CPO Bill No. 112, page 1, line 7, col. 1 on 12/16/14, and to Manila CPO Bill No. 108, page 1, line 4, col. 1 on 12/16/14;[31]

2) Certification dated February 25, 2015, signed by Rodrigo SP. Romero, Head, Records Unit, Philippine Postal Corporation, National Capital Region stating that Registered Mail No. 12890 was delivered by postman and duly received by Timothy N. Gomez on January 5, 2015;[32] and

3) Certification dated February 26, 2015, signed by Divina G. Madeja, Chief, Records Unit, Makati Central Post Office, stating that Registered Mail No. 12887 was delivered and duly received by Wilfredo Lontoc, Jr. on January 6, 2015.[33]

Given the foregoing, it is clearly evident that the balance of the evidence, as required by Rule 13, Section 12 of the Rules of Court, tilts in favor of DEU, which submitted a notarized affidavit of the person who did the mailing, along with certifications issued by competent authorities attesting to the

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[30] Affidavit of Service by Jemarie S. Concepcion, *id*. at 44.

[31] *Id*. at 45.

[32] *Id*. at 47.

[33] *Id*. at 49.

fact of postage, mailing and delivery of the registered mails as required by the appellate court. Since DEU received the Resolution dated November 15, 2014 on December 10, 2014, it had five days from December 10, 2014, or until December 15, 2014, to file a compliance. This DEU was able to accomplish, by the filing and service of its Compliance through registered mail on December 15, 2014.

Validity of union resolution and its effect on the petition

DIGITEL asseverates that the verification and certification of non-forum shopping in DEU's petition for *certiorari* is defective, because the board resolution it submitted in its Compliance before the CA is dated December 15, 2014, while the verification and certification of non-forum shopping in DEU's petition for *certiorari* was executed on October 20, 2014. According to DIGITEL, this could only mean that the signatory of the verification and certification of non-forum shopping had no authority to sign the same in behalf of DEU at the time the petition was filed. Since the verification and certification of non-forum shopping in DEU's petition for *certiorari* was defective, the petition should be dismissed per Rule 45, Sections 1 and 4, and Rule 7, Section 5 of the Rules of Court.

DEU's petition for *certiorari* was filed on October 20, 2014. The verification and certification of non-forum shopping included therein was signed by Alan D. Licardo (Licardo) as president of DEU. The board resolution it submitted in its Compliance, designating and authorizing Licardo to represent DEU in the suit, was issued only on December 15, 2014.

The jurisprudential rules governing the submission and contents of the verification and certification of non-forum shopping were summarized in *Altres, et al. v. Empleo, et al.*,[34] *viz.*:

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification,

[34] 594 Phil. 246 (2008).

and non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) As to **certification against forum shopping, non-compliance therewith or a defect therein,** unlike in verification, **is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**

5) **The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case**; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, **the certification against forum shopping must be executed by the party-pleader**, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[35] (Emphases Ours)

Tested against these parameters, the Court finds the verification and certification of non-forum shopping in DEU's petition for *certiorari* to be substantially compliant with the

[35] *Id*. at 248-249.

Rules of Court. The petition was signed by Licardo as President of DEU. In *Cagayan Valley Drug Corp. v. Commissioner of Internal Revenue*,[36] the Court recognized the authority of the President of a corporation to sign a verification and certification of non-forum shopping without authority from the board of directors. This recognition was extended to union presidents in *PNCC Skyway Traffic Mgm't. and Security Div. Workers Org. v. PNCC Skyway Corp.*,[37] where the Court gave further consideration to the fact that the board of therein petitioner union subsequently passed a resolution authorizing the president to file the suit. The Court deemed this a ratification of the president's act of signing the verification and certification. Nevertheless, the recognition of the authority of the president of a juridical entity (whether a corporation or a union) to sign verifications and certifications without prior board approval is based on the role and function of a president within the juridical entity, such that the president is in a position to verify the truthfulness and correctness of the allegations in the petition.[38] Furthermore, like in the *PNCC* case, Licardo's authority to sign the verification and certification was also given after the petition had been filed. It cannot therefore be said that Licardo was absolutely bereft of authority to sign the petition, considering that he is the president of DEU and the DEU board subsequently ratified his act. The substantive issues raised in this case, and the implications they have for the livelihood of DIGITEL's workers, compel this Court, in the name of justice, to relax the rules and allow DEU's petition to be tried on the merits. If justice is to be done to the workers of DIGITEL, they must be afforded the amplest opportunity for the proper and just determination of their cause, free from the constraints of technicalities. For, it is far better to dispose of a case on the merits which is a primordial end rather than on a technicality,

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[36] 568 Phil. 572 (2008).

[37] 626 Phil. 700 (2010).

[38] *Cagayan Valley Drug Corp. v. Commissioner of Internal Revenue*, *supra*, at 581-582; *PNCC Skyway Traffic Mgm't. and Security Div. Workers Org. v. PNCC Skyway Corp.*, *supra*, at 710.

if it be the case that may result in injustice.[39] On the other hand, if DIGITEL is fully confident that the facts and the law are on its side, it should not have any qualms in presenting its case before the appellate court.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Resolutions dated January 26, 2015 and March 11, 2015 of the Court of Appeals in CA-G.R. SP No. 137645 are hereby **REVERSED** and **SET ASIDE**. The Court of Appeals is ordered to **REINSTATE** and **ADMIT** the petition for *certiorari* filed by Digitel Employees Union in CA-G.R. SP No. 137645 and to proceed with the case as soon as possible.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 222939. July 3, 2019]

MECO MANNING & CREWING SERVICES, INC. and CAPT. IGMEDIO G. SORRERA, *petitioners, vs.* **CONSTANTINO R. CUYOS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL; EMPLOYER MUST PROVE BY SUBSTANTIAL EVIDENCE THAT THE DISMISSAL IS FOR A JUST AND VALID CAUSE. — It is settled that in termination cases, the burden of proof rests upon the employer to show that the dismissal

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[39] *Bacarra v. National Labor Relations Commission and Ledesma*, 510 Phil. 353, 361 (2005).

is for a just and valid cause. Failure to do so would necessarily mean that the dismissal was illegal. For this purpose, the employer must present substantial evidence to prove the legality of an employee's dismissal. "Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

2. ID.; ID.; ID.; ID.; SHIP'S LOGBOOK AS PERTINENT EVIDENCE IN CASE AT BAR WAS NOT PRESENTED RAISES DOUBTS OF THE ALLEGED INFRACTIONS. — In *Abacast Shipping and Management Agency, Inc. v. National Labor Relations Commission (Abacast)*, the Court stressed that the ship's logbook is a respectable record that can be relied upon to determine the veracity of the charges filed and the procedure taken against the employees prior to their dismissal. In the said case, the Court rejected a shipmaster's report which allegedly contained a collation of excerpts from the ship's logbook. The Court further opined that the failure to produce the logbook or at least make photocopies of the pertinent pages thereof would reasonably suggest that there were no entries in the logbook that could have established the acts and offenses allegedly committed by the seafarer-employee. A similar observation obtains in this case. The decklog extract presented by the petitioners is a mere collation of the supposed contents of the ship's logbook. The petitioners did not present the logbook itself or even photocopies of the relevant pages thereof. Their only excuse is that the captain of the ship is obliged by law to keep the logbook. Hence, they could not present it before the labor tribunals. However, this does not explain why they failed to present even photocopies of the pertinent pages of the logbook. Thus, as aptly observed by the appellate court, the non-presentation of the ship's logbook or copies of the pertinent pages thereof raises doubts as to the occurrence of Constantino's alleged infractions.

3. ID.; ID.; ID.; ID.; PROCEDURAL DUE PROCESS; TWO WRITTEN NOTICES REQUIRED BEFORE TERMINATION; SECTION 17(D) OF THE POEA-SEC AS JUSTIFICATION FOR NON-COMPLIANCE THEREOF, NOT APPLICABLE. — In termination proceedings, it is settled that for the manner of dismissal to be valid, the employer must comply with the employee's right to procedural due process by furnishing him with two written notices before the termination

of his employment. The first notice apprises the employee of the particular acts or omissions for which his dismissal is sought, while the second informs the employee of the employer's decision to dismiss him. In this case, the petitioners admit that they did not furnish Constantino with any written notice prior to his dismissal. They maintain, however, that this is justified under Section 17(D) of the POEA-SEC. x x x Section 17(D) is inapplicable to this case because the alleged offenses by Constantino have not been established by substantial evidence. Assuming for the sake of argument that the aforesaid infractions have been duly shown, Section 17(D) would still be inapplicable because Capt. Kolidas failed to conduct the required investigation under Section 17(B). Finally, it is clear from Section 17 that it is only the second notice or the notice of dismissal which may be dispensed with under exceptional circumstances — the first written notice could never be dispensed with. The seafarer-employee should always be furnished with the written notice informing him of the charges against him and the date, time, and place of the formal investigation. Very clearly, the petitioners failed to afford Constantino with procedural due process prior to his termination.

4. ID.; ID.; ID.; ILLEGAL DISMISSAL OF OVERSEAS WORKERS; PROPRIETY OF MONETARY AWARDS IN CASE AT BAR. — In a plethora of cases, the Court has held that illegally dismissed overseas workers, including seafarers, shall be entitled to salaries corresponding to the unexpired portion of their employment contracts. This includes the monthly vacation leave pay and all other benefits guaranteed in the employment contract which were not made contingent upon the performance of any task or the fulfilment of any condition. In this case, Constantino's employment contract provides that the duration of his employment is eight months, or from December 10, 2007 to August 9, 2008. Unfortunately, he was illegally dismissed from his employment on February 14, 2008 or after serving for just two months. Thus, he is entitled to his salaries corresponding to the unexpired portion of his contract which is six months. x x x Constantino was also properly awarded the full reimbursement of his placement fee and the deductions made with interest at the rate of 12% per annum pursuant to Section 10 of Republic Act (R.A.) No. 8042, as amended by R.A. No. 10022. [He was also entitled to] Seniority Pay at the rate of US$99.00 per month, the Supplement Bonus at the rate

of US$464.00 per month, and the Vacation Leave Pay at the rate of US$495.00 per month. The Court notes that Seniority Pay and Supplement Bonus are included under the item for "Basic Monthly Salary" under Constantino's employment contract. Further, they do not appear to be dependent upon any contingency. Thus, they must form part of Constantino's guaranteed benefits. x x x These money awards are further subject to the payment of interest at the rate of 6% per annum from the finality of the decision.

5. ID.; ID.; ID.; ID.; ATTORNEY'S FEES PROPER AS EMPLOYEE WAS FORCED TO LITIGATE AND RETAIN THE SERVICES OF HIS COUNSEL. — As to the attorney's fees, the award thereof was also proper. The Court has repeatedly held that the award of attorney's fees is legally and morally justifiable in actions for recovery of wages and where an employee was forced to litigate and thus, incur expenses to protect his rights and interest. The propriety of the award of attorney's fees in this case is clear. It could not be denied that Constantino was forced to litigate and retain the services of his counsel thereby incurring expenses as a result of petitioners' act of illegally dismissing him and their refusal to pay him his salaries corresponding to the unexpired portion of his employment contract. Thus, Constantino is entitled to attorney's fees equivalent to 10% of his total monetary award.

6. ID.; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (RA NO. 8042, AS AMENDED); FOR A JURIDICAL PLACEMENT AGENCY, ITS CORPORATE OFFICERS SHALL BE JOINTLY AND SOLIDARILY LIABLE WITH IT FOR CLAIMS AND DAMAGES. — Section 10 of R.A. No. 8042, as amended by R.A. 10022, provides that if the recruitment or placement agency is a juridical being, its corporate officers, directors, and partners, as the case may be, shall be jointly and solidarily liable with the corporation or partnership for the claims and damages against it. Here, there is no dispute that MECO is a corporation engaged in the recruitment and placement of Filipino seafarers for its foreign principal. It is also not disputed that Capt. Sorrera is MECO's President and General Manager; hence, he is a corporate officer. Thus, the appellate court correctly adjudged Capt. Sorrera as among those who are jointly and solidarily liable to Constantino.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioners.
Valencia & Valencia for respondent.

D E C I S I O N

J. REYES JR., *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision[1] dated May 28, 2015, and the Resolution[2] dated January 21, 2016, of the Court of Appeals (CA) — Cebu City, in CA-G.R. SP No. 05091, which granted herein respondent Constantino R. Cuyos' (Constantino) petition for *certiorari* and consequently reversed and set aside the Decision[3] dated September 30, 2009, and the Resolution[4] dated January 15, 2010, of the National Labor Relations Commission (NLRC) — Cebu City in NLRC OFW No. VAC-05-000033-2009, which in turn affirmed the Decision[5] dated February 12, 2009 of the Labor Arbiter in NLRC RAB-VII-03-0023-08 OFW, a case for illegal dismissal of a seafarer.

The Facts

On March 10, 2008, Cuyos filed a complaint for illegal dismissal and claims for salaries and other benefits for the unexpired portion of his employment contract, damages, and attorney's fees against International Crew Services, Ltd. (ICS),

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[1] Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Marilyn B. Lagura-Yap and Germano Francisco D. Legaspi, concurring; *rollo*, pp. 66-83.

[2] *Id*. at 85-89.

[3] Penned by Commissioner Julie C. Rendoque, with Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Aurelio D. Menzon, concurring; *id*. at 127-136.

[4] *Id*. at 138-139.

[5] Penned by Labor Arbiter Philip B. Montances; *id*. at 353-359.

and petitioners Meco Manning & Crewing Services, Inc. (MECO) and Captain Igmedio G. Sorrera (Capt. Sorrera) before the Regional Arbitration Branch of the NLRC in Cebu City. The petitioners moved for the dismissal of the case, but the same was denied by the Labor Arbiter. Thereafter, the parties were required to submit their respective position papers.

In his Position Paper,[6] Constantino alleged that on December 11, 2007, MECO, for and on behalf of its principal, ICS, hired him as the Second Marine Engineer of the vessel "M/V Crown Princess." The employment was for a period of eight months commencing on December 10, 2007, under the following terms and conditions:

1.1. Duration of the Contract	:	Eight months
1.2. Position	:	Second Engineer
1.3. Basic Monthly Salary	:	US$1,239.00 / Seniority Pay US$99.00 / SMB US$330.00 / Supplement Bonus US$464.00
1.4. Hours of Work	:	44 Hrs. per week
1.5. Overtime	:	US$773.00 F.O.T.
1.6. Vacation Leave with Pay	:	US$495.00 Per month
1.7. POINT OF HIRE	:	Manila, Philippines.[7]

On December 12, 2007, Constantino boarded the vessel.

Constantino claimed that the ship's Chief Engineer, Francisco G. Vera, Jr. (Vera), mistreated him during his short stay on board the "M/V Crown Princess." He recounted that on December 13, 2007, Vera started shouting at him whenever he would ask questions concerning the engine operations of the vessel; and that on January 9, 2008, he was attending to the freshwater generator when, all of a sudden, Vera slapped his hand and kept on shouting at him allegedly because he was not doing his work properly.

Finally, on February 14, 2008, Constantino was shocked when the Third Mate of the vessel handed to him an electronic plane

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[6] *Id*. at 140-153.

[7] *Id*. at 154.

ticket and informed him that he must disembark at Cristobal, Panama, where a reliever would take his place. After inquiring for the reason why he was suddenly being relieved, Captain G. Kolidas (Capt. Kolidas), the Master of the Vessel, told him that he would call their head office in Greece. After the said communication, however, Capt. Kolidas told him that it would be better for him to just go home as he did not have a good relation with Vera. Thus, on February 18, 2008, Constantino was made to disembark from the vessel against his will. He arrived in Manila on February 20, 2008.

On February 22, 2008, Constantino met with Capt. Sorrera at the MECO office and sought explanation for his unceremonious and illegal dismissal. Capt. Sorrera informed him that he was dismissed because he challenged Vera to a fight. Constantino denied the allegation and claimed that it was Vera who was very rude to him.

For their part, the petitioners, in their Position Paper,[8] admitted that they hired Constantino as the Second Engineer on board "M/V Crown Princess" on December 11, 2007. However, they claimed that Constantino's dismissal was valid. They narrated that on January 2, 2008, at approximately 10:30 in the morning, Vera instructed Constantino to collect the engine garbage. Instead of carrying out the order, Constantino openly and strongly protested and was already prepared for a fight. To preserve the peace and avert physical confrontation, Vera no longer insisted on his order and merely reminded Constantino that as the Second Engineer, he (Constantino) could always direct his subordinates to perform these tasks.

Petitioners continued that on January 5, 2008, Vera instructed Constantino to dismantle the ship's freshwater generator ejector pump. Vera, however, noticed that Constantino was not dismantling the pump properly. Thus, in order to prevent damage on the pump, Vera ordered Constantino to stop. Vera then proceeded to show him the proper manner of dismantling the pump. However, Constantino turned ballistic, hurling invectives

[8] *Id.* at 155-201.

at Vera and threatened and attempted to harm him with a spanner. Fortunately, cooler heads intervened and prevented Constantino from physically hurting Vera.

Finally, on January 17, 2008, at around 1:00 p.m. in the afternoon, Vera directed Constantino to clean the scavenge areas of the engine room. However, Constantino protested vehemently. In order to avoid more trouble, Vera chose to report the incident to Capt. Kolidas.

Petitioners claimed that Constantino's dismissal was necessitated by reason of his unsatisfactory performance evaluation, violation of his contract of employment as he violated the provisions on insubordination and inefficiency, his angry and provocative utterances and his attempt to physically assault his superior. Thus, Constantino's dismissal was for a just cause and was resorted to in order to protect and maintain the peace of the vessel and the safety of its crew.

In support of their allegations, the petitioners attached a facsimile message dated February 1, 2008 (Annex "2"),[9] purportedly signed by Capt. Kolidas; an unsigned facsimile message dated February 9, 2008 (Annex "2-A"),[10] with an attached "decklog extract" dated February 9, 2008 (Annex "2-B");[11] and a letter dated January 6, 2008 (Annex "3"),[12] signed by Vera and attested to by two witnesses, namely, Edgar Villanueva, the vessel's Third Engineer, and Rigor Buenaventura, the vessel's Electrician.

Ruling of the Labor Arbiter

In its assailed Decision dated February 12, 2009, the Labor Arbiter dismissed the complaint for lack of merit. It ratiocinated that the pieces of evidence presented by the petitioners clearly showed that Constantino defied the lawful orders of his superior

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[9] *Id*. at 206.

[10] *Id*. at 207.

[11] *Id*. at 208.

[12] *Id*. at 209.

officer. This, according to the Labor Arbiter, constituted serious misconduct and willful disobedience which are legal causes for termination of an employee. Further, considering that his termination was valid, the Labor Arbiter ruled that Constantino was not entitled to his money claims. The dispositive portion of the decision states:

> **WHEREFORE**, premises considered, judgment is hereby rendered **DISMISSING** the instant case for lack of merit.[13]

Aggrieved, Constantino elevated an appeal to the NLRC. Constantino later submitted an Affidavit[14] dated April 3, 2009 as an addendum to his appeal memorandum. In the said affidavit, he specifically denied the allegations against him by the petitioners.

Ruling of the NLRC

In its Decision dated September 30, 2009, the NLRC affirmed the February 12, 2009 Labor Arbiter's Decision. The NLRC concurred with the Labor Arbiter's observation that Constantino committed serious misconduct and willful disobedience when he disobeyed the lawful orders of his superior officer, when he challenged his superior officer to a fistfight, and when he attempted to assault his superior officer. Thus, the petitioners have the right to terminate his employment. The dispositive portion of the decision provides:

> **WHEREFORE**, premises considered, the decision of the Labor Arbiter dated 12 February 2009 is hereby **AFFIRMED**.[15]

Constantino moved for reconsideration, but the same was denied by the NLRC in its Resolution dated January 15, 2010.

Undaunted, Constantino filed a petition for *certiorari* before the CA.

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[13] *Id*. at 359.

[14] *Id*. at 405-406.

[15] *Id*. at 135.

The Ruling of the CA

In its Decision dated May 28, 2015, the CA reversed and set aside the September 30, 2009 Decision and the January 15, 2010 Resolution of the NLRC. The appellate court did not share the conclusions reached by the Labor Arbiter and the NLRC. Instead, it ruled that the petitioners failed to present substantial evidence to prove that Constantino's dismissal was made for a valid and justifiable cause.

It opined that the documents presented by the petitioners, constituting of the facsimile messages and Vera's letter, are insufficient to prove the alleged insubordination and defiance by Constantino. It stressed that the rule that the entries in the ship's logbook are *prima facie* evidence of the incident in question is true only if the logbook itself containing such entries or photocopies of the pertinent pages thereof were presented in evidence. It noted that in this case, what the petitioners presented are only facsimile messages purportedly containing typewritten excerpts from the ship's logbook. Thus, they could not be considered as *prima facie* evidence of the incidents in question.

The appellate court also found the facsimile message dated February 1, 2008 to be dubious and unreliable. In this facsimile message, Capt. Kolidas stated that Constantino started creating problems against Vera since he boarded the vessel and that Constantino even challenged Vera to a fight. For these reasons, he stated that he was of the opinion that Constantino must be replaced as the Second Engineer as soon as possible. However, the appellate court noted that this facsimile message was sent only on February 20, 2008 as could be shown by the electronic annotation "20/02/2008 14:41" appearing on the upper right corner of the message. This, according to the appellate court, is inconsistent with the facts of the case considering that Constantino was already informed of his dismissal on February 14, 2008, and that he already disembarked from the vessel on February 18, 2008. The appellate court further ruled that Vera's January 6, 2008 letter is self-serving and uncorroborated by any evidence. As such, it cannot be given any weight and credit.

The appellate court further ruled that the petitioners failed to afford Constantino due process. It observed that the petitioners failed to comply with the two-notice requirement prior to the termination of the employment of an employee. In sum, the appellate court ruled that Constantino was dismissed without just cause and without due process. The dispositive portion of the CA Decision states:

> WHEREFORE, premises considered, the instant Petition for *Certiorari* is GRANTED. The Decision dated September 30, 2009 and the Resolution dated January 15, 2010 of the National Labor Relations Commission, Seventh Division, Cebu City, in NLRC OFW No. VAC-05-000033-2009, are REVERSED and SET ASIDE. A new decision is rendered declaring petitioner Constantino R. Cuyos to have been illegally terminated from employment. Accordingly, private respondents Meco Manning & Crewing Services, Inc., International Crew Services, Ltd. and Captain Igmedio G. Sorrera are ordered to pay, jointly and severally, [Cuyos]: (1) his salaries corresponding to the unexpired portion of his employment contract, at the rate of US$1,239.00 per month, or its peso equivalent at the exchange rate at the time of actual payment; (2) his placement fee with 12% interest per annum, pursuant to Section 10 of Republic Act No. 8042; and (3) attorney's fees of 10% of the aggregate monetary award.
>
> Let this case be remanded to the Labor Arbiter for proper computation of [Cuyos's] monetary awards in accordance with this decision.
>
> SO ORDERED.[16]

The petitioners moved for reconsideration, but the same was denied by the CA in its Resolution dated January 21, 2016.

Hence, this petition.

The Issue

WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT CONSTANTINO R. CUYOS WAS ILLEGALLY DISMISSED FROM EMPLOYMENT.

The petitioners insist that the CA erred in reversing the Labor Arbiter's and NLRC's decisions. They argue that the logbook

[16] *Id*. at 82.

entries, as extracted by the master of the vessel, sufficiently established that Constantino committed serious misconduct and willful disobedience. Further, they posit that the existence of a logbook does not preclude the admission and consideration of other accounts relating to the incident on board the vessel. Thus, the Labor Arbiter and the NLRC correctly ruled that Constantino was validly dismissed as satisfactorily shown in Vera's letter and the report by Capt. Kolidas, as contained in his facsimile transmissions. They further claim that Constantino never controverted the contents of Vera's letter and the facsimile messages during the hearing of the case before the Labor Arbiter.

The petitioners also maintain that the CA erred when it ruled that Constantino was not afforded due process. They contend that under Section 17(D) of the 2000 Standard Terms and Conditions Governing the Employment of Filipino Seafarer On-Board Ocean-Going Vessels (POEA-SEC), dismissal for just cause may be effected by the Master without furnishing the seafarer with a notice of dismissal if there is a clear and existing danger to the safety of the crew or the vessel.

For his part, Constantino, in his Comment[17] dated July 18, 2016 and Expanded Discussion[18] dated July 28, 2016, counters that the CA did not err when it reversed the Labor Arbiter's and NLRC's decisions. He also insists that he vehemently disputed the allegations of gross misconduct and willfull disobedience, contrary to the assertions by the petitioners. Moreover, he maintains that the petitioners failed to afford him due process when they decided to suddenly terminate his employment. He points out that in their position paper, the petitioners themselves admitted that they did not provide him with written notices of the charges against him and of his dismissal. In sum, Constantino contends that the CA correctly ruled that the petitioners failed to prove by substantial evidence the charges of insubordination, serious misconduct, and willfull disobedience.

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[17] *Id*. at 1027-1037.

[18] *Id*. at 1039-1051.

The Court's Ruling

The petition lacks merit.

Petitioners failed to prove, by substantial evidence, that Constantino's dismissal was grounded on just and valid causes.

It is settled that in termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause. Failure to do so would necessarily mean that the dismissal was illegal.[19] For this purpose, the employer must present substantial evidence to prove the legality of an employee's dismissal.[20] "Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[21]

In this case, the Court concurs with the appellate court's conclusion that the petitioners failed to establish the validity of Constantino's dismissal by substantial evidence.

It must be recalled that in their attempt to prove the validity of Constantino's dismissal, one of the documents presented by the petitioners is Capt. Kolidas' facsimile message dated February 1, 2008. As observed by the appellate court, however, the said document is dubious considering that it was transmitted only on February 20, 2008, or 6 days after Constantino was informed of his dismissal.

To this observation by the appellate court, the petitioners' only response was to point out that while the transmission date was indeed on February 20, 2008, it could not be denied that the facsimile message was dated February 1, 2008. They assert that under Section 17(D) of the POEA-SEC, Capt. Kolidas, as the master of the vessel, has the authority to dismiss a seafarer-

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[19] *Grande v. Philippine Nautical Training Colleges*, 806 Phil. 601, 617 (2017).

[20] *Faeldonia v. Tong Yak Groceries*, 617 Phil. 894, 902 (2009).

[21] *Travelaire & Tours Corporation v. National Labor Relations Commission*, 355 Phil. 932, 936 (1998).

employee even without furnishing the seafarer with a notice of dismissal if there exists a clear danger to the safety of the crew or vessel, and that the only duty of the master of the vessel is to submit a complete report to the manning agency after the incident. Thus, it would seem that the petitioners are implying that the February 1, 2008, facsimile message was transmitted only on February 20, 2008, because it constitutes as Capt. Kolidas' report after the fact of dismissal pursuant to Section 17(D) of the POEA-SEC.

The arguments and insinuations by the petitioners are not supported even by their own evidence. The contents of the February 1, 2008 facsimile message are reproduced as follows:

x x x x x x x x x

THE 2ND ENGINEER MR. CUYOS CONSTANTINO SINCE HE CAME ON BOARD THE MV CROWN PRINCESS HE STARTED CREATING PROBLEMS AGAINST THE CHIEF ENGINEER OF THE SHIP MR. VERA FRANCISCO.

AS THE CHIEF ENGINEER REPORTED TO ME THE 2ND ENGINEER MR. CUYOS CONSTANTINO WAS NOT AGREEING IN THE CHIEF ENGINEER[']S INSTRUCTIONS AND WHEN THE CHIEF ENGINEER WAS POINTING OUT THE INCIDENT MR. CUYOS [CONSTATINO] STARTED TO LOOK FOR A FIGHT. **BEFORE ARRIVAL IN USA THE CHIEF ENGINEER OF THE SHIP[,] MR. VERA[,] TALKED WITH HIS AGENCY IN MANILA AND HE HAD EXPLAINED EVERYTHING TO HIS AGENCY AND THEY HAVE AGREED TO CHANGE THE 2ND ENGINEER SOONEST POSSIBLE.** (Emphasis supplied)

MY OPINION IS THE 2ND ENGINEER MR. CUYOS CONSTANTINO TO BE CHANGED THE SOONEST POSSIBLE FOR THE GOOD OF THE SHIP AND TO AVOID THE WORST.[22]

From the aforesaid transmission, the following could be deduced: *First*, Capt Kolidas' knowledge regarding the incident is completely one-sided. He did not conduct any investigation to ascertain the truthfulness and veracity of Vera's accusations

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[22] *Rollo*, p. 206.

against Constantino. He never bothered getting Constantino's side of the story. He reported the incident as relayed to him by Vera. Thus, he could not have reasonably determined if there is indeed clear danger to the crew or to the vessel. *Second*, Capt. Kolidas did not order the dismissal of Constantino. While Capt. Kolidas stated that he was of the opinion that Constantino must be replaced, his opinion on the matter is no longer relevant considering that Constantino's dismissal was already a done deal. From Capt. Kolidas' facsimile transmission, it is evident that the decision to dismiss Constantino was made by Vera and the petitioners. Clearly, the provisions of Section 17(D) of the POEA-SEC are inapplicable in this case.

Likewise, the unsigned facsimile message dated February 9, 2008, and the attached decklog extract bearing the same date are also insufficient to establish the alleged insubordination and gross misconduct by Constantino. The unsigned February 9, 2008 transmission merely states that attached to it is the decklog extract concerning Constantino's behavior on certain dates. On the other hand, the decklog extract contains a short type-written narration of the alleged acts of insubordination and serious misconduct committed by Constantino on January 2, 2008 and January 17, 2008.

In *Abacast Shipping and Management Agency, Inc. v. National Labor Relations Commission (Abacast)*,[23] the Court stressed that the ship's logbook is a respectable record that can be relied upon to determine the veracity of the charges filed and the procedure taken against the employees prior to their dismissal. In the said case, the Court rejected a shipmaster's report which allegedly contained a collation of excerpts from the ship's logbook. The Court further opined that the failure to produce the logbook or at least make photocopies of the pertinent pages thereof would reasonably suggest that there were no entries in the logbook that could have established the acts and offenses allegedly committed by the seafarer-employee.[24]

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[23] 245 Phil. 487 (1988).

[24] *Id*. at 490.

A similar observation obtains in this case. The decklog extract presented by the petitioners is a mere collation of the supposed contents of the ship's logbook. The petitioners did not present the logbook itself or even photocopies of the relevant pages thereof. Their only excuse is that the captain of the ship is obliged by law to keep the logbook. Hence, they could not present it before the labor tribunals. However, this does not explain why they failed to present even photocopies of the pertinent pages of the logbook. Thus, as aptly observed by the appellate court, the non-presentation of the ship's logbook or copies of the pertinent pages thereof raises doubts as to the occurrence of Constantino's alleged infractions.

Interestingly, the petitioners also invoked *Abacast* in support of their cause. In the present petition for review, the petitioners even correctly argued that what the Court did in *Abacast* was to reject a typewritten collation of excerpts of what could be the logbook and rule that what should have been submitted in evidence was the logbook itself or authenticated copies of the pertinent pages thereof. Unfortunately, it would seem that the petitioners failed to comprehend that the typewritten decklog extract they submitted is similar to the typewritten collation of excerpts which has been rejected by the Court in *Abacast*. As such, the decklog extract does not deserve any consideration.

The appellate court also properly disregarded Vera's January 6, 2008 letter-report as self-serving. As correctly pointed out by the appellate court, the letter was unsubstantiated by any other evidence. Moreover, the letter-report is inconsistent with all the other pieces of evidence presented by the petitioners.

It must be noted that among the accusations hurled against Constantino, the incident which allegedly transpired on January 5, 2008, and which is the subject of the January 6, 2008 letter-report could be considered as the gravest. Indeed, in the said letter-report, there is an allegation of an attempt on the part of Constantino to inflict bodily harm against his superior officer with the use of a tool.

Curiously, however, Capt. Kolidas made no mention of this incident in his facsimile messages. In particular, while the

facsimile messages and decklog extract mentioned the incidents on January 2, 2008, and January 17, 2008, no reference was made to Constatino's alleged threats and attempts to harm Vera on January 5, 2008. This is significant because if the facsimile messages and the decklog extract indeed contain the true reproduction of the relevant entries in the ship's logbook regarding Constantino's offenses, which is what the petitioners would want the Court to believe, then it only follows that the reason the January 5, 2008 incident was not mentioned in the decklog extract, is because no entry regarding such incident exists in the ship's logbook. The lack of any entry relating to the January 5, 2008 incident consequently creates doubt that the January 6, 2008 letter-report was merely executed to manufacture or supply events which did not occur.

In fine, the pieces of evidence presented by the petitioners to establish the validity of the dismissal are either unreliable or plainly insufficient to prove that Constantino is guilty of insubordination and serious misconduct. Thus, the appellate court correctly reversed the NLRC's and Labor Arbiter's decisions considering that they were not duly supported by substantial evidence.

Petitioners violated Constantino's right to procedural due process.

In termination proceedings, it is settled that for the manner of dismissal to be valid, the employer must comply with the employee's right to procedural due process by furnishing him with two written notices before the termination of his employment. The first notice apprises the employee of the particular acts or omissions for which his dismissal is sought, while the second informs the employee of the employer's decision to dismiss him.[25]

In this case, the petitioners admit that they did not furnish Constantino with any written notice prior to his dismissal. They

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[25] *Distribution & Control Products, Inc. v. Santos*, G.R. No. 212616, July 10, 2017, 830 SCRA 452, 463.

maintain, however, that this is justified under Section 17(D) of the POEA-SEC.

The contention is misplaced. Section 17 of the POEA-SEC provides for the disciplinary procedures against erring seafarers, to wit:

> Section 17. DISCIPLINARY PROCEDURES
>
> The Master shall comply with the following disciplinary procedures against an erring seafarer:
>
> A. The Master shall furnish the seafarer with a written notice containing the following:
>
> 1. Grounds for the charges as listed in Section 31 of this Contract.
> 2. Date, time and place for a formal investigation of the charges against the seafarer concerned.
>
> B. The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. An entry on the investigation shall be entered into the ship's logbook.
>
> C. If, after the investigation or hearing, the Master is convinced that imposition of a penalty is justified, the Master shall issue a written notice of penalty and the reasons for it to the seafarer, with copies furnished to the Philippine agent.
>
> D. Dismissal for just cause may be effected by the Master without furnishing the seafarer with a notice of dismissal if doing so will prejudice the safety of the crew or the vessel. This information shall be entered in the ship's logbook. The Master shall send a complete report to the manning agency substantiated by witnesses, testimonies and any other documents in support thereof.

As already discussed, Section 17(D) is inapplicable to this case because the alleged offenses by Constantino have not been established by substantial evidence. Assuming for the sake of argument that the aforesaid infractions have been duly shown, Section 17(D) would still be inapplicable because Capt. Kolidas failed to conduct the required investigation under Section 17(B). Finally, it is clear from Section 17 that it is only the second notice or the notice of dismissal which may be dispensed with

under exceptional circumstances — the first written notice could never be dispensed with. The seafarer-employee should always be furnished with the written notice informing him of the charges against him and the date, time, and place of the formal investigation. Very clearly, the petitioners failed to afford Constantino with procedural due process prior to his termination.

Propriety of the monetary awards.

In a plethora of cases, the Court has held that illegally dismissed overseas workers, including seafarers, shall be entitled to salaries corresponding to the unexpired portion of their employment contracts.[26] This includes the monthly vacation leave pay and all other benefits guaranteed in the employment contract which were not made contingent upon the performance of any task or the fulfilment of any condition.[27]

In this case, Constantino's employment contract provides that the duration of his employment is eight months, or from December 10, 2007 to August 9, 2008. Unfortunately, he was illegally dismissed from his employment on February 14, 2008 or after serving for just two months. Thus, he is entitled to his salaries corresponding to the unexpired portion of his contract which is six months. Thus, the appellate court correctly awarded Constantino with his salary for the unserved portion of his contract at the rate of US$1,239.00 per month. Constantino was also properly awarded the full reimbursement of his placement fee and the deductions made with interest at the rate of 12% per annum pursuant to Section 10 of Republic Act (R.A.) No. 8042, as amended by R.A. No. 10022.

Nevertheless, the appellate court erred when it did not include in its award the Seniority Pay at the rate of US$99.00 per month, the Supplement Bonus at the rate of US$464.00 per month,

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[26] *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 267 (2009); *Yap v. Thenamaris Ship's Management*, 664 Phil. 614, 629 (2011); *Skippers United Pacific, Inc. v. Doza*, 681 Phil. 427, 442 (2012).

[27] *Tangga-an v. Philippine Transmarine Carriers, Inc.*, 706 Phil. 339, 351-352 (2013).

and the Vacation Leave Pay at the rate of US$495.00 per month. The Court notes that Seniority Pay and Supplement Bonus are included under the item for "Basic Monthly Salary" under Constantino's employment contract. Further, they do not appear to be dependent upon any contingency. Thus, they must form part of Constantino's guaranteed benefits. From these considerations, it is clear that Constantino is entitled to backwages in the total amount of US$13,782.00 computed as follows – US$13,782.00 = (US$1,239.00 + US$99.00 + US$464.00 + US$495.00) x 6 months. These money awards are further subject to the payment of interest at the rate of 6% per annum from the finality of the decision.[28]

The same could not be said with respect to the SMB or Special Maintenance Bonus at the rate of US$330.00 per month although it is also listed under the Basic Monthly Salary in the employment contract. This is because the aforesaid bonus is contingent upon the performance of certain maintenance duties on board the vessel as provided for under Section 11.2, Article 11 of the Collective Bargaining Agreement[29] between petitioner MECO and the Associated Marine Officers & Seamen's Union of the Philippines, in which Constantino is a member.

The appellate court is also correct in not awarding the overtime pay provided in the employment contract. It is settled that the correct criterion in determining the propriety of the award of overtime pay is whether the seafarer rendered service in excess of the hours he was required to work under his contract.[30] In this case, Constantino failed to adduce evidence showing that he rendered service beyond the required forty-four hours per week. Hence, overtime pay could not be awarded.

The appellate court also correctly ruled that Constantino is not entitled to moral and exemplary damages. The award of

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[28] *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013); *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403, 448 (2014).

[29] *Rollo*, p. 246.

[30] *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, 540 Phil. 65, 83-84 (2006).

moral damages is proper where the dismissal was tainted with bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy. On the other hand, exemplary damages are recoverable only if the dismissal was done in a wanton, oppressive, or malevolent manner.[31] As observed by the appellate court, Constantino failed to prove by substantial evidence that his relief was attended by clear, oppressive, or humiliating acts on the part of the petitioners. Hence, he cannot be awarded with moral and exemplary damages.

As to the attorney's fees, the award thereof was also proper. The Court has repeatedly held that the award of attorney's fees is legally and morally justifiable in actions for recovery of wages and where an employee was forced to litigate and thus, incur expenses to protect his rights and interest.[32] The propriety of the award of attorney's fees in this case is clear. It could not be denied that Constantino was forced to litigate and retain the services of his counsel thereby incurring expenses as a result of petitioners' act of illegally dismissing him and their refusal to pay him his salaries corresponding to the unexpired portion of his employment contract. Thus, Constantino is entitled to attorney's fees equivalent to 10% of his total monetary award.

Finally, Section 10 of R.A. No. 8042, as amended by R.A. 10022, provides that if the recruitment or placement agency is a juridical being, its corporate officers, directors, and partners, as the case may be, shall be jointly and solidarily liable with the corporation or partnership for the claims and damages against it. Here, there is no dispute that MECO is a corporation engaged in the recruitment and placement of Filipino seafarers for its foreign principal. It is also not disputed that Capt. Sorrera is MECO's President and General Manager; hence, he is a corporate officer. Thus, the appellate court correctly adjudged Capt. Sorrera as among those who are jointly and solidarily liable to Constantino.

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[31] *Park Hotel v. Soriano*, 694 Phil. 471, 487 (2012).

[32] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 448 (2014).

WHEREFORE, the present Petition for Review on *Certiorari* is **DENIED**. The May 28, 2015 Decision and the January 21, 2016 Resolution of the Court of Appeals — Cebu City in CA-G.R. SP No. 05091 are hereby **AFFIRMED with MODIFICATIONS**. Accordingly, Meco Manning & Crewing Services, Inc., International Crew Services, Ltd., and Captain Igmedio G. Sorrera are ordered to pay, jointly and severally, Constantino R. Cuyos, the following: (1) his salaries in the total amount of US$13,782.00, or its peso equivalent at the exchange rate at the time of actual payment, corresponding to the unexpired portion of his employment contract; (2) his placement fee and deductions made with interest at the rate of 12% per annum, pursuant to Section 10 of Republic Act No. 8042, as amended; and (3) attorney's fees in the amount equivalent to 10% of the total monetary awards. All monetary awards shall earn interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until its full payment.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 223434. July 3, 2019]

SUSAN GALANG and BERNADETH ALBINO, in representation for BRENDA FAGYAN, EDMUND FAGYAN, MARJORIE CADAWENG, and their successors-in-interest: VENUS ALBINO, ERICKSON GALANG, MICHELLE GALANG, PABLO PADAWIL, GRACE LILIBETH YANZON, JEFFERSON DUPING, SPS. JONATHAN JAVIER and DOMINGA JAVIER, CELINE WAKAT, DUSTIN LICNACHAN, MARTHA

PODES, LUCIA PANGKET, SPS. MARK SIBAYAN and BELINDA SIBAYAN, SPS. ANTONIO SO HU AND SOLEDAD SO HU, and SPS. EDUARDO CALIXTO and PHOEBE CALIXTO, *petitioners, vs.* **VERONICA WALLIS, NELSON INAGCONG SUMERWE, MANUEL KADATAR, FELINO EUGENIO, VICTORIA S. CERDON, JOANNA MARIE F. CASANDRA, APOLINARIO D. MORENO, SPOUSES LARRY and MARITES EDADES, EVANGELINE B. CAPPLEMAN, PILAR T. QUILACIO, MARLON SIBAYAN, DAISY MAE RIVER, ROSITA AGASEN, JOAN CIRIACO, FLORABEL N. FLORDELIS, SPOUSES THEODORE UY and JHOANNA UY, SPOUSES WILBER NGAY-OS and CRISTINA NGAY-OS, AND ALL PERSONS ACTING UNDER THEIR AUTHORITY AND DIRECTION, THE MUNICIPAL ASSESSOR'S OFFICE OF ITOGON, THE PROVINCIAL ASSESSOR'S OFFICE OF BENGUET, and DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE INDIGENOUS PEOPLES' RIGHTS ACT OF 1997 (IPRA) (REPUBLIC ACT NO. 8371); JURISDICTION OF THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP); THE NCIP SHALL HAVE JURISDICTION OVER CLAIMS AND DISPUTES INVOLVING RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/ INDIGENOUS PEOPLES (ICC/IP) ONLY WHEN THEY ARISE BETWEEN OR AMONG PARTIES BELONGING TO THE SAME ICC/ IP GROUP. WHEN SUCH CLAIMS AND DISPUTES ARISE BETWEEN OR AMONG PARTIES WHO DO NOT BELONG TO THE SAME ICC/IP GROUP, THE CASE SHALL FALL UNDER THE JURISDICTION OF THE REGULAR COURTS, EVEN IF THE REAL ISSUE INVOLVES A DISPUTE OVER A LAND WHICH APPEARS TO BE LOCATED WITHIN THE ANCESTRAL DOMAIN OF THE ICC/IP. — The bone of contention in the

present case has already been extensively discussed in our pronouncement in *Unduran, et al. v. Aberasturi, et al.* There, the Court unequivocally declared that pursuant to Section 66 of the IPRA, the NCIP shall have jurisdiction over claims and disputes involving rights of ICC/IP only when they arise between or among parties belonging to the same ICC/IP group. When such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the case shall fall under the jurisdiction of the regular courts, instead of the NCIP. Thus, even if the real issue involves a dispute over a land which appears to be located within the ancestral domain of the ICC/IP, it is not the NCIP, but the RTC, which has the power to hear, try and decide the case. In no uncertain terms, the Court explained: As held in the main decision, the **NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP group because of the qualifying provision under Section 66 of the IPRA that "no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws."** Bearing in mind that the primary purpose of a proviso is to limit or restrict the general language or operation of the statute, and that what determines whether a clause is a proviso is the legislative intent, the Court stated that said qualifying provision requires the presence of two conditions before such claims and disputes may be brought before the NCIP, i.e., exhaustion of all remedies provided under customary laws, and the Certification issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved. **The Court thus noted that the two conditions cannot be complied with if the parties to a case either (1) belong to different ICCs/IP groups which are recognized to have their own separate and distinct customary laws, or (2) if one of such parties was a non-ICC/IP member who is neither bound by customary laws or a Council of Elders/Leaders, for it would be contrary to the principles of fair play and due process for parties who do not belong to the same ICC/IP group to be subjected to its own distinct customary laws and Council of Elders/Leaders.** In which case, the Court ruled that the regular courts shall have jurisdiction, and that the NCIP's quasi-judicial jurisdiction is, in effect, limited to cases where the opposing parties belong to the same ICC/IP group. This is

precisely the case in the present controversy. As the RTC pointed out and likewise alleged by respondents, the parties herein are members of indigenous groups and that the case involves a dispute among groups of indigenous people. They do not, however, belong to the same ICC/IP group. Thus, applying the doctrine in *Unduran*, it is the RTC, and not the NCIP, which has jurisdiction over the instant case. This is so even if it was also found that the subject land appears to be classified as ancestral land. We, therefore, find that the RTC should not have dismissed the complaint as it actually had jurisdiction over the same.

2. REMEDIAL LAW; CIVIL PROCEDURE; COURTS; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER IS CONFERRED BY THE CONSTITUTION OR BY LAW; A COURT OF GENERAL JURISDICTION HAS THE POWER OR AUTHORITY TO HEAR AND DECIDE CASES WHOSE SUBJECT MATTER DOES NOT FALL WITHIN THE EXCLUSIVE ORIGINAL JURISDICTION OF ANY COURT, TRIBUNAL OR BODY EXERCISING JUDICIAL OR QUASI-JUDICIAL FUNCTIONS. IN CONTRAST, A COURT OF LIMITED JURISDICTION, OR A COURT ACTING UNDER SPECIAL POWERS, HAS ONLY THE JURISDICTION EXPRESSLY DELEGATED; THE REGIONAL TRIAL COURT HAS JURISDICTION OVER A COMPLAINT WHICH NEITHER ALLEGED THAT THE PARTIES ARE MEMBERS OF ICC/IP NOR THE CASE INVOLVES A DISPUTE OVER ANCESTRAL LANDS/DOMAINS OF ICC/IP. — [I]t bears emphasis that as in *Unduran*, the allegations in petitioners' complaint neither alleged that the parties are members of ICC/IP nor that the case involves a dispute or controversy over ancestral lands/domains of ICC/IP. Rather, the allegations in their complaint make up for an *accion reivindicatoria*, a civil action involving an interest in a real property with an assessed value of more than ₱20,000.00. Thus, similar to the finding of the Court in *Unduran*, the complaint of petitioners herein is well within the jurisdiction of the RTC. Indeed, jurisdiction over the subject matter is conferred by the Constitution or by law. A court of general jurisdiction has the power or authority to hear and decide cases whose subject matter does not fall within the exclusive original jurisdiction of any court, tribunal or body exercising judicial or quasi-judicial function. In contrast, a court of limited jurisdiction, or a court acting under special powers, has only the jurisdiction expressly

delegated. An administrative agency, acting in its quasi-judicial capacity, is a tribunal of limited jurisdiction which could wield only such powers that are specifically granted to it by the enabling statutes. Limited or special jurisdiction is that which is confined to particular causes or which can be exercised only under limitations and circumstances prescribed by the statute.

3. POLITICAL LAW; ADMINISTRATIVE LAW; THE INDIGENOUS PEOPLES' RIGHTS ACT OF 1997 (IPRA) (REPUBLIC ACT NO. 8371); REGARDLESS OF WHETHER THE PARTIES ARE NON-ICC/IP, OR MEMBERS OF DIFFERENT ICC/IP GROUPS, THE NCIP HAS PRIMARY JURISDICTION OVER ADVERSE CLAIMS AND BORDER DISPUTES ARISING FROM THE DELINEATION OF ANCESTRAL DOMAINS/LANDS, CANCELLATION OF FRAUDULENTLY ISSUED CERTIFICATES OF ANCESTRAL DOMAIN TITLE, AND DISPUTES AND VIOLATIONS OF ICC/IP'S RIGHTS BETWEEN MEMBERS OF THE SAME ICC/IP GROUP. — With respect to the finding of the RTC on primary and concurrent jurisdiction of the regular courts and the NCIP, moreover, the Court pronounced in *Unduran* that there is nothing in the provisions of the entire IPRA that expressly or impliedly confer concurrent jurisdiction to the NCIP and the regular courts over claims and disputes involving rights of ICC/IP between and among parties belonging to the same ICC/IP group. As such, the NCIP's jurisdiction vested under Section 66 of the IPRA is merely limited and cannot be deemed concurrent with the regular courts. Instead, its primary jurisdiction is bestowed not under Section 66, but under Sections 52 (h) and 53, in relation to Section 62, and Section 54 of the IPRA. Thus, only when the claims involve the following matters shall the NCIP have primary jurisdiction regardless of whether the parties are non-ICC/IP, or members of different ICC/IP groups: (1) adverse claims and border disputes arising from the delineation of ancestral domains/lands; (2) cancellation of fraudulently issued Certificates of Ancestral Domain Title; and (3) disputes and violations of ICC/IP's rights between members of the same ICC/IP group. A perusal of the allegations in the complaint before us, however, reveals that the present controversy does not involve these matters cognizable by the primary jurisdiction of the NCIP. Hence, we reiterate our finding that the RTC has jurisdiction over the instant case.

APPEARANCES OF COUNSEL

Jake Awal Sagpaey for petitioners.
Antonio P. Pekas for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Order[2] dated August 27, 2015 and the Order[3] dated February 8, 2016 of the Regional Trial Court (*RTC*, First Judicial Region, Branch 10, La Trinidad, Benguet, dismissing the case for lack of jurisdiction.

The antecedent facts are as follows.

On May 4, 2015, petitioners Susan Galang and Bernadeth Albino, in representation for Brenda Fagyan, Edmund Fagyan, Marjorie Cadaweng, and their successors-in-interest: Venus Albino, Erickson Galang, Michelle Galang, Pablo Padawil, Grace Lilibeth Yanzon, Jefferson Duping, spouses Jonathan Javier and Dominga Javier, Celine Wakat, Dustin Licnachan, Martha Podes, Lucia Pangket, spouses Mark Sibayan and Belinda Sibayan, spouses Antonio So Hu and Soledad So Hu, and spouses Eduardo Calixto and Phoebe Calixto, filed a Complaint[4] for *Accion Reivindicatoria*, Declaration of Nullity of PSU No. 203172, Annulment of Tax Declaration, Injunction with Prayer for Temporary Restraining Order (*TRO*) and Damages, claiming to be the lawful owners of parcels of land located at Ampucao, Itogon, Benguet. In said complaint, they traced the provenance of their title to a certain Wasiwas Bermor, the *Teñiente Del Bario* of Ampucao Itogon, Benguet, who occupied the land as early as 1908 and registered the same in his name in 1961.

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[1] *Rollo*, pp. 3-25.

[2] *Id.* at 173-178; penned by Acting Presiding Judge Danilo P. Camacho.

[3] *Id.* at 185; penned by Acting Presiding Judge Emmanuel C. Rasing.

[4] *Id.* at 27-40.

Then, by virtue of a Deed of Absolute Sale dated September 13, 1973, petitioner Brenda Fagyan acquired the land from Wasiwas Bermor and, subsequently, divided and transferred portions thereof to the rest, of the petitioners. According to petitioners, moreover, despite the fact that they legally acquired the subject lands as evidenced by the Deeds of Absolute Sale they presented, respondents Veronica Wallis, Nelson Inagcong Sumerwe, Manuel Kadatar, Felino Eugenio, Victoria S. Cerdon, Joanna Marie F. Casandra, Apolinario D. Moreno, spouses Larry and Marites Edades, Evangeline B. Cappleman, Pilar T. Quilacio, Marlon Sibayan, Daisy Mae River, Rosita Agasen, Joan Ciriaco, Florabel N. Flordelis, spouses Theodore Uy and Jhoanna Uy, and spouses Wilber Ngay-os and Cristina Ngay-os have been intruding into their land in bad faith and without any color of title. They assert that the documents being used by respondents to justify their intrusion, particularly Tax Declaration No. 2010-01-09-02350 and PSU No. 203172, were fraudulently acquired and are patent nullities. As such, petitioners prayed that the RTC: (1) declare them as the true and absolute owners of the subject lands; (2) issue a TRO restraining respondents from pursuing any more improvements and excavations thereon; (3) order respondents to vacate the portions of the lands that they are unlawfully occupying; (4) restore them of their lawful possession of the same; (5) declare as null and void the documents of ownership being used by respondents; and (6) order respondents to pay them damages and costs of the suit.

In their Answer and Motion to Dismiss incorporated in their Opposition, the respondents alleged that the RTC had no jurisdiction over the subject matter of the case because of the fact that the land subject of the controversy is an ancestral land and that said controversy is among members of indigenous peoples' groups. As such, the case falls within the exclusive jurisdiction of the Hearing Officer of the National Commission on Indigenous Peoples (*NCIP*). In support of their claim, respondents submitted a Resolution dated August 30, 1998, issued by the Community Special Task Force on Ancestral Lands, granting the application for recognition of ancestral land in favor of the Heirs of Toato Bugnay, represented by respondent

Veronica Wallis. In addition, respondents further alleged that petitioners have no cause of action against them as the latter have no right over the subject land and that even assuming that they had such right, they already waived the same to third persons.[5]

In its Order dated August 27, 2015, the RTC dismissed the complaint on the finding that it is bereft of jurisdiction to hear and decide the case. The trial court used as its basis Section 66 of Republic Act (*R.A.*) No. 8371, otherwise known as *The Indigenous Peoples' Rights Act of 1997 (IPRA)*, which provides that "[t]he NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights" of Indigenous Cultural Communities (*ICC*)/Indigenous Peoples (*IP*), as well as Section 5, Rule III of NCIP Administrative Circular No. 1-03 dated April 9, 2003, known as the *Rules on Pleadings, Practice and Procedure before the NCIP*, reiterating the exclusive jurisdiction of the NCIP over claims and disputes involving ancestral lands. Thus, since the case involves a dispute or controversy of property rights over an ancestral land between members of the IP, jurisdiction properly pertains with the NCIP. The RTC held further that even if it subscribes to the contention that both the trial courts and the NCIP have jurisdiction over the present action, still jurisdiction should pertain to the latter under the doctrine of primary jurisdiction.[6]

In another Order[7] dated February 8, 2016, the RTC denied the Motion for Reconsideration of the petitioners and ruled that the parties may litigate before the NCIP. Aggrieved by such denial, petitioners filed the instant petition on April 4, 2016, invoking the following argument:

THE REGIONAL TRIAL COURT DECIDED A QUESTION OF SUBSTANCE WHICH IS NOT IN ACCORDANCE WITH THE LAW AND THE APPLICABLE DECISIONS OF THE SUPREME COURT.[8]

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[5] *Id.* at 174.

[6] *Id.* at 175-178.

[7] *Supra* note 3.

[8] *Supra* note 1, at 13.

In their petition, petitioners raise the sole question of whether the NCIP has jurisdiction over their complaint such that it precludes the RTC from taking cognizance of the case. According to the petitioners, the RTC wrongfully ruled that it has no jurisdiction over the case on the ground that the same falls within the exclusive jurisdiction of the NCIP. This is because on the basis of the Court's pronouncement in *Unduran, et al. v. Aberasturi, et al.*,[9] the jurisdiction of the NCIP covers only disputes between and among members of the same ICC/IP involving their rights under the IPRA. But in the instant case, the parties do not belong to the same ICC/IP and most are not even ICC/IP at all. Neither does the case involve a dispute over an ancestral land of a particular ICC/IP. On the contrary, petitioners assert that their complaint is an *accion reivindicatoria*, a civil action involving an interest in a real property with an assessed value of more than ₱20,000.00, which is well within the jurisdiction of the RTC. Besides, as the ruling in *Lamsis, et al. v. Dong-E*[10] dictates, an action for ancestral land registration is not a bar for an *accion reivindicatoria* as the same does not constitute *litis pendentia* or *res judicata*.[11]

The petition is impressed with merit.

The bone of contention in the present case has already been extensively discussed in our pronouncement in *Unduran, et al. v. Aberasturi, et al.*[12] There, the Court unequivocally declared that pursuant to Section 66[13] of the IPRA, the NCIP shall have

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[9] 771 Phil. 536 (2015).

[10] 648 Phil. 372 (2010).

[11] *Rollo*, pp. 13-25.

[12] *Supra* note 9; see also *Unduran v. Aberasturi*, G.R. No. 181284, April 18, 2017, 823 SCRA 80.

[13] Section 66 of R.A. No. 8371 provides:

SECTION 66. Jurisdiction of the NCIP. — The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs; Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the

jurisdiction over claims and disputes involving rights of ICC/IP only when they arise between or among parties belonging to the same ICC/IP group. When such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the case shall fall under the jurisdiction of the regular courts, instead of the NCIP. Thus, even if the real issue involves a dispute over a land which appears to be located within the ancestral domain of the ICC/IP, it is not the NCIP, but the RTC, which has the power to hear, try and decide the case.[14] In no uncertain terms, the Court explained:

As held in the main decision, the **NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP group because of the qualifying provision under Section 66 of the IPRA that "no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws."** Bearing in mind that the primary purpose of a proviso is to limit or restrict the general language or operation of the statute, and that what determines whether a clause is a proviso is the legislative intent, the Court stated that said qualifying provision requires the presence of two conditions before such claims and disputes may be brought before the NCIP, i.e., exhaustion of all remedies provided under customary laws, and the Certification issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved. **The Court thus noted that the two conditions cannot be complied with if the parties to a case either (1) belong to different ICCs/IP groups which are recognized to have their own separate and distinct customary laws, or (2) if one of such parties was a non-ICC/IP member who is neither bound by customary laws or a Council of Elders/Leaders, for it would be contrary to the principles of fair play and due process for parties who do not belong to the same ICC/IP group to be subjected to its own distinct customary laws and Council of Elders/Leaders.** In which case, the Court ruled that the regular courts shall have jurisdiction, and that the NCIP's quasi-judicial

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Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

[14] *Unduran v. Aberasturi, supra* note 12, at 99.

jurisdiction is, in effect, limited to cases where the opposing parties belong to the same ICC/IP group.[15] (Emphases supplied; citations omitted.)

This is precisely the case in the present controversy. As the RTC pointed out and likewise alleged by respondents, the parties herein are members of indigenous groups and that the case involves a dispute among groups of indigenous people.[16] They do not, however, belong to the same ICC/IP group. Thus, applying the doctrine in *Unduran*, it is the RTC, and not the NCIP, which has jurisdiction over the instant case. This is so even if it was also found that the subject land appears to be classified as ancestral land. We, therefore, find that the RTC should not have dismissed the complaint as it actually had jurisdiction over the same.

Besides, it bears emphasis that as in *Unduran*, the allegations in petitioners' complaint neither alleged that the parties are members of ICC/IP nor that the case involves a dispute or controversy over ancestral lands/domains of ICC/IP. Rather, the allegations in their complaint make up for an *accion reivindicatoria*, a civil action involving an interest in a real property with an assessed value of more than ₱20,000.00. Thus, similar to the finding of the Court in *Unduran*, the complaint of petitioners herein is well within the jurisdiction of the RTC. Indeed, jurisdiction over the subject matter is conferred by the Constitution or by law. A court of general jurisdiction has the power or authority to hear and decide cases whose subject matter does not fall within the exclusive original jurisdiction of any court, tribunal or body exercising judicial or quasi-judicial function. In contrast, a court of limited jurisdiction, or a court acting under special powers, has only the jurisdiction expressly delegated. An administrative agency, acting in its quasi-judicial capacity, is a tribunal of limited jurisdiction which could wield only such powers that are specifically granted to it by the enabling statutes. Limited or special jurisdiction is that which is confined

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[15] *Id.* at 103-104.

[16] *Rollo*, pp. 174-175.

to particular causes or which can be exercised only under limitations and circumstances prescribed by the statute.[17]

With respect to the finding of the RTC on primary and concurrent jurisdiction of the regular courts and the NCIP, moreover, the Court pronounced in *Unduran* that there is nothing in the provisions of the entire IPRA that expressly or impliedly confer concurrent jurisdiction to the NCIP and the regular courts over claims and disputes involving rights of ICC/IP between and among parties belonging to the same ICC/IP group. As such, the NCIP's jurisdiction vested under Section 66 of the IPRA is merely limited and cannot be deemed concurrent with the regular courts. Instead, its primary jurisdiction is bestowed not under Section 66, but under Sections 52 (h)[18] and 53,[19] in

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[17] *Unduran v. Aberasturi, supra* note 12, at 102-103.

[18] Section 52 of the IPRA provides:

SECTION 52. Delineation Process. — The identification and delineation of ancestral domains shall be done in accordance with the following procedures:

x x x x x x x x x

h) Endorsement to NCIP. — Within fifteen (15) days from publication, and of the inspection process, the Ancestral Domains Office shall prepare a report to the NCIP endorsing a favorable action upon a claim that is deemed to have sufficient proof. However, if the proof is deemed insufficient, the Ancestral Domains Office shall require the submission of additional evidence: Provided, That the Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification: Provided, further, That in case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP: Provided, furthermore, That in cases where there are conflicting claims among ICCs/IPs on the boundaries of ancestral domain claims, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to the section below.

[19] Section 53 of the IPRA provides:

SECTION 53. Identification, Delineation and Certification of Ancestral Lands. —

x x x x x x x x x

e) Upon receipt of the applications for delineation and recognition of ancestral land claims, the Ancestral Domains Office shall cause the publication of the application and a copy of each document submitted including a translation

relation to Section 62,[20] and Section 54[21] of the IPRA. Thus, only when the claims involve the following matters shall the

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in the native language of the ICCs/IPs concerned in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial, and regional offices of the NCIP and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspapers and radio station are not available;

f) Fifteen (15) days after such publication, the Ancestral Domains Office shall investigate and inspect each application, and if found to be meritorious, shall cause a parcellary survey of the area being claimed. The Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification. In case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP. In case of conflicting claims among individuals or indigenous corporate claimants, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to Sec. 62 of this Act. In all proceedings for the identification or delineation of the ancestral domains as herein provided, the Director of Lands shall represent the interest of the Republic of the Philippines; and

g) The Ancestral Domains Office shall prepare and submit a report on each and every application surveyed and delineated to the NCIP, which shall, in turn, evaluate the report submitted. If the NCIP finds such claim meritorious, it shall issue a certificate of ancestral land, declaring and certifying the claim of each individual or corporate (family or clan) claimant over ancestral lands.

[20] Section 62 of the IPRA provides:

SECTION 62. Resolution of Conflicts. — In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which [cannot] be resolved, the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains: Provided, That if the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: Provided, further, That any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen (15) days from receipt of a copy thereof.

[21] Section 54 of the IPRA provides:

NCIP have primary jurisdiction regardless of whether the parties are non-ICC/IP, or members of different ICC/IP groups: (1) adverse claims and border disputes arising from the delineation of ancestral domains/lands; (2) cancellation of fraudulently issued Certificates of Ancestral Domain Title; and (3) disputes and violations of ICC/IP's rights between members of the same ICC/IP group.[22] A perusal of the allegations in the complaint before us, however, reveals that the present controversy does not involve these matters cognizable by the primary jurisdiction of the NCIP. Hence, we reiterate our finding that the RTC has jurisdiction over the instant case.

Finally, as regards the trial court's reliance on our pronouncement in *The City Government of Baguio City, et al. v. Atty. Masweng, et al.*,[23] we clarify that the same is a mere expression of opinion and has no binding force. Again, in *Unduran v. Aberasturi*,[24] we ruled:

> Anent what Justice Perez described as the "implicit affirmation" done in The City Government of Baguio City v. Masweng of the NCIP's jurisdiction over cases where one of the parties is not ICC/IPs, a careful review of that case would show that the Court merely cited Sections 3(k), 38 and 66 of the IPRA and Section 5 of NCIP Administrative Circular No. 1-03 dated April 9, 2003, known as the Rules on Pleadings, Practice and Procedure Before the NCIP, as bases of its ruling to the effect that disputes or controversies over ancestral lands/domains of ICCs/IPs are within the original and exclusive jurisdiction of the NCIP-RHO. **However, the Court did not identify and elaborate on the statutory basis of the NCIP's "original and exclusive jurisdiction" on disputes or controversies over ancestral lands/domains of ICCs/IPs. Hence, such description of the nature**

SECTION 54. Fraudulent Claims. — The Ancestral Domains Office may, upon written request from the ICCs/IPs, review existing claims which have been fraudulently acquired by any person or community. Any claim found to be fraudulently acquired by, and issued to, any person or community may be cancelled by the NCIP after due notice and hearing of all parties concerned.

[22] *Unduran v. Aberasturi, supra* note 12, at 106-107.

[23] 597 Phil. 668 (2009).

[24] *Supra* note 12.

and scope of the NCIP's jurisdiction made without argument or full consideration of the point, can only be considered as an obiter dictum, which is a mere expression of an opinion with no binding force for purposes of *res judicata* and does not embody the determination of the court.[25] (Citations omitted; emphasis supplied.)

All told, in view of the fact that the parties herein do not belong to the same ICC/IP group, some of whom do not even belong to any ICC/IP at all, the Court rules that it is the RTC, and not the NCIP, which has jurisdiction over the present controversy. *Unduran* clearly teaches us that under Section 66 of the IPRA, the NCIP shall have limited jurisdiction over claims and disputes involving rights of IP/ICC *only when they arise between or among parties belonging to the same ICC/IP group*; but if such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the proper regular courts shall have jurisdiction. Thus, even if the land subject of the instant case appears to be classified as ancestral, since the dispute thereon does not comply with the requirements under Section 66, nor does it involve the exceptional matters under Sections 52 (h) and 53, in relation to Section 62, as well as Section 54 of the IPRA; we, therefore, hold that the RTC erred in dismissing the complaint before it, being the proper tribunal clothed with jurisdiction to entertain the same.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The assailed Orders dated August 27, 2015 and February 8, 2016 of the Regional Trial Court, First Judicial Region, Branch 10, La Trinidad, Benguet, are **REVERSED** and **SET ASIDE**. The case is, therefore, **REMANDED** to said trial court for further proceedings and for proper disposition on the merits.

SO ORDERED.

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

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[25] *Id.* at 124-126.

SECOND DIVISION

[G.R. No. 224651. July 3, 2019]

CIVIL SERVICE COMMISSION and THE OFFICE OF THE SOLICITOR GENERAL, *petitioners, vs.* **EDGAR B. CATACUTAN,** *respondent.*

[G.R. No. 224656. July 3, 2019]

EDGAR B. CATACUTAN, *petitioner, vs.* **CIVIL SERVICE COMMISSION and THE OFFICE OF THE SOLICITOR GENERAL,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; WHEN THE COURT IS INVITED TO PASS JUDGMENT ON ISSUES IN A PETITION FOR REVIEW, IT IS NOT BOUND TO TRY THE FACTS ANEW AND, INSTEAD, WILL ONLY PORE OVER THE PERTINENT RECORDS TO DETERMINE WHETHER THE FINDINGS BELOW HAVE SUBSTANTIAL BASIS IN EVIDENCE. —** In administrative proceedings for the enforcement of disciplinary sanctions on erring public servants, the quantum of evidence necessary to justify an affirmative finding is mere substantial evidence. Yet when the Court is invited to pass judgment on issues in a petition for review, it is not bound to try the facts anew and, instead, will only pore over the pertinent records to determine whether the findings below have substantial basis in evidence. However, we are impelled to address a crucial matter ahead of the main issues propounded by herein petitioners in G.R. No. 224651.

2. **ID.; ID.; ID.; HIGHER COURTS ARE PRECLUDED FROM ENTERTAINING MATTERS NEITHER ALLEGED IN THE PLEADINGS NOR RAISED IN THE PROCEEDINGS BELOW, BUT VENTILATED FOR THE FIRST TIME ONLY IN A MOTION FOR RECONSIDERATION OR ON APPEAL, FOR WHEN A PARTY DELIBERATELY ADOPTS A CERTAIN THEORY AND THE CASE IS DECIDED UPON THAT THEORY IN THE TRIBUNAL BELOW, HE OR SHE WILL NOT BE PERMITTED TO**

CHANGE THE SAME ON APPEAL LEST IT CAUSE UNFAIRNESS TO THE ADVERSE PARTY. — It is notable that the CSC and the OSG are now, for the first time, putting forth an argument that has not been principally addressed in the proceedings below. In their Petition in G.R. No. 224651, as well as in their Comment in G.R. No. 224656, they allege Catacutan to have deliberately and intentionally concealed the subject document for reasons supposedly known only to him which, thus, negates the finding that his omission and failure to inform Gutierrez and A/S Covarrubias of the arrival of the trial court order was a mere oversight. x x x. We decline to give due course to this issue because, *first,* the allegation pertains to an infraction different from the violations for which Catacutan has been cited and to which he has been able to offer counter evidence earlier in the proceedings. *Second,* the Court is bound by the fundamental rule that precludes higher courts from entertaining matters neither alleged in the pleadings nor raised in the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. Indeed, when a party deliberately adopts a certain theory and the case is decided upon that theory in the tribunal below, he or she will not be permitted to change the same on appeal lest it cause unfairness to the adverse party. In other words, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular, but also extrajudicial and invalid. This is based on the fundamental tenets of fair play. An exception to this rule is viable only when the change in theory will not require the presentation of additional evidence on both sides. In which case, the Court will not hesitate to declare Catacutan guilty of another offense if and when the records disclose a substantial justification therefor.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; NEGLIGENCE; IN CASES INVOLVING PUBLIC OFFICIALS, THERE IS GROSS NEGLIGENCE WHEN A BREACH OF DUTY IS FLAGRANT AND PALPABLE, WHICH WARRANTS THE SUPREME PENALTY OF DISMISSAL FROM SERVICE; WHEREAS SIMPLE NEGLECT OF DUTY IS CHARACTERIZED BY FAILURE OF AN EMPLOYEE OR OFFICIAL TO GIVE PROPER ATTENTION TO A TASK EXPECTED OF HIM OR HER, SIGNIFYING A DISREGARD OF A DUTY RESULTING FROM CARELESSNESS OR

INDIFFERENCE, WHICH WARRANTS THE PENALTY OF MERE SUSPENSION FROM OFFICE WITHOUT PAY. — The gravity of negligence or the character of neglect in the performance of duty is certainly a matter of evidence and will direct the proper sanction to be imposed. On one hand, gross neglect of duty is understood as the failure to give proper attention to a required task or to discharge a duty, characterized by want of even the slightest care, or by conscious indifference to the consequences insofar as other persons may be affected, or by flagrant and palpable breach of duty. It is the omission of that care which even inattentive and thoughtless men never fail to give to their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable. Under the law, this offense warrants the supreme penalty of dismissal from service. Simple neglect of duty, on the other hand, is characterized by failure of an employee or official to give proper attention to a task expected of him or her, signifying a disregard of a duty resulting from carelessness or indifference. This warrants the penalty of mere suspension from office without pay. We agree with the CA that the records substantially support the finding that Catacutan's omission was only by mere inadvertence, and that he is, therefore, liable only for simple neglect of duty.

4. **ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE IS NOT INCONSISTENT WITH A FINDING OF NEGLIGENCE; THE CARELESSNESS AND NEGLIGENCE OF THE RESPONDENT IN THE PERFORMANCE OF HIS DUTIES AS ADMINISTRATIVE OFFICER, RESULTING IN THE FORFEITURE OF THE STATE'S RIGHT TO APPEAL FROM AN ANNULMENT DECREE, THEREBY FRUSTRATING ITS CONSTITUTIONAL MANDATE TO PROTECT THE FUNDAMENTAL SANCTITY OF THE MARITAL INSTITUTION, CONSTITUTES CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.** — [W]e find basis in holding Catacutan likewise liable for conduct prejudicial to the best interest of the service. Conduct prejudicial to the best interest of the service is not defined by the Civil Service Law and its rules, but is so inclusive as to put within its ambit any conduct of a public officer that tarnishes the image and integrity of his public office. The OSG, an independent and autonomous body attached to the Department

of Justice, acts as the government's chief counsel. Its central function is to represent the government in all criminal proceedings before the Court and the CA, as well as in civil actions and special proceedings in which the state must intervene as a matter of public policy or for the protection of the general welfare. Annulment and nullity of marriage are among such actions in which the state, through the OSG, takes part. In this light, it is not difficult to see that the simple negligence herein ascribed to Catacutan, as an institutional officer, has caused the state to lose its right to appeal the subject annulment order, thereby frustrating its constitutional mandate to protect the fundamental sanctity of the marital institution — a consequence too great to be countenanced and overlooked. Indeed, conduct prejudicial to the best interest of the service is not inconsistent with a finding of negligence, because the underlying act may or may not be characterized by corruption or a willful intent to violate the law, or to disregard established rules. x x x. Catacutan's carelessness and negligence in the performance of his duties as Administrative Officer V at the OSG, resulting in the forfeiture of the state's right to appeal from an annulment decree, could also well be placed in the x x x roster of acts amounting to conduct prejudicial to the best interest of the service.

5. ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY IS A LESS GRAVE OFFENSE PUNISHABLE BY SUSPENSION OF ONE MONTH AND ONE DAY TO SIX MONTHS; WHEREAS CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, A GRAVE OFFENSE, IS PUNISHABLE BY SUSPENSION OF SIX MONTHS AND ONE DAY TO ONE YEAR; PENALTY OF SUSPENSION FROM SERVICE FOR EIGHT MONTHS IMPOSED UPON THE RESPONDENT FOR CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, TAKING INTO ACCOUNT THE OFFENSE OF SIMPLE NEGLECT OF DUTY AS AN AGGRAVATING CIRCUMSTANCE. — Under Section 55 of CSC Memorandum Circular No. 19, Series of 1999 which governs the instant administrative proceedings, the penalty to be meted out to Catacutan should be that corresponding to the most serious charge and the rest will be treated as merely aggravating circumstances. Simple neglect of duty is a less grave offense punishable by suspension of one month and one day to six months; whereas conduct prejudicial to the best interest of the service, a grave offense, is punishable

by suspension of six months and one day to one year. In either case, a second offense shall warrant dismissal from service. Hence, in view of the lack of mitigating and aggravating circumstances properly pleaded and proved, Catacutan should be imposed the penalty of suspension from service for eight months, taking into account the offense of simple neglect of duty as an aggravating circumstance.

APPEARANCES OF COUNSEL

Office of the Solicitor General for Civil Service Commission.
Manuel Law Office for Edgar B. Catacutan.

D E C I S I O N

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

These two consolidated Petitions for Review assail the July 31, 2015 Decision[1] and the April 22, 2016 Resolution[2] of the Court of Appeals-Cebu City (CA) in CA-G.R. CEB-SP No. 07624. The assailed decision partly granted the appeal of Edgar B. Catacutan (Catacutan) from the April 12, 2013 Decision[3] of the Civil Service Commission (CSC) in Case No. 130369 and found him guilty only of Simple Neglect of Duty. In turn, the CSC affirmed the finding of the Office of the Solicitor General (OSG) that Catacutan, a public servant in its ranks, had committed Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service in connection with the performance of his duties as Administrative Officer V.

The Facts

As Administrative Officer V at the OSG, Catacutan was tasked, among others, to affix bar codes to all incoming documents at

[1] Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Pamela Ann Abella Maxino and Jhosep Y. Lopez, concurring; *rollo* (G.R. No. 224651), pp. 34-42.

[2] *Id.* at 43-47.

[3] The decision was signed by Chairman Francisco T. Duque III and Commissioner Robert S. Martinez, *id.* at 139-148.

the Docket Management Service (DMS) for further transmission to the different departments within the organization. Among these documents are those pertaining to special proceeding cases requiring OSG intervention, such as declaration of nullity of marriage and annulment of marriage, which are routed to the legal department for appropriate action.

In March 2010, the Regional Trial Court (RTC), Branch 31, Agoo, La Union had declared a marriage null and void[4] and, in a June 25, 2010 Order,[5] denied the motion for reconsideration filed by the OSG in behalf of the State. A copy of this order had reached the DMS on July 5, 2010. By law, the OSG had until July 20, 2010 to file an appeal with the CA. However, the assigned lawyer, Associate Solicitor Jose Covarrubias (A/S Covarrubias), failed to timely file said appeal because the copy of the subject order was transmitted to him only on August 6, 2010.

This lapse led to a request[6] for an investigation into Catacutan's possible accountability, as well as that of Rommel C. Gutierrez (Gutierrez), Administrative Officer I, to whom the bar coded documents are transmitted for digital scanning and for further transmission.[7] The request alleged that the subject trial court order was bar coded on August 5, 2010 at 3:16 p.m., and then encoded and scanned at 5:39 p.m. on the same day.[8]

The Ruling of the OSG

The OSG Administrative Disciplinary Committee docketed the request as an administrative case.[9] Upon its recommendation,

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[4] FC Case No. A-934, entitled *William Y. Ninobla v. Josephine Buera-Ninobla.*

[5] *Rollo* (G.R. No. 224656), p. 49.

[6] *Via* a Joint Affidavit dated September 16, 2010 signed by Assistant Solicitor Roman Del Rosario and Associate Solicitors Ma. Christina Lim, Julie Mercurio, Sharone Rodriguez, Aristotle Mejia and Jose Covarrubias, *rollo* (G.R. No. 224651), p. 142.

[7] Counter Affidavit (Gutierrez), *id*. at 62-63.

[8] *Supra* note 6, at 143.

[9] Adm. Case No. 09-10-02.

the Solicitor General formally charged Catacutan with Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service, and imposed a 90-day preventive suspension.

Responding to the charges, Catacutan admitted that he inadvertently filed the subject order among the documents classified as "Ordinary," and professed that he, unaware of its urgent nature, placed a bar code on it belatedly on July 9, 2010. He apologized for this omission, but claimed the lapse to be a mere oversight and an honest mistake.[10] He explained his official duty to be limited to bar coding incoming documents in civil cases and transmitting them to the scanner who, in turn, transmits them to the corresponding legal divisions. He lamented that by reason of the huge volume of the documents that he had to bar code on a daily basis, a sorter has in fact been designated to classify incoming and inbound documents either as "Rush" or "Ordinary" according to their content.

In its January 24, 2011 Decision,[11] the OSG found Catacutan guilty of the charges and imposed the supreme penalty of dismissal from the service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from reemployment in the government. The OSG did not reconsider, hence, Catacutan appealed to the CSC.

The Ruling of the CSC

The CSC affirmed the OSG's findings and the sanctions imposed on Catacutan. Its April 12, 2013 Decision[12] disposed of the appeal as follows:

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[10] Counter Affidavit (Catacutan), *rollo* (G.R. No. 224651), pp. 60-61.

[11] *Id*. at 68-78. Signed by Solicitor General Jose Anselmo I. Cadiz, disposing as follows:

> WHEREFORE, respondent is hereby found guilty of gross neglect of duty and conduct prejudicial to the best interest of the service, and is hereby meted the penalty of DISMISSAL with all its accessory penalties. By this token, respondent's request for the lifting of his preventive suspension, being academic, is merely noted.
>
> SO ORDERED.

[12] *Id*. at 139-148. The decision was signed by Chairman Francisco T. Duque III and Commissioner Robert S. Martinez.

WHEREFORE, the appeal of Edgar B. Catacutan, Administrative Officer V, Office of the Solicitor General (OSG), is hereby **DISMISSED.** Accordingly, the Decision dated January 24, 2011 issued by former Solicitor General Jose Anselmo I. Cadiz finding Catacutan guilty of Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service and imposing upon him the penalty of dismissal from the service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from [reemployment] in the government service, and the Resolution dated February 24, 2011, denying his motion for reconsideration, are **AFFIRMED.**[13]

The Ruling of the CA

Catacutan refuted the uniform finding and conclusion of the OSG and the CSC before the CA which, on July 31, 2015, rendered the assailed Decision finding him to have committed only simple neglect of duty as the omission was characterized by mere inadvertence. Accordingly, it ordered that Catacutan be suspended from service for four months without pay until reinstatement to his former position, but without backwages pending appeal. The disposition reads:

WHEREFORE, the petition for review of Edgar B. Catacutan is **PARTLY GRANTED.** The assailed Decision dated April 12, 2013 of the Civil Service Commission is **MODIFIED** insofar as Edgar B. Catacutan is hereby found guilty of Simple Neglect of Duty and penalized with suspension for four (4) months without pay. After Catacutan served his suspension, the Office of the Solicitor General and the Civil Service Commission are ordered to **REINSTATE** Catacutan to his former position before he was dismissed from service. Catacutan is, however, not entitled to [backwages] pending his appeal.

SO ORDERED.[14]

The CA appeared to have attributed to Catacutan the duty to ascertain the level of urgency attached to the subject trial court order, as well as the duty to inform both Gutierrez and A/S

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[13] *Id.* at 148.

[14] *Rollo* (G.R. No. 224656), pp. 15-16.

Covarrubias of the arrival thereof — both of which he did fail to perform albeit unintentionally. It found no evidence that Catacutan, after bar coding the document, willfully and intentionally showed lack of care for it, and that inasmuch as the subject document did not have the "Rush" marking on its face, he had the right to treat it as an ordinary document which he still managed to process four days from receipt. Moreover, it dropped the charge of conduct prejudicial to the best interest of the service on the ground that records do not show how the omission of Catacutan has tarnished the image and integrity of the agency.

Both parties sought reconsideration, but the CA denied their motions.[15] Hence, these petitions.

The Issues

In G.R. No. 224651, petitioners CSC and OSG assign the following error:

THE HONORABLE [CA] ERRED ON A QUESTION OF LAW IN MODIFYING THE DECISION OF THE CIVIL SERVICE COMMISSION DATED [APRIL 12, 2013] AND IN DENYING PETITIONERS' MOTION FOR RECONSIDERATION, BY DECLARING THAT RESPONDENT IS ONLY GUILTY OF SIMPLE NEGLECT OF DUTY WITH A PENALTY OF SUSPENSION, INSTEAD OF GROSS NEGLECT OF DUTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, WHICH IS PUNISHABLE BY DISMISSAL FROM THE SERVICE WITH ALL ITS ACCESSORY PENALTIES.[16]

In G.R. No. 224656, petitioner Catacutan assigns the following errors:

I.

THE HONORABLE COURT *A QUO* COMMITTED REVERSIBLE ERROR OF LAW IN RULING THAT PETITIONER IS GUILTY OF SIMPLE NEGLECT OF DUTY DESPITE THE FACT THAT THE HONORABLE COURT *A QUO* ITSELF APTLY FOUND OUT

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[15] Resolution dated April 22, 2016, *supra* note 2.

[16] *Rollo* (G.R. No. 224651), p. 17.

THAT PETITIONER PERFORMED HIS DUTY AS BARCODER OF THE DMS SECTION OF THE OSG UP TO ITS VERY LETTERS.

II.

THE HONORABLE COURT *A QUO* COMMITTED REVERSIBLE ERROR OF LAW IN RULING THAT IT IS THE DUTY OF PETITIONER TO ASCERTAIN THE URGENCY OF EACH AND EVERY DOCUMENT THAT PETITIONER RECEIVES FROM THE MAIL SORTER/CLASSIFIER DESPITE THE FACT THAT ASCERTAINING THE URGENCY OF THE DOCUMENT IS THE SOLE DUTY OF THE MAIL SORTER AND NOT THAT OF PETITIONER, AS CLEARLY STATED IN PETITIONER'S JOB DESCRIPTION MANUAL.[17]

The Court's Ruling

The Court finds no merit in both petitions.

In administrative proceedings for the enforcement of disciplinary sanctions on erring public servants, the quantum of evidence necessary to justify an affirmative finding is mere substantial evidence.[18] Yet when the Court is invited to pass judgment on issues in a petition for review, it is not bound to try the facts anew and, instead, will only pore over the pertinent records to determine whether the findings below have substantial basis in evidence. However, we are impelled to address a crucial matter ahead of the main issues propounded by herein petitioners in G.R. No. 224651.

It is notable that the CSC and the OSG are now, for the first time, putting forth an argument that has not been principally addressed in the proceedings below. In their Petition in G.R. No. 224651, as well as in their Comment in G.R. No. 224656, they allege Catacutan to have deliberately and intentionally concealed the subject document for reasons supposedly known only to him which, thus, negates the finding that his omission and failure to inform Gutierrez and A/S Covarrubias of the

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[17] *Rollo* (G.R. No. 224656), pp. 31-32.

[18] See *Rodriguez-Angat v. Government Service and Insurance System,* 765 Phil. 213, 228 (2015).

arrival of the trial court order was a mere oversight.[19] They add that the deliberate concealment of the document is not only the gist of gross neglect of duty, but is also the basis to hold Catacutan liable for conduct prejudicial to the best interest of the service.[20] They insist that Catacutan may not evade liability for either offense by theoretically assuming the job of a mere bar coder and, in effect, put to naught his promotion to his current post when the ranks within the OSG was recently professionalized by law.[21]

We decline to give due course to this issue because, *first,* the allegation pertains to an infraction different from the violations for which Catacutan has been cited and to which he has been able to offer counter-evidence earlier in the proceedings. *Second,* the Court is bound by the fundamental rule that precludes higher courts from entertaining matters neither alleged in the pleadings nor raised in the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. Indeed, when a party deliberately adopts a certain theory and the case is decided upon that theory in the tribunal below, he or she will not be permitted to change the same on appeal lest it cause unfairness to the adverse party.[22]

In other words, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular, but also extrajudicial and invalid. This is based on the fundamental tenets of fair play.[23] An exception to this rule is viable only when the change in theory will not require the presentation of additional evidence

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[19] *Rollo* (G.R. No. 224651), pp. 17-22; *rollo* (G.R. No. 224656), pp. 317-318.

[20] *Rollo* (G.R. No. 224651), p. 17.

[21] *Id*. at 304-308.

[22] *Maxicare PCIB CIGNA Healthcare v. Contreras,* 702 Phil. 688, 696-697 (2013); and *Bote v. Spouses Veloso,* 700 Phil. 78, 88 (2012), citing *Carantes v. Court of Appeals,* 167 Phil. 232, 240 (1977).

[23] *Bote v. Spouses Veloso, id.*, citing *Mon v. Court of Appeals,* 471 Phil. 65, 73-74 (2004).

on both sides.[24] In which case, the Court will not hesitate to declare Catacutan guilty of another offense if and when the records disclose a substantial justification therefor.

However, we find no substantial proof to support the hypothesis that Catacutan did conceal the copy of the subject trial court order deliberately and intentionally as belatedly alleged by the OSG and the CSC. It is a conclusion or inference made by the OSG and the CSC based only on the contents of Gutierrez's affidavit filed before the OSG Administrative Disciplinary Committee at the inception of these proceedings.

The said affidavit materially states that Catacutan received the trial court order on July 9, 2010, attached a bar code to it and immediately placed it in a box "intended for the purpose"; that Catacutan failed to inform Gutierrez of its existence as required by regular office procedures; that when Gutierrez came across the document on August 5, 2010, he immediately scanned the same as part of his job, but noticed that the 15-day period to file an appeal had already lapsed; and that the following day, he called Catacutan's attention to it, but the latter claimed that he did not notice the urgent nature of the document on account of the volume of documents he needed to bar code on the day it arrived.[25]

A fleeting look at this piece of evidence reveals no express and categorical imputation of deliberateness and intentionality of concealment on the part of Catacutan. Neither has this allegation been raised in the formal complaint nor put forth in the proceedings below. Yet to our mind, what can be inferred from Gutierrez's statement, as well as from the circumstances surrounding the incident, is that Catacutan has been negligent in the performance of his duties

The gravity of negligence or the character of neglect in the performance of duty is certainly a matter of evidence and will direct the proper sanction to be imposed. On one hand, gross

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[24] *Canlas v. Tubil,* 616 Phil. 915, 923 (2009).

[25] *Supra* note 7.

neglect of duty is understood as the failure to give proper attention to a required task or to discharge a duty, characterized by want of even the slightest care, or by conscious indifference to the consequences insofar as other persons may be affected, or by flagrant and palpable breach of duty.[26] It is the omission of that care which even inattentive and thoughtless men never fail to give to their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable. Under the law, this offense warrants the supreme penalty of dismissal from service.[27] Simple neglect of duty, on the other hand, is characterized by failure of an employee or official to give proper attention to a task expected of him or her, signifying a disregard of a duty resulting from carelessness or indifference.[28] This warrants the penalty of mere suspension from office without pay.

We agree with the CA that the records substantially support the finding that Catacutan's omission was only by mere inadvertence, and that he is, therefore, liable only for simple neglect of duty. We do not subscribe, however, to the appellate court's premise that it was also Catacutan's prime duty to ascertain the nature of the subject trial court order and to inform the scanner and the assigned solicitor of the arrival thereof. This, because the said duties respectively belong in the first instance to the assigned sorter and the assigned scanner.

The statements contained in the affidavits of Gutierrez and Catacutan, taken together with the latter's Job Description Manual,[29]

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[26] *Office of the Court Administrator v. Umblas,* A.M No. P-09-2649, August 1, 2017, 833 SCRA 502, 511; and *Civil Service Commission v. Rabang,* 572 Phil. 316, 322-323 (2008), citing *Golangco v. Atty. Fung,* 535 Phil. 331, 341 (2006).

[27] *Civil Service Commission v. Rabang, id*. at 323, citing *Golangco v. Fung, id*.

[28] *Office of the Ombudsman v. PS/Supt. Espina,* 807 Phil. 529, 543 (2017); *Office of the Ombudsman v. De Leon,* 705 Phil. 26, 38 (2013), citing *Republic v. Canastillo,* 551 Phil. 987, 996 (2007).

[29] *Rollo* (G.R. No. 224656), p. 266. Catacutan's Job Description Manual enumerates his duties as follows:

provide a seamless outline of the manner by which incoming and inbound documents are processed and routed within the OSG organization. At the front line is the mail sorter who receives all mail matters and classifies them into either "Ordinary" or "Rush." In organizational parlance, a document marked "Rush" is one requiring immediate and urgent attention and treatment. By institutionalized practice at the OSG, the likes of the subject trial court order are considered as such and are treated with utmost urgency. After having been marked, the documents are turned over to Catacutan who affixes the bar code and transmits the same to Gutierrez for scanning — *i.e.,* creation of a digital copy — and for further routing to the various departments within the organization so that they could be properly acted upon.

Contrary to the preliminary finding of the OSG, Catacutan's record of official activities reveals that the subject trial court order was received by the DMS on July 5, 2010[30] on which he affixed a bar code not on August 5, 2010, but, rather, on July 9, 2010 at 10:53 a.m.[31] for further transmittal to "Lorenzo M. Tañada Div., Jose III Covarrubias." It was then scanned by Gutierrez on August 5, 2010 at 3:16 p.m.[32]

Although containing important communication affecting the appellate process, the subject trial court order does not bear the word "Rush" on its face to signify its urgent nature and priority.[33] In the established process flow of incoming and

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1. Receives classified inbound documents from receiving clerk and mail sorters;
2. Matches the inbound document with the E-CMT and CMT databases;
3. Prints and attaches [bar code] stickers to inbound documents;
4. Refers unmatched documents to the Investigative Officer of the appropriate section for verification;
5. Transmits matched documents to the Encoder of the appropriate section; [and]
6. Performs such other duties as may be assigned from time to time.

[30] *Id*. at 50.

[31] Bar Code 10-047742-0006, *id*. at 53.

[32] *Id*.

[33] *Id*. at 49.

inbound documents at the DMS, this is certainly a loophole principally attributable to the mail sorter[34] who is primarily expected to determine the nature and character thereof. This might lend credence to Catacutan's claim that he merely relied on the lack of a "Rush" mark on the document which is why he was impelled to treat it as an ordinary document as he did — bar coding the same only four days from the supposed sorting and only after he has processed all urgent documents that were received by the DMS that day.[35] Thus, he bids for complete exoneration and advocates the notion that he could not be expected to determine the importance of the subject trial court order because he has not been trained to read and understand the content of documents of that kind. We find this claim to be incredible.

Catacutan has been in service at the OSG Docket Division for 17 long years. He started his career in 1994 as Records Officer, and was later promoted to Stenographic Reporter I. He was promoted to Stenographic Reporter II when the Docket Division installed the computerized docket management system.[36] As Stenographic Reporter II, his task already included receiving and segregating documents from the Docket Receiving Section and the Administrative Division, particularly in the special proceedings section pertaining to marital annulment and nullity cases. Thus, at one point in his career, he has assumed the duties of the mail sorter. He was likewise engaged in finding and encoding documents and pleadings pertaining to old and current cases for referral to the handling division, and in recording pleadings and documents in the distribution books for routing to the appropriate divisions.

Catacutan has been greatly immersed in the said tasks since the year 2000, initially performing satisfactorily with an

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[34] A certain Edsel Camazo, *rollo* (G.R. No. 224651), p. 71; also referred to as "Edsel/Edcel Camazo/Camaso" in some parts of the *rollo.*

[35] See also Answer and Supplemental Answer, *rollo* (G.R. No. 224656), pp. 134-139.

[36] *Rollo* (G.R. No. 224651), pp. 178-179.

equivalent point score of 7 according to his performance evaluation form.[37] Needless to say, meritorious promotions in government service precede exemplary performance. Thus, when he was appointed in 2008 to his current permanent post as Administrative Officer V, it is by no other reason than by his meritorious performance — considering that it was a remarkable movement of nine salary grades from a clerical position to a supervisory post requiring a bachelor's degree and a second-level eligibility.[38]

In this light, it is difficult to ascribe credibility to Catacutan's self-serving claim that he could not be expected to assess the nature of the subject trial court order immediately when he processed the same for bar coding. That the one-page document consists only of roughly 30 words, with the heading that identifies it to be an order emanating from the court, certainly militates against his proffered ignorance especially considering that it is of the same character or similar to documents he has been processing in all his years of service. Indeed, even on its face and without the practical marking that would have otherwise put him on notice of its urgency, he may, even at a cursory glance, instantaneously determine the document's inherent value to the institution that he serves. As Administrative Officer V occupying a supervisory position, he does not perform mere mechanical tasks and, hence, is reasonably expected to be more prudent in the discharge of his functions as far as to the extent of performing a check on the work processes of the mail sorter before him. Regrettably, that did not happen in this case.

In sum, the Court finds that the character of negligence hereby attributed to Catacutan falls short of being gross to otherwise warrant the supreme penalty of dismissal from the service. The CA aptly found that Catacutan's neglect was neither so odious and brazen, nor willful and intentional, as to demonstrate a conscious indifference to the consequences of his omission.[39]

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[37] Performance Evaluation Form, *id*. at 252.

[38] *Id*. at 178.

[39] *Rollo* (G.R. No. 224656), pp. 13-14.

Indeed, we find that the simple neglect of duty for which he is hereby sanctioned consists in his failure to give proper attention to the task required of him, impressing upon this Court that at the time of the incident he was performing his duty carelessly.

Finally, we find basis in holding Catacutan likewise liable for conduct prejudicial to the best interest of the service.

Conduct prejudicial to the best interest of the service is not defined by the Civil Service Law and its rules, but is so inclusive as to put within its ambit any conduct of a public officer that tarnishes the image and integrity of his public office.[40]

The OSG, an independent and autonomous body attached to the Department of Justice, acts as the government's chief counsel. Its central function is to represent the government in all criminal proceedings before the Court and the CA, as well as in civil actions and special proceedings in which the state must intervene as a matter of public policy or for the protection of the general welfare.[41] Annulment and nullity of marriage are among such actions in which the state, through the OSG, takes part. In this light, it is not difficult to see that the simple negligence herein ascribed to Catacutan, as an institutional officer, has caused the state to lose its right to appeal the subject annulment order, thereby frustrating its constitutional mandate to protect the fundamental sanctity of the marital institution — a consequence too great to be countenanced and overlooked.

Indeed, conduct prejudicial to the best interest of the service is not inconsistent with a finding of negligence, because the underlying act may or may not be characterized by corruption or a willful intent to violate the law, or to disregard established rules.[42] *Catipon v. Japson*[43] provides a resume of acts held to constitute this administrative offense:

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[40] *Cruz v. Pandacan Hiker's Club, Inc.,* 776 Phil. 336, 344 (2016).

[41] ADMINISTRATIVE CODE (1987), Book IV, Title III, Chapter 12.

[42] *Catipon v. Japson,* 761 Phil. 205, 222 (2015).

[43] *Id*. at 221-222.

[T]he following acts or omissions have been treated as [conduct prejudicial to the best interest of the service]: misappropriation of public funds; abandonment of office; failure to report back to work without prior notice; failure to safe keep public records and property; making false entries in public documents; falsification of court orders; a judge's act of brandishing a gun, and threatening the complainants during a traffic altercation; a court interpreter's participation in the execution of a document conveying complainant's property which resulted in a quarrel in the latter's family; selling fake Unified Vehicular Volume Program exemption cards to his officemates during office hours; a CA employee's forging of receipts to avoid her private contractual obligations; a Government Service Insurance System (GSIS) employee's act of repeatedly changing his IP address, which caused network problems within his office and allowed him to gain access to the entire GSIS network, thus putting the system in a vulnerable state of security; a public prosecutor's act of signing a motion to dismiss that was not prepared by him, but by a judge; and a teacher's act of directly selling a book to her students in violation of the Code of Ethics for Professional Teachers.

Catacutan's carelessness and negligence in the performance of his duties as Administrative Officer V at the OSG, resulting in the forfeiture of the state's right to appeal from an annulment decree, could also well be placed in the above roster of acts amounting to conduct prejudicial to the best interest of the service.

Under Section 55[44] of CSC Memorandum Circular No. 19, Series of 1999 which governs the instant administrative proceedings, the penalty to be meted out to Catacutan should be that corresponding to the most serious charge and the rest will be treated as merely aggravating circumstances. Simple neglect of duty is a less grave offense punishable by suspension of one month and one day to six months; whereas conduct prejudicial to the best interest of the service, a grave offense, is punishable by suspension of six months and one day to one

[44] Section 55. *Penalty for the most serious offense.* If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count, and the rest shall be considered as aggravating circumstances.

year. In either case, a second offense shall warrant dismissal from service.[45] Hence, in view of the lack of mitigating and aggravating circumstances properly pleaded and proved, Catacutan should be imposed the penalty of suspension from service for eight months, taking into account the offense of simple neglect of duty as an aggravating circumstance.

WHEREFORE, the Petitions in G.R. No. 224651 and in G.R. No. 224656 are **DENIED**. The July 31, 2015 Decision and the April 22, 2016 Resolution of the Court of Appeals-Cebu City in CA-G.R. CEB-SP No. 07624, finding Edgar B. Catacutan, Administrative Officer V at the Office of the Solicitor General, guilty only of Simple Neglect of Duty, is **MODIFIED** to include Conduct Prejudicial to the Best Interest of the Service. Accordingly, he is hereby meted the penalty of eight (8) months suspension from office for said offenses.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 225847. July 3, 2019]

DANILO L. PACIO, *petitioner, vs.* **DOHLE-PHILMAN MANNING AGENCY, INC., DOHLE (IOM) LIMITED, and/or MANOLO T. GACUTAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF FACT OF ADMINISTRATIVE AGENCIES

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[45] CSC Memorandum Circular No. 19 (1999), Section 52.

AND QUASI-JUDICIAL BODIES, WHICH HAVE ACQUIRED EXPERTISE BECAUSE THEIR JURISDICTION IS CONFINED TO SPECIFIC MATTERS, ARE GENERALLY ACCORDED NOT ONLY GREAT RESPECT BUT EVEN FINALITY, AND ARE BINDING UPON THE COURT UNLESS THERE IS A SHOWING OF GRAVE ABUSE OF DISCRETION OR WHERE IT IS CLEARLY SHOWN THAT THEY WERE ARRIVED AT ARBITRARILY OR IN UTTER DISREGARD OF THE EVIDENCE ON RECORD, OR WHEN THE FACTUAL FINDINGS OF THE QUASI-JUDICIAL AGENCIES CONCERNED ARE CONFLICTING OR CONTRARY WITH THOSE OF THE COURT OF APPEALS. — Both parties come to the Court with their own versions of the factual antecedents that birthed the herein controversy. As a general rule, the Court is disinclined to review these factual allegations due to the particular scope of its judicial review, which is limited to deciding only questions of law brought up on appeal. This rule, however, is replete with exceptions which would not only allow, but in fact necessitate a second look at the evidence of records. In *Maria Vilma G. Doctor and Jaime Lao, Jr. v. NII Enterprises and/or Mrs. Nilda C. Ignacio*, it was held, thus: At the outset, the Court reiterates that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, its jurisdiction is generally limited to reviewing errors of law. The Court is not a trier of facts, and this applies with greater force in labor cases. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record. However, it is equally settled that one of the exceptions to this rule is when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary with those of the Court of Appeals, as in the present case. Thus, the Court proceeds with its own factual determination herein based on the evidence of the parties. The exception applies in this case as the findings of fact of the lower tribunals, the LA and the NLRC, contradict those of the CA. In this regard, the Court takes a closer look at the records and finds in favor of the respondents. The evidence on record

clearly shows that the CA did not err in reversing the factual findings of the LA and the NLRC that the petitioner is entitled to disability benefits.

2. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; SEAFARERS; DISABILITY BENEFITS; DISABILITIES WHEN DEEMED TOTAL AND PERMANENT. — This case is predicated on whether or not the petitioner is entitled to disability benefits based on his allegation that his work with the respondents resulted in his total and permanent disability. In the absence of a CBA between the petitioner and the respondents, it is the POEA SEC as well as relevant labor laws which will govern the petitioner's claim, especially as these are deemed written in the contract of employment between the parties. As provided by Article 198, formerly Article 192 of the Labor Code of the Philippines, the following disabilities shall be deemed total and permanent: (1) Temporary total disability lasting continuously for more than 120 days, except as otherwise provided for in the Rules; (2) Complete loss of sight of both eyes; (3) Loss of two limbs at or above the ankle or wrist; (4) Permanent complete paralysis of two limbs; (5) Brain injury resulting in incurable imbecility or insanity; and (6) Such cases as determined by the Medical Director of the System and approved by the Commission.

3. ID.; ID.; ID.; ID.; STATUTORY PROCESS FOR A VALID DISABILITY CLAIM; NOT COMPLIED WITH. — In determining the possible existence of permanent disability, the law does not leave the choice to either the petitioner him or herself or the employer, but to their respective medical experts. This flux of provisions highlights that in order to claim disability benefits, it is not enough to merely allege an injury. The aforestated must be read in harmony with each other, as cited in *TSM Shipping Phils., Inc., et al. v. Patiño*: As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment

Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.** In the case at bar, the petitioner failed to comply with the outlined, statutory process for a valid disability claim, despite the respondents' efforts to adhere to the same. The records show that the company-designated physician was in fact able to give an assessment of the petitioner's illness within the allotted time, contrary to the petitioner's allegations that the respondents did not give a full report as to his condition.

4. ID.; ID.; ID.; ID.; THE SEAFARER'S REFUSAL TO COOPERATE, HIS DECISION NOT TO MENTION TO THE EMPLOYER/AGENCY THAT HE WAS QUESTIONING THE LATTER'S MEDICAL FINDINGS AND SEEKING RECOURSE WITH HIS OWN PHYSICIAN, AND HIS BELATED FILING OF THE COMPLAINT ALMOST A FULL YEAR AFTER THE MEDICAL CHECKUP WITH THE EMPLOYER/AGENCY SHOW THE SEAFARER'S PALPABLE LACK OF GOOD FAITH IN THE HANDLING OF HIS DISABILITY CLAIM, ESPECIALLY AS THE SAME CONTRAVENES THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA SEC). — The petitioner's refusal to cooperate, his decision not to mention to the respondents that he was questioning the latter's medical findings and seeking recourse with his own physician, and his belated filing of the complaint which was actuated almost a full year after the medical checkup with the respondents prompt the Court to find that there is a palpable lack of good faith in the petitioner's handling of the claim, especially as the same contravenes the POEA SEC. In *Splash Philippines, Inc., et al. v. Ruizo*, the Court denied disability benefits to a seafarer who refused to return to the company for further treatment, refused to return to work, and instead filed a complaint, in contravention of the POEA SEC: x x x. In actuality, the petitioner's act of refusing to cooperate

not only makes his claim questionable, but also vitiates the validity of his own assertions as well as that of his own doctor that his disability is such to entitle him to the corresponding benefits. Since the petitioner did not inform the respondents that he was contesting their findings, and did not even draw their attention to the fact that he had in hand conflicting findings, the statutory recourse of looking for a third physician to bind the parties was never effected, an omission that the Court finds as prejudicial to the petitioner.

5. ID.; ID.; ID.; ID.; IF THERE IS A DISPARITY IN THE MEDICAL FINDINGS OF THE PARTIES, THE DUTY TO SECURE THE OPINION OF A THIRD DOCTOR BELONGS TO THE EMPLOYEE ASKING FOR DISABILITY BENEFITS, AND HE OR SHE MUST ACTIVELY OR EXPRESSLY REQUEST FOR IT; THE FAILURE OF THE SEAFARER TO MAKE USE OF THIS REMEDY IS FATAL TO HIS/HER DISABILITY BENEFITS CLAIM. — The law dictates that if there is a disparity in the medical findings of the parties, a possible answer to the stalemate is through the seeking of recourse to a third physician agreed upon by both parties. Under Section 20(A)(3) of the 2010 POEA SEC, if a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer, whose decision shall be final and binding on both parties. This is important as an employer/agency may insist on its own disability assessment even against a different opinion by another doctor, unless the seafarer signifies his or her intent to submit the disputed assessment to a third physician. Crucially, the duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits, and he or she must actively or expressly request for it. In the case at bar, the petitioner did not make use of this remedy since, at the pain of reiteration, he immediately filed the complaint without even informing the respondents as to his physician's contrary findings. As a consequence, despite the divergence in opinion between the company physician and the petitioner's own, the parties were not able to address the same due to the lack of knowledge of the respondents and the lack of action on the part of the petitioner, which should stand as another reason to deny the latter's claim.

6. ID.; ID.; ID.; ID.; THE EMPLOYER/AGENCIES ASSESSMENT OF THE SEAFARER'S DISABILITY IS

FINAL AND BINDING, IN THE ABSENCE OF A THIRD AND BINDING OPINION, ESPECIALLY WHERE THE COMPANY-DESIGNATED PHYSICIAN'S FINDINGS IS COMPLETE AND WITHOUT ANY APPARENT INFIRMITY. — In *Veritas Maritime Corporation v. Gepanaga, Jr.*: Gepanaga failed to observe the prescribed procedure of having the conflicting assessments on his disability referred to a third doctor for a binding opinion. x x x Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. x x x. Paralleling *Gepanaga, Jr.*, the Court has no option but to hold the respondents' assessment of the petitioner's disability as final and binding, in the absence of a third and binding opinion. This especially, as a perusal of the company-designated physician's findings will show that the same is complete and without any apparent infirmity. The petitioner was unable to proffer any counter-evidence showing that the company-designated physician was unable to come up with an indefinite and un-arbitrary ruling on the petitioner's medical status. Considering it was the petitioner's inaction in securing a third physician and his lack of proof in assailing the respondents' own medical report, the Court finds that the CA did not err in ruling in favor of the respondents.

7. ID.; ID.; ID.; ID.; WHILE AN ILLNESS MAY BE DISPUTABLY PRESUMED TO BE WORK-RELATED, THE SEAFARER OR THE CLAIMANT MUST STILL SHOW A REASONABLE CONNECTION BETWEEN THE NATURE OF WORK ON BOARD THE VESSEL AND THE ILLNESS CONTRACTED OR AGGRAVATED; THUS, THE CLAIMANT MUST PRESENT SUBSTANTIAL EVIDENCE THAT HIS WORK CONDITIONS CAUSED OR AT LEAST INCREASED THE RISK OF CONTRACTING THE DISEASE. — At the basic core of the matter, it was incumbent on the petitioner to show through substantial evidence proof that his condition was aggravated by his work, and not just merely rely on the presumption that his illness is work-related. While the law recognizes that an illness may be disputably presumed to be work-related, the seafarer or the claimant must

still show a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated. Thus, the burden is placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease. x x x. In this case, the petitioner failed to substantiate by clear evidence the causal connection between the strain of work, with the disability he alleges. Aside from citing increased work due to lack of manpower, the petitioner was unable to show that it was the work itself that led to his difficult condition, especially considering that he himself admitted that he already had a pre-existing condition, as embodied in the findings of the PEME. While a pre-existing condition does not absolutely bar the chance that it could have been aggravated during the course of employment, the petitioner in this case failed to prove that it was exacerbated by the unusual strain brought about by the nature of his work.

APPEARANCES OF COUNSEL

Mauleon Chunpeng & Partner for petitioner.
Retoriano and Olalia-Retoriano for respondents.

D E C I S I O N

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

Challenged before this Court *via* this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the Decision[2] dated January 22, 2016 of the Court of Appeals, and its Resolution[3] dated July 10, 2016, in CA-G.R. SP No. 138514, which reversed the Decision[4] dated September 30, 2014 of the

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[1] *Rollo*, pp. 8-35.

[2] Penned by Associate Justice Jose C. Reyes, Jr. (now a Member of this Court), with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando (now a Member of this Court), concurring; *id.* at 36-45A.

[3] *Id.* at 46-47.

[4] Rendered by Commissioner Mercedes R. Posada-Lacap, with Presiding Commissioner Grace E. Maniquiz-Tan and Commissioner Dolores M. Peralta-Beley concurring; *id.* at 93-102.

National Labor Relations Commission (NLRC) in NLRC LAC NO. 07-000557-14-OFW.

The Antecedent Facts

The facts are as follows:

On July 4, 2012, respondent Dohle-Philman Manning Agency, for and in behalf of its principal, Dohle (IOM) Limited (respondents), hired Danilo L. Pacio (petitioner) to work as an Able Seaman in vessel MV Lady Elisabeth.[5] On June 21, 2012, the petitioner underwent a pre-employment medical examination (PEME) at the Angelus Medical Clinic in Makati City. The medical certificate issued subsequent and as a result of the PEME reflected that the petitioner had disclosed that he had been suffering from hypertension since 2011.[6]

Despite this revelation, he was certified fit for sea duty, though he was made to sign an undertaking where he acknowledged that he was given appropriate advice and medication for his pre-existing hypertension consisting of 270 capsules of amlodipine (Dailyvasc) 5 milligrams to be taken once a day for nine months. Aside from the acknowledgment, the petitioner was also asked to give the following declarations: (1) That he shall religiously take his medications as advised and diligently follow the doctor's advice; failure to do so will warrant the termination of his contract subject to the discretion of the agency/principal/employer; and (2) that in the event of a disabling sickness resulting from his hypertension, said ailment shall be deemed preexisting and non-compensable; consequently, no claim can be made against the company/employer.[7]

On July 10, 2012, the petitioner departed from the Philippines and commenced employment. Five months later, on December 10, 2012, the petitioner complained of high blood pressure and dizziness, prompting his referral to a medical facility in Romania.[8]

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

[6] *Id.* at 37.

[7] *Id.*

[8] *Id.*

The Romanian physicians declared him unfit for sea duties and recommended his repatriation. As a result, he was repatriated four days later and was immediately endorsed to respondent agency's appointed physicians at the Marine Medical Services of the Metropolitan Medical Center (MMC) in Sta. Cruz, Manila for a thorough medical examination.[9]

The results of the medical report read:

Laboratory examination showed decreased hemoglobin, hematocrit, white blood cell (complete blood count), normal fasting blood sugar, HBA1C, blood urea nitrogen, creatinine, triglyceride, HDL, thyroid function test, VLDL, SGPT, sodium, potassium, urinalysis, elevated uric acid, cholesterol, LDL and creatine kinase.

He underwent chest x-ray, 12 Lead ECG, 2D Echo Study, Carotid Duplex Scan, Treadmill Stress Test and 24-Hour Holter Monitoring for further evaluation.

He will undergo Cranial MRA with MRI on December 24, 2012.

He was given medications for his condition (Bezam, Clopidogrel and Cholestad).

The etiology/cause of hypertension is not work-related. It is multifactorial in origin, which includes generic predisposition, poor lifestyle, high salt intake, smoking, Diabetes Mellitus, age and increased sympathetic activity.

Transient Ischemic Attack is due to disturbance of brain function secondary to microvascular occlusions causing temporary deficiency in the brain's blood supply. Symptoms are similar to stroke but are temporary and reversible.

Risk factors include age, Hypertension, Carotid Artery Disease, smoking, Diabetes Mellitus, obesity, alcohol, all of which are not work-related.

Patient is presently unfit for duty for approximately four (4) months.

He is to come back on January 10, 2013 for re-evaluation.

Impression-Hypertension

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[9] *Id*.

To Consider Transient Ischemic Attack[10]

Despite the notation that the latter's condition was not work-related, the respondents shouldered the expenses for the petitioner's medical evaluation. They did not hear any response from the petitioner for almost a year, which, for the respondents, signaled acceptance of the medical assessment.[11]

However, on November 11, 2013, the respondents received a Notice of Conference from the Philippine Overseas Employment Administration (POEA) requiring them to appear in a conciliation conference pursuant to the Request for Assistance filed by the petitioner.[12] During the hearing, the petitioner expressed his desire to be hired again as "he feels strong enough to work."[13] He stressed that if the respondents would deny his reemployment, he should be compensated for the long years of service he had rendered for them. The respondents denied these claims for alleged lack of basis.

For failure of the parties to settle the case amicably, the hearing officer terminated the conciliation proceedings. On December 16, 2013, the petitioner filed a claim for permanent total disability benefits, damages and attorney's fees with the Regional Arbitration Branch No. 1 of the NLRC in San Fernando, La Union.

On April 21, 2014, Executive Labor Arbiter (ELA) Irenarco R. Rimando rendered a Decision[14] against the respondents, the dispositive portion reading, thus:

IN VIEW THEREOF, judgment is hereby rendered directing respondents DOHLE PHILMAN MANNING AGENCY, INC. AND CAPT. MANOLO GACUTAN to jointly and severally pay US$60,000.00

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[10] *Id*. at 38.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 104-122.

to DANILO L. PACIO, as his permanent and total disability benefits, plus 10% thereof as attorney's fees.

SO ORDERED.[15]

The respondents' appeal to the NLRC was struck down for lack of merit, with the NLRC affirming the findings of the ELA in a Decision[16] promulgated on September 30, 2014. The respondents' Motion for Reconsideration was similarly denied, prompting the respondents to seek a reprieve with the CA.[17]

In a Decision[18] dated January 22, 2016 granting the respondents' appeal, the CA found merit in the respondents' assertion that the labor tribunals gravely abused their discretion in disregarding the pertinent provisions of the Labor Code, the POEA Standard Employment Contract (POEA SEC), and the Collective Bargaining Agreement (CBA) in granting the petitioner permanent total disability benefits.

The CA found that the respondents were cognizant of the petitioner's history of high blood pressure, as the latter had fully disclosed his condition during the PEME and even admitted that he was on maintenance medication.[19] This also indicated that the petitioner had been suffering from the pre-existing condition of hypertension at the time his services were engaged by the respondents. While not discounting the possibility that the pre-existing condition, which caused the petitioner's transient ischemic attack, may have progressed during the term of his employment, the CA held that there was no compliance with the prescribed procedure for disability compensation.[20] The dispositive portion of the Decision reads, to wit:

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[15] *Id*. at 40.

[16] *Id*. at 93-102.

[17] *Id*. at 40.

[18] *Id*. at 36-45A.

[19] *Id*. at 41.

[20] *Id*. at 44-45.

WHEREFORE, premises considered, the instant petition is GRANTED. The Decision dated September 30, 2014 of the National Labor Relations Commission (NLRC) - Fifth Division in NLRC RAB-I-OFW-(S)-12-1125-13 (SFLU) and NLRC LAC No. 07-000557-14-OFW and its Resolution dated October 30, 2014 are REVERSED and SET ASIDE.

SO ORDERED.[21]

The petitioner's Motion for Reconsideration was denied by the CA in its Resolution[22] dated July 10, 2016. Hence, this Petition.

The Issue and the Parties' Arguments

The issue herein is simply, whether or not the CA committed serious error of law in reversing the Decision and Resolution of the NLRC, the latter having affirmed the findings of the ELA that the petitioner is entitled to permanent total disability benefits.

As his contention, the petitioner alleges that, prior to the commencement of his employment with the respondents, he was declared Fit for Sea Duty after going through the PEME. It was in the performance of his sea duties that the petitioner began to experience "high blood pressure" and "dizziness," and shortly thereafter, suffered paralysis on half of his body, affecting his lower and upper right limbs, which allegedly resulted from a straight, rigorous duty on port watch and aggravated by the fact that the crew was undermanned on board the vessel.[23]

The petitioner narrates that when he reported his state of health to the Chief Mate and Captain of the MV Lady Elisabeth, he was signed off in Turkey for medical reasons with an indication on the Medical Examination Report issued by the ship captain — Scenikov Viktor that "PATIENT [was] UNFIT FOR DUTY."[24]

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[21] *Id*. at 45-45A.

[22] *Id*. at 46-47.

[23] *Id*. at 11.

[24] *Id*.

Upon his arrival in the Philippines, he reported immediately to the MMC for evaluation and supposed treatment, however, while a Magnetic Resonance Angiogram (MRA) was performed on him, the results were not disclosed and he was readily discharged as an outpatient.[25] Barely a month after his repatriation, the respondents discontinued the petitioner's treatment, and despite follow-ups, the petitioner was only told that his treatment had been stopped and his condition was labeled as "Risky." The petitioner was, thus, constrained to consult with Dr. Nelson Gundran (Dr. Gundran), who diagnosed the petitioner with "Hypertension State II" and advised the petitioner to avoid strenuous activities, limit work load, and take the medicine prescribed.[26]

The petitioner argues that he has suffered from permanent disability, though he may not have lost the use of his body because of his inability to perform his job for more than 120 days, as defined under jurisprudence, particularly the cited case of *Quitoriano v. Jebsens Maritime, Inc./Gutay and/or Atle Jebsens Management A/S*.[27]

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[25] *Id*. at 12.

[26] *Id*.

[27] 624 Phil. 523 (2010).

There are three kinds of disability benefits under the Labor Code, as amended by P.D. No. 626: (1) temporary total disability, (2) permanent total disability, and (3) permanent partial disability. Section 2, Rule VII of the Implementing Rules of Book V of the Labor Code differentiates the disabilities as follows:

> Sec. 2. *Disability*.— (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period not exceeding 120 days, except as otherwise provided for in Rule X of these Rules.
>
> (b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.
>
> (c) A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body.
>
> In *Vicente v. ECC* (G.R. No. 85024, January 23, 1991, 193 SCRA 190, 195):

On the other hand, the respondents allege that the petitioner had recognized his pre-existing hypertension, and voluntarily executed an Oath of Undertaking[28] acknowledging his condition

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x x x the **test** of whether or not an employee suffers from 'permanent total disability' is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. Thus, if by reason of the injury or sickness he sustained, the employee is unable to perform his customary job **for more than 120 days** and he does not come within the coverage of Rule X of the Amended Rules on Employees Compensability (which, in more detailed manner, describes what constitutes temporary total disability), then the said employee undoubtedly suffers from 'permanent total disability' regardless of whether or not he loses the use of any part of his body.

A **total** disability does not require that the employee be absolutely disabled or totally paralyzed. What is necessary is that the injury must be such that **the employee cannot pursue his usual work and earn therefrom** (*Austria v. Court of Appeals*, G.R. No. 146636, Aug. 12, 2002, 387 SCRA 216, 221). On the other hand, a **total** disability is **considered permanent if it lasts continuously for more than 120 days**. Thus, in the very recent case of *Crystal Shipping, Inc. v. Natividad* (G.R. No. 134028, December 17, 1999, 321 SCRA 268, 270-271), we held:

> Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. x x x.
>
> Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity. x x x *Id*. at 530-531. (Emphases and underscoring in the original)

[28] *Rollo*, p. 511.

3. I undertake to religiously comply with this medication and diligently follow the Doctor's advice. Failure on my part to do this requirement will warrant the termination of my contract, subject to the discretion of the Agency/ Principal/Employer;

4. In the event of a disabling sickness resulting from the above named ailment, I hereby declare that the said ailment is pre-existing and also NOT COMPENSABLE. I will not hold the Company/Employer accountable and shall NOT make any claims arising from said ailment;

5. This shall forever bar myself, or any of my legal heirs, ascendants or descendants, or any representative from claiming any Medical or Disability

and the doctor's advice for him to regularly take medication. As to the petitioner's assertion that he suffered paralysis on half of his body after a straight, rigorous duty on port watch confounded by the undermanned crew on board, the same is bare and self-serving as the evidence on record shows that the symptoms that prompted the medical examination pertained to high blood pressure and dizziness, which were transient and did not cause permanent and total disability.[29]

The respondents point to the fact that the petitioner consulted with his private doctor before he was examined by the company-designated physician, thus, it was erroneous for him to state that he was constrained to obtain medical advice from his own physician due to the alleged haphazard and incomplete medical attention received from the company-designated physician.[30] The respondents, likewise, call attention to the petitioner's arrival in the Philippines on December 14, 2012, and that he only reported to the respondents five (5) days later or on December 19, 2012.[31] Per the petitioner's own admission, he consulted with his physician, Dr. Gundran, a day before the company physician's own diagnosis, with Dr. Gundran diagnosing him with Hypertension Stage II.[32]

As for the petitioner's averment that over a year passed without any assessment of fitness/unfitness of non-work relation, the respondents allege that the declaration of the company-designated physician on December 21, 2012 was duly communicated to him, and that if it were true that there was no assessment, it is improbable and highly irregular that the petitioner waited a year before calling the respondents' attention on such a matter and only when the complaint had already been filed.[33]

Benefits or any other benefits as a consequence of or arising from said illness/disease or any condition related thereto, from any courts of law or any administrative tribunal not only in the Philippines but also in any other jurisdiction.

[29] *Id*. at 518.

[30] *Id*. at 519.

[31] *Id.*

[32] *Id*. at 520.

[33] *Id.*

Ruling of the Court

Both parties come to the Court with their own versions of the factual antecedents that birthed the herein controversy. As a general rule, the Court is disinclined to review these factual allegations due to the particular scope of its judicial review, which is limited to deciding only questions of law brought up on appeal. This rule, however, is replete with exceptions which would not only allow, but in fact necessitate a second look at the evidence of records. In *Maria Vilma G. Doctor and Jaime Lao, Jr. v. NII Enterprises and/or Mrs. Nilda C. Ignacio*,[34] it was held, thus:

> At the outset, the Court reiterates that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, its jurisdiction is generally limited to reviewing errors of law. The Court is not a trier of facts, and this applies with greater force in labor cases. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record. However, it is equally settled that one of the exceptions to this rule is when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary with those of the Court of Appeals, as in the present case. Thus, the Court proceeds with its own factual determination herein based on the evidence of the parties.[35]

The exception applies in this case as the findings of fact of the lower tribunals, the LA and the NLRC, contradict those of the CA. In this regard, the Court takes a closer look at the records and finds in favor of the respondents. The evidence on record clearly shows that the CA did not err in reversing the factual findings of the LA and the NLRC that the petitioner is entitled to disability benefits.

This case is predicated on whether or not the petitioner is entitled to disability benefits based on his allegation that his

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[34] G.R. No. 194001, November 22, 2017.

[35] *Id*.

work with the respondents resulted in his total and permanent disability. In the absence of a CBA between the petitioner and the respondents, it is the POEA SEC as well as relevant labor laws which will govern the petitioner's claim, especially as these are deemed written in the contract of employment between the parties.[36]

As provided by Article 198, formerly Article 192 of the Labor Code of the Philippines, the following disabilities shall be deemed total and permanent: (1) Temporary total disability lasting continuously for more than 120 days, except as otherwise provided for in the Rules; (2) Complete loss of sight of both eyes; (3) Loss of two limbs at or above the ankle or wrist; (4) Permanent complete paralysis of two limbs; (5) Brain injury resulting in incurable imbecility or insanity; and (6) Such cases as determined by the Medical Director of the System and approved by the Commission.

In the petitioner's case, he anchors his claim for total and permanent disability on his alleged inability to perform his job for more than 120 days as a result of his work-aggravated hypertension. To that effect, he believes himself entitled to the payment of permanent total disability benefits, damages and attorney's fees. Relevantly, the process and grounds outlined in the same are found in Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code, to wit:

Sec. 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.

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[36] *TSM Shipping Phils., Inc., et al. v. Patiño*, 807 Phil. 666, 676 (2017).

In determining the possible existence of permanent disability, the law does not leave the choice to either the petitioner him or herself or the employer, but to their respective medical experts. Section 20(B)(3) of the POEA SEC provides that:

> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.
>
> 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. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

This flux of provisions highlights that in order to claim disability benefits, it is not enough to merely allege an injury. The aforestated must be read in harmony with each other, as cited in *TSM Shipping Phils., Inc., et al. v. Patiño*:[37]

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration**

[37] 807 Phil. 666 (2017).

is justified by his medical condition.[38] (Emphasis Ours and italics in the original)

In the case at bar, the petitioner failed to comply with the outlined, statutory process for a valid disability claim, despite the respondents' efforts to adhere to the same. The records show that the company-designated physician was in fact able to give an assessment[39] of the petitioner's illness within the allotted time, contrary to the petitioner's allegations that the respondents did not give a full report as to his condition. The Court finds as strange the petitioner's questioning the report of the company-designated physician, while at the same time utilizing that same report as basis for his contention that he is unfit for duty for approximately four months, in an attempt to show that his disability status exceeds the time allowed by law. Thus, there can be no other conclusion that the petitioner has accepted, at

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[38] *Id*. at 677-678, citing *Vergara v. Hammonia Maritime Services, Inc., et al*., 588 Phil. 895, 912 (2008).

[39] Laboratory examination showed decreased hemoglobin, hematocrit, white blood cell (complete blood count), normal fasting blood sugar, HBA1C, blood urea nitrogen, creatinine, triglyceride, HDL, thyroid function test, VLDL, SGPT, sodium, potassium, urinalysis, elevated uric acid, cholesterol, LDL and creatine kinase.

He underwent chest x-ray, 12 Lead ECG, 2D Echo Study, Carotid Duplex Scan, Treadmill Stress Test and 24-Hour Holter Monitoring for further evaluation.

He will undergo Cranial MRA with MRI on December 24, 2012.

He was given medications for his condition (Bezam, Clopidogrel and Cholestad).

The etiology/cause of hypertension is not work-related. It is multifactorial in origin, which includes generic predisposition, poor lifestyle, high salt intake, smoking, Diabetes Mellitus, age and increased sympathetic activity.

Transient Ischemic Attack is due to disturbance of brain function secondary to microvascular occlusions causing temporary deficiency in the brain's blood supply. Symptoms are similar to stroke but are temporary and reversible.

Risk factors include age, Hypertension, Carotid Artery Disease, smoking, Diabetes Mellitus, obesity, alcohol, all of which are not work-related.

Patient is presently unfit for duty for approximately four (4) months.

He is to come back on January 10, 2013 of (sic) re-evaluation.

Impression-Hypertension

To Consider Transient Ischemic Attack

the absolute least, the completeness of the report of the company-designated physician, notwithstanding his own claim that his own chosen physician has rendered a finding contrary to that of the respondents and in support of the petitioner's own perceived view of his medical status.

Aside from the foregoing, the Court finds as self-serving the petitioner's accusation that the assessment of the company-designated physician was insubstantial, especially considering that the petitioner himself did not cooperate fully in ensuring that the report would be as spotless as possible. The records reveal that the petitioner had refused to go back to the company-designated physician for further tests and instead spent almost one year out of the respondents' sights before filing the complaint. After declaring a finding that the petitioner was unfit for duty for approximately four months, the medical report stated that the petitioner was asked to come back on January 10, 2013 for re-evaluation, however, the respondents did not hear from him afterwards. They did not even know that the petitioner had consulted his own medical expert as the petitioner did not reach out until many months later, to file the instant case.

While the petitioner claims he followed up with the respondents concerning his medication, he was unable to show any tangible proof that he did so, in the form of any correspondence with the respondents. In the absence of anything but his self-serving declaration, the Court is inclined to adhere to the respondents' version of the events leading up to the filing of the complaint, especially as it is more in line with the strange and belated filing of the disability claim.

The petitioner's refusal to cooperate, his decision not to mention to the respondents that he was questioning the latter's medical findings and seeking recourse with his own physician, and his belated filing of the complaint which was actuated almost a full year after the medical checkup with the respondents prompt the Court to find that there is a palpable lack of good faith in the petitioner's handling of the claim, especially as the same contravenes the POEA SEC. In *Splash Philippines, Inc., et al.*

v. Ruizo,[40] the Court denied disability benefits to a seafarer who refused to return to the company for further treatment, refused to return to work, and instead filed a complaint, in contravention of the POEA SEC:

> Ruizo's non-compliance with his obligation under the POEA-SEC is aggravated by the fact that while he was still undergoing treatment under the care of Dr. Cruz, he filed the present complaint on May 26, 2006. Moreover, after he failed to return for further ESWL and without informing the agency or Dr. Cruz, he consulted Dr. Vicaldo who examined him only for a day or on May 7, 2007, certified him unfit to work, and gave him a disability rating of *Impediment Grade VII (41.8%)*. This aspect of the case bolsters the LA's conclusion that Ruizo was merely making excuses for his failure to report to Dr. Cruz and had become indifferent to treatment as he was determined to claim and obtain disability benefits from the petitioners. It also lends credence to the petitioners' submission that he abandoned his treatment under Dr. Cruz. Worse, it validates the LA's opinion that his inability to work and the persistence of his kidney ailment could be attributed to his own willful refusal to undergo treatment. Under the POEA-SEC, such a refusal negates the payment of disability benefits.[41]

In actuality, the petitioner's act of refusing to cooperate not only makes his claim questionable, but also vitiates the validity of his own assertions as well as that of his own doctor that his disability is such to entitle him to the corresponding benefits. Since the petitioner did not inform the respondents that he was contesting their findings, and did not even draw their attention to the fact that he had in hand conflicting findings, the statutory recourse of looking for a third physician to bind the parties was never effected, an omission that the Court finds as prejudicial to the petitioner.

The law dictates that if there is a disparity in the medical findings of the parties, a possible answer to the stalemate is through the seeking of recourse to a third physician agreed upon by both parties. Under Section 20(A)(3) of the 2010 POEA

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[40] 730 Phil. 162 (2014).

[41] *Id*. at 178.

SEC, if a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer, whose decision shall be final and binding on both parties.[42] This is important as an employer/agency may insist on its own disability assessment even against a different opinion by another doctor, unless the seafarer signifies his or her intent to submit the disputed assessment to a third physician.[43]

Crucially, the duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits, and he or she must actively or expressly request for it.[44] In the case at bar, the petitioner did not make use of this remedy since, at the pain of reiteration, he immediately filed the complaint without even informing the respondents as to his physician's contrary findings. As a consequence, despite the divergence in opinion between the company physician and the petitioner's own, the parties were not able to address the same due to the lack of knowledge of the respondents and the lack of action on the part of the petitioner, which should stand as another reason to deny the latter's claim. In *Veritas Maritime Corporation v. Gepanaga, Jr.*:[45]

> Gepanaga failed to observe the prescribed procedure of having the conflicting assessments on his disability referred to a third doctor for a binding opinion.
>
> x x x x x x x x x
>
> Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. x x x.[46]

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[42] *Generato M. Hernandez v. Magsaysay Maritime Corporation, Saffron Maritime Limited and/or Marlon R. Roño*, G.R. No. 226103, January 24, 2018.

[43] *Id*.

[44] *Id*.

[45] 753 Phil. 308 (2015).

[46] *Id*. at 319-320.

Paralleling *Gepanaga, Jr.*, the Court has no option but to hold the respondents' assessment of the petitioner's disability as final and binding, in the absence of a third and binding opinion. This especially, as a perusal of the company-designated physician's findings will show that the same is complete and without any apparent infirmity. The petitioner was unable to proffer any counter-evidence showing that the company-designated physician was unable to come up with an indefinite and un-arbitrary ruling on the petitioner's medical status. Considering it was the petitioner's inaction in securing a third physician and his lack of proof in assailing the respondents' own medical report, the Court finds that the CA did not err in ruling in favor of the respondents.

At the basic core of the matter, it was incumbent on the petitioner to show through substantial evidence proof that his condition was aggravated by his work, and not just merely rely on the presumption that his illness is work-related. While the law recognizes that an illness may be disputably presumed to be work-related, the seafarer or the claimant must still show a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated.[47] Thus, the burden is placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease.[48]

As explained in *Espere v. NFD International Manning Agents, Inc., et al.*,[49] another case involving hypertension:

> In other words, while the law recognizes that an illness may be disputably presumed to be work-related, the seafarer or the claimant must still show a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated. Thus, the burden is placed upon the claimant to present substantial evidence

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[47] *Espere v. NFD International Manning Agents, Inc., et al*., 814 Phil. 820, 838 (2017).

[48] *Id*.

[49] 814 Phil. 820 (2017).

that his work conditions caused or at least increased the risk of contracting the disease.

In this case, however, petitioner relied on the presumption that his illness is work-related but he was unable to present substantial evidence to show that his work conditions caused or, at the least, increased the risk of contracting his illness. Neither was he able to prove that his illness was preexisting and that it was aggravated by the nature of his employment. Thus, the LA and the CA correctly ruled that he is not entitled to any disability compensation.[50] (Citations omitted)

In this case, the petitioner failed to substantiate by clear evidence the causal connection between the strain of work, with the disability he alleges. Aside from citing increased work due to lack of manpower, the petitioner was unable to show that it was the work itself that led to his difficult condition, especially considering that he himself admitted that he already had a pre-existing condition, as embodied in the findings of the PEME. While a pre-existing condition does not absolutely bar the chance that it could have been aggravated during the course of employment, the petitioner in this case failed to prove that it was exacerbated by the unusual strain brought about by the nature of his work. In *Villanueva, Sr. v. Baliwag Navigation, Inc., et al.*,[51] the Court held that a complainant must satisfy by substantial evidence the condition laid down in the contract that if the heart disease, such as the one herein, was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain brought about by the nature of his work.[52] The petitioner failed to do so, and for this and his lack of cooperation in fulfilling the procedural and substantive requirements in alleging total and permanent disability, the Court finds that the CA did not err in denying his disability claims.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is hereby **DENIED**. The Decision dated January

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[50] *Id.* at 838.

[51] 715 Phil. 299 (2013).

[52] *Id.* at 303.

22, 2016 of the Court of Appeals, and its Resolution dated July 10, 2016, in CA-G.R. SP No. 138514, are hereby **AFFIRMED**.

SO ORDERED.

Peralta (Chairperson), Leonen, Lazaro-Javier,* and *Inting, JJ.*, concur.

SECOND DIVISION

[G.R. No. 226556. July 3, 2019]

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); VALUE ADDED TAX (VAT); THE SALE OF THE GENERATING ASSETS — THE MASINLOC, AMBUKLAO-BINGA AND PANTABANGAN POWER PLANTS — IS NOT SUBJECT TO VAT, SINCE THE SALE IS NOT IN PURSUIT OF A COMMERCIAL OR ECONOMIC ACTIVITY BUT PURSUANT TO POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT'S (PSALM) GOVERNMENTAL FUNCTION FOR THE PURPOSE OF PRIVATIZING NPC GENERATION ASSETS UNDER THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA). — The issue of whether the sale of power plants by PSALM is subject to VAT and the

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* Designated additional Member per Raffle dated June 26, 2019 *vice* Associate Justice Ramon Paul L. Hernando.

arguments of both parties in this case have been passed upon and settled in G.R. No. 198146 (*Power Sector Assets and Liabilities Management Corporation v. Commissioner on Internal Revenue*), where the Court ruled: x x x. **We do not agree with the CIR's position, which is anchored on the wrong premise that PSALM is a successor-in-interest of NPC. PSALM is not a successor-in-interest of NPC**. x x x. **Clearly, NPC and PSALM have different functions. Since PSALM is not a successor-in-interest of NPC, the repeal by RA 9337 of NPC's VAT exemption does not affect PSALM. In any event, even if PSALM is deemed a successor-in-interest of NPC, still the sale of the power plants is not "in the course of trade or business" as contemplated under Section 105 of the NIRC , and thus, not subject to VAT**. **The sale of the power plants is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize NPC generation assets. PSALM was created primarily to liquidate all NPC financial obligations and stranded contract costs in an optimal manner**. x x x. **Thus, it is very clear that the sale of the power plants was an exercise of a governmental function mandated by law for the primary purpose of privatizing NPC assets in accordance with the guidelines imposed by the EPIRA law.** x x x. **Similarly, the sale of the power plants in this case is not subject to VAT since the sale was made pursuant to PSALM's mandate to privatize NPC's assets, and was not undertaken in the course of trade or business. In selling the power plants, PSALM was merely exercising a governmental function for which it was created under the EPIRA law.** Applying our ruling in G.R. No. 198146 involving the same parties and similar issues, the sale of the generating assets — the Masinloc, Ambuklao-Binga and Pantabangan power plants — in the present case is likewise not subject to VAT, since the sale was pursuant to the mandate of PSALM under the EPIRA to privatize NPC assets. The sale of the power plants is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize NPC generation assets. The sale of the power plants is clearly not the same as the sale of electricity by generation companies, transmission, and distribution companies, which is subject to VAT under Section 108 of the NIRC. Thus, we do not find any merit in the arguments raised by the CIR.

2. ID.; ID.; ID.; THE LEASE OF NAGA COMPLEX AND COLLECTION OF INCOME AND RECEIVABLES ARE NOT SUBJECT TO VAT, AS THE SAME ARE WITHIN PSALM'S POWERS NECESSARY TO DISCHARGE ITS MANDATE UNDER THE LAW AND ARE UNDERTAKEN IN THE EXERCISE OF PSALM'S GOVERNMENTAL FUNCTION. — We likewise do not find PSALM liable to pay VAT on the lease of Naga Complex; collection of income from participation fee, site visit fee, plant CDs, photocopying charges and data room access fee; and collection of receivables from employees for the excess utilization of allowed mobile phone services, inventory variance receivable from custodian, refund from a successor-generation company of the insurance premiums paid by PSALM and interest received from mandatory dollar deposit. Under the EPIRA, PSALM, as the conservator of NPC assets, operates and maintains NPC assets and manages its liabilities in trust for the national government, until the NPC assets could be sold or disposed of. Thus, during its corporate life, PSALM has powers relating to the management of its personnel and leasing of its properties as may be necessary to discharge its mandate. x x x. Since the lease of Naga Complex and collection of income and receivables are within PSALM's powers necessary to discharge its mandate under the law and likewise undertaken in the exercise of PSALM's governmental function, we do not find these activities subject to VAT. To reiterate, VAT is ultimately a tax on consumption, and it is levied only on the sale, barter or exchange of goods or services by persons who engage in such activities, **in the course of trade or business.** Accordingly, the CTA Third Division and CTA EB erred in finding PSALM liable for deficiency VAT in the amount of ₱9,566,062,571.44.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the Decision[2] promulgated on 17 May 2016 as well as the Resolution[3] promulgated on 12 August 2016 by the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB Case No. 1282. The CTA EB affirmed the Decision[4] dated 2 December 2014 and Resolution[5] dated 25 February 2015 of the Third Division of the Court of Tax Appeals (CTA Third Division) in CTA Case No. 8475. The CTA Third Division found petitioner Power Sector Assets and Liabilities Management Corporation (PSALM) liable to pay the amount of ₱9,566,062,571.44 as deficiency value-added tax (VAT) for the taxable year 2008, inclusive of the deficiency interest and delinquency interest.

The Facts

PSALM, a government-owned and controlled corporation created under Republic Act No. (RA) 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA),[6] is mandated to manage the orderly sale, disposition, and privatization of the National

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[1] *Rollo*, pp. 12-36. Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Id*. at 54-67. Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas and Ma. Belen Ringpis-Liban concurring. Presiding Justice Roman G. Del Rosario penned a Dissenting Opinion, Associate Justice Juanito C. Castañeda, Jr. penned a Separate Concurring Opinion, and Associate Justice Erlinda P. Uy penned a Concurring and Dissenting Opinion.

[3] *Id*. at 101-103.

[4] *Id*. at 251-270. Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Associate Justices Lovell R. Bautista and Esperanza R. Fabon-Victorino concurring.

[5] *Id*. at 284-285.

[6] Section 49 of Republic Act No. 9136 provides:

Power Corporation (NPC) generation assets, real estate and other disposable assets, and Independent Power Producer contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.[7]

On 9 June 2011, the Bureau of Internal Revenue (BIR) issued a Final Assessment Notice (FAN) covered by Assessment No. VT-08-00072[8] alleging that, for taxable year ending 31 December 2008, PSALM is liable to pay a deficiency VAT amounting to ₱10,103,158,715.06, inclusive of penalties and interests, computed as follows:

Taxable Sales per VAT Returns		
Add: Adjustments		
Proceeds from Sales of Generating Asset	₱53,859,322,483.00	

SEC. 49. *Creation of Power Sector Assets and Liabilities Management Corporation*. — There is hereby created a government-owned and-controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation", hereinafter referred to as the "PSALM Corp.", which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

[7] Section 50 of Republic Act No. 9136 provides:

SEC. 50. *Purpose and Objective, Domicile and Term of Existence*. — The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

The PSALM Corp. shall have its principal office and place of business within Metro Manila.

The PSALM Corp. shall exist for a period of twenty five (25) years from the effectivity of this Act, unless otherwise provided by law, and all assets held by it, all moneys and properties belonging to it, and all its liabilities outstanding upon the expiration of its term of existence shall revert to and be assumed by the National Government.

[8] *Rollo*, pp. 105-106, 108.

Proceeds from Lease of Naga Complex	172,096,188.00	
Collection of Income	9,183,364.00	
Collection of receivables	1,148,257.00	54,041,750,292.00
Total Proceeds to be subjected to VAT		₱54,041,750,292.00
Output Tax		₱6,485,010,035.04
Less: Creditable Input Tax		
Input Tax Carried Over from Previous Quarter	₱30,364,192.07	
Input Tax Claimed per VAT Return	14,932,013.06	
Total Input Tax per VAT Return	45,296,205.13	
Less: Excess Input Tax Carried Over to Succeeding Period	45,296,205.13	
Value Added Tax		₱6,485,010,035.34
Less: VAT Payments		
Deficiency Value Added Tax		₱6,485,010,035.34
Add:Increments		
Interest	₱3,618,098,680.02	
Penalty	50,000.00	3,618,148,680.02
Total Amount Due		₱10,103,158,715.06

On 7 July 2011, PSALM filed its administrative protest against the FAN, alleging that the privatization of NPC assets is an original mandate of PSALM and not subject to VAT. On 5 September 2011, PSALM filed its supplemental protest reiterating its substantive defenses.

On 19 March 2012, respondent Commissioner of Internal Revenue (CIR) issued its Final Decision on Disputed Assessment,[9] which denied PSALM's protest for lack of factual and legal bases. The CIR held that the sale of electricity is subject to VAT under RA 9337[10] and the real properties sold

[9] *Id.* at 130-132.

[10] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

by PSALM are regarded as real properties used in trade or business.

Thus, on 18 April 2012, PSALM filed a petition for review before the CTA.

The Ruling of the CTA Third Division

In a Decision dated 2 December 2014, the CTA Third Division partially granted PSALM's petition, allowing PSALM to claim input tax credits, and holding that PSALM is not liable to pay the compromise penalty of ₱50,000.00.

However, the CTA Third Division ruled that PSALM is liable to pay the deficiency VAT, because the enactment of RA 9337 superseded BIR Ruling No. 020-2002, on which PSALM relied for its VAT exemption. The CTA Third Division found that the sale of generating assets of PSALM — the Masinloc, Ambuklao-Binga and Pantabangan power plants — fall under "all kinds of goods and properties" subject to VAT under Section 106 of the National Internal Revenue Code of 1997 (NIRC). The CTA Third Division thereafter modified the computation of the penalty interest and computed it from the last day prescribed by law for filing a return. Thus, the CTA Third Division computed PSALM's liability as follows:

Output Tax		₱6,485,010,035.04
Less: Credible Input Tax		
Input tax carried over from previous Quarter	₱30,364,192.07	
Input tax claimed per VAT Return	14,932,013.06	45,296,205.13
Value Added Tax Due		₱6,439,713,829.91
Less: VAT Payments		-
Deficiency Value Added Tax		₱6,439,713,829.91
Add: Increments		
Interest (01-25-2009 to 06-30-2011)	₱3,126,348,741.53	
Compromise Penalty	-	₱3,126,348,741.53
Total Deficiency VAT		**₱9,566,062,571.44**

Thus, the dispositive portion of its Decision reads:

> WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, the assessments issued by respondent against petitioner covering taxable year 2008 for deficiency value-added tax are UPHELD but in the MODIFIED AMOUNT of NINE BILLION FIVE HUNDRED SIXTY SIX MILLION SIXTY TWO THOUSAND FIVE HUNDRED SEVENTY ONE and 44/100 PESOS (₱9,566,062,571.44), inclusive of twenty percent (20%) interest imposed upon Section 249(A) of the Tax Code, as amended.
>
> In addition, petitioner is hereby ORDERED TO PAY:
>
> a) Deficiency interest at the rate of 20% per annum on the basic deficiency VAT of ₱6,439,713,829.91 computed from June 30, 2011 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997;
>
> b) Delinquency interest at the rate of 20% per annum on the basic deficiency VAT of ₱6,439,713,829.91 [computed from] June 30, 2011 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended; and
>
> c) Delinquency interest at the rate of 20% per annum on the deficiency interest which have accrued as afore-stated in (a) computed from June 30, 2011 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.
>
> SO ORDERED.[11]

PSALM filed a motion for partial reconsideration, which was denied for lack of merit by the CTA Third Division in its 25 February 2015 Resolution. Hence, PSALM appealed to the CTA EB.

The Ruling of the CTA En Banc

In a Decision dated 17 May 2016, the CTA EB affirmed the decision of the CTA Third Division and held that PSALM is subject to VAT for its sale of generating assets, lease of Naga Complex, and collection of income and receivables, because

[11] *Id*. at 268-269.

these were done in the course of trade or business, and RA 9337 placed the electric power industry under the VAT system.

Thus, the dispositive portion of the CTA EB decision reads:

> WHEREFORE premises considered, the petition is DENIED for lack of merit. The Decision of the Third Division of this Court in CTA Case No. 8475, promulgated on December 2, 2014 and its Resolution, promulgated on February 25, 2015, are hereby AFFIRMED. No pronouncement as to costs.
>
> SO ORDERED.[12]

In a Dissenting Opinion, Presiding Justice Roman G. Del Rosario (Justice Del Rosario) opined that the assessment issued by the CIR against PSALM should be cancelled, insofar as it relates to the proceeds from sales of generating assets and from collection of income and receivables, because: (1) PSALM relied in good faith on BIR Ruling No. 020-02 dated 13 May 2002 declaring that the disposition or sale of assets as a consequence of PSALM's mandate is not subject to VAT; and (2) the collection of receivables is not in the nature of sale, barter, exchange, lease of goods or properties, performance of service, and importation of goods, so as to fall under a transaction subject to VAT under Section 105 of the NIRC.

However, Justice Del Rosario opined that the lease of Naga Complex should be excluded from the coverage of BIR Ruling No. 020-02, absent any showing that the property involved is among those transferred from NPC to PSALM. Also, he opined that the deficiency interest may not be imposed on the deficiency VAT assessed against PSALM, because deficiency interest may be imposed only on income tax, donor's tax and estate tax, under the NIRC.

In a Concurring and Dissenting Opinion, Associate Justice Erlinda P. Uy concurred with the majority opinion that PSALM is liable to pay VAT, but dissented as to the imposition of the deficiency interest, reasoning out that deficiency interest should

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[12] *Id*. at 66.

be imposed only in cases of deficiency income tax, donor's tax and estate tax.

On 12 August 2016, the CTA EB denied the motion for reconsideration filed by PSALM, due to lack of merit. Hence, PSALM filed the present petition before the Court.

The Issues

PSALM raises the following issues for resolution:

A. WHETHER PSALM'S PRIVATIZATION ACTIVITIES ARE SUBJECT TO VAT[;]

B. WHETHER PSALM IS LIABLE FOR DEFICIENCY VAT FOR TRANSACTIONS INCIDENTAL TO ITS PRIVATIZATION ACTIVITIES[;] [and]

C. WHETHER PSALM IS LIABLE FOR DEFICIENCY VAT FOR RECEIVABLES NOT ARISING FROM SALE OF GOODS OR SERVICES[.][13]

The Ruling of the Court

We find merit in the petition.

The relevant provisions of the NIRC, as amended, state:

SEC. 105. *Persons Liable*. — Any person who, **in the course of trade or business**, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act 7716.

The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock,

[13] *Id*. at 18.

nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business.

x x x x x x x x x

SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties*. —

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 1/2%).

The phrase "***sale or exchange of services***" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire another domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the

Philippines to another place in the Philippines; **sales of electricity by generation companies, transmission, and distribution companies;** services of franchise grantees of electric utilities; telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under section 119 of this Code, and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity, and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. (Emphasis supplied)

The issue of whether the sale of power plants by PSALM is subject to VAT and the arguments of both parties in this case have been passed upon and settled in G.R. No. 198146 (*Power Sector Assets and Liabilities Management Corporation v. Commissioner on Internal Revenue*),[14] where the Court ruled:

> Under Section 50 of the EPIRA law, PSALM's principal purpose is to manage the orderly sale, disposition, and privatization of the NPC generation assets, real estate and other disposable assets, and IPP's contracts with the objective of liquidating all NPC's financial obligations and stranded contract costs in an optimal manner.
>
> PSALM asserts that the privatization of NPC's assets, such as the sale of the Pantabangan-Masiway and Magat Power Plants, is pursuant to PSALM's mandate under the EPIRA law and is not conducted in the course of trade or business. PSALM cited the 13 May 2002 BIR Ruling No. 020-02, that PSALM's sale of assets is not conducted in pursuit of any commercial or profitable activity as to fall within the ambit of a VAT-able transaction under Sections 105 and 106 of the NIRC. The pertinent portion of the ruling adverted to states:
>
> *2. Privatization of assets by PSALM is not subject to VAT*
>
> Pursuant to Section 105 in relation to Section 106, both of the Tax Code of 1997, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods, is collected from any person, who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, which tax shall be paid by the seller or transferor.

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[14] G.R. No. 198146, 8 August 2017, 835 SCRA 235.

> The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial activity, including transactions incidental thereto.
>
> Since the disposition or sale of the assets is a consequence of PSALM's mandate to ensure the orderly sale or disposition of the property and thereafter to liquidate the outstanding loans and obligations of NPC, utilizing the proceeds from sales and other property contributed to it, including the proceeds from the Universal Charge, and not conducted in pursuit of any commercial or profitable activity, including transactions incidental thereto, the same will be considered an isolated transaction, which will therefore not be subject to VAT. (BIR Ruling No. 113-98 dated July 23, 1998)

On the other hand, the CIR argues that the previous exemption of NPC from VAT under Section 13 of Republic Act No. 6395 (RA 6395) was expressly repealed by Section 24 of Republic Act No. 9337 (RA 9337), which reads:

> SEC. 24. *Repealing Clause*. — The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
>
> (A) Section 13 of R.A. No. 6395 on the exemption from value-added tax of National Power Corporation (NPC);
>
> (B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sale of generated power by generation companies; and
>
> (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.

As a consequence, the CIR posits that the VAT exemption accorded to PSALM under BIR Ruling No. 020-02 is also deemed revoked since PSALM is a successor-in-interest of NPC. Furthermore, the CIR avers that prior to the sale, NPC still owned the power plants and not PSALM, which is just considered as the trustee of the NPC properties. Thus, the sale made by NPC or its successors-in-interest of its power plants should be subject to the 10% VAT beginning 1 November 2005 and 12% VAT beginning 1 February 2007.

We do not agree with the CIR's position, which is anchored on the wrong premise that PSALM is a successor-in-interest of NPC. PSALM is not a successor-in-interest of NPC. Under its charter, NPC is mandated to "undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis." With the passage of the EPIRA law which restructured the electric power industry into generation, transmission, distribution, and supply sectors, the NPC is now primarily mandated to perform missionary electrification function through the Small Power Utilities Group (SPUG) and is responsible for providing power generation and associated power delivery systems in areas that are not connected to the transmission system. On the other hand, PSALM, a government-owned and-controlled corporation, was created under the EPIRA law to manage the orderly sale and privatization of NPC's assets with the objective of liquidating all of NPC's financial obligations in an optimal manner. **Clearly, NPC and PSALM have different functions. Since PSALM is not a successor-in-interest of NPC, the repeal by RA 9337 of NPC's VAT exemption does not affect PSALM.**

In any event, even if PSALM is deemed a successor-in-interest of NPC, still the sale of the power plants is not "in the course of trade or business" as contemplated under Section 105 of the NIRC, and thus, not subject to VAT. The sale of the power plants is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize NPC generation assets. PSALM was created primarily to liquidate all NPC financial obligations and stranded contract costs in an optimal manner. The purpose and objective of PSALM are explicitly stated in Section 50 of the EPIRA law, x x x.

x x x x x x x x x

PSALM is limited to selling only NPC assets and IPP contracts of NPC. The sale of NPC assets by PSALM is not "in the course of trade or business" but purely for the specific purpose of privatizing NPC assets in order to liquidate all NPC financial obligations. PSALM is tasked to sell and privatize the NPC assets within the term of its existence. The EPIRA law even requires PSALM to submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the total privatization of the NPC assets and IPP contracts. Section 47 of the EPIRA law provides:

SEC 47. *NPC Privatization*. — Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act. Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the Philippines, on the total privatization of the generation assets, real estate, other disposable assets as well as existing IPP contracts of NPC and thereafter, implement the same, in accordance with the following guidelines, except as provided for in Paragraph (f) herein:

(a) The privatization value to the National Government of the NPC generation assets, real estate, other disposable assets as well as IPP contracts shall be optimized;

(b) The participation by Filipino citizens and corporations in the purchase of NPC assets shall be encouraged.

In the case of foreign investors, at least seventy-five percent (75%) of the funds used to acquire NPC-generation assets and IPP contracts shall be inwardly remitted and registered with the *Bangko Sentral ng Pilipinas*;

(c) The NPC plants and/or its IPP contracts assigned to IPP Administrators, its related assets and assigned liabilities, if any, shall be grouped in a manner which shall promote the viability of the resulting generation companies (gencos), ensure economic efficiency, encourage competition, foster reasonable electricity rates and create market appeal to optimize returns to the government from the sale and disposition of such assets in a manner consistent with the objectives of this Act. In the grouping of the generation assets and IPP contracts of NPC, the following criteria shall be considered:

(1) A sufficient scale of operations and balance sheet strength to promote the financial viability of the restructured units;

(2) Broad geographical groupings to ensure efficiency of operations but without the formation of regional companies or consolidation of market power;

(3) Portfolio of plants and IPP contracts to achieve management and operational synergy without dominating any part of the market or the load curve; and

(4) Such other factors as may be deemed beneficial to the best interest of the National Government while ensuring attractiveness to potential investors.

(d) All assets of NPC shall be sold in open and transparent manner through public bidding, and the same shall apply to the disposition of IPP contracts;

(e) In cases of transfer of possession, control, operation or privatization of multi-purpose hydro facilities, safeguards shall be prescribed to ensure that the national government may direct water usage in cases of shortage to protect potable water, irrigation, and all other requirements imbued with public interest;

(f) The Agus and Pulangi complexes in Mindanao shall be excluded from among the generation companies that will be initially privatized. Their ownership shall be transferred to the PSALM Corp. and both shall continue to be operated by the NPC. Said complexes may be privatized not earlier than ten (10) years from the effectivity of this Act, and, except for Agus III, shall not be subject to Build-Operate-Transfer (B-O-T), Build-Rehabilitate-Operate-Transfer (B-R-O-T) and other variations thereof pursuant to Republic Act No. 6957, as amended by Republic Act No. 7718. The privatization of Agus and Pulangi complexes shall be left to the discretion of PSALM Corp. in consultation with Congress;

(g) The steamfield assets and generating plants of each geothermal complex shall not be sold separately. They shall be combined and each geothermal complex shall be sold as one package through public bidding. The geothermal complexes covered by this requirement include, but are not limited to, Tiwi-Makban, Leyte A and B (Tongonan), Palinpinon, and Mt. Apo;

(h) The ownership of the Caliraya-Botokan-Kalayaan (CBK) pump storage complex shall be transferred to the PSALM Corporation;

(i) Not later than three (3) years from the effectivity of this Act, and in no case later than the initial implementation of open access, at least seventy percent (70%) of the total capacity of generating assets of NPC and of the total capacity of the power plants under contract with NPC located in Luzon and Visayas shall have been privatized: *Provided*, That any unsold capacity

shall be privatized not later than eight (8) years from the effectivity of this Act; and

(j) NPC may generate and sell electricity only from the undisposed generating assets and IPP contracts of PSALM Corp. and shall not incur any new obligations to purchase power through bilateral contracts with generation companies or other suppliers.

Thus, it is very clear that the sale of the power plants was an exercise of a governmental function mandated by law for the primary purpose of privatizing NPC assets in accordance with the guidelines imposed by the EPIRA law.

In the 2006 case of *Commissioner of Internal Revenue v. Magsaysay Lines, Inc. (Magsaysay)*, the Court ruled that the sale of the vessels of the National Development Company (NDC) to Magsaysay Lines, Inc. is not subject to VAT since it was not in the course of trade or business, as it was involuntary and made pursuant to the government's policy of privatization. The Court cited the CTA's ruling that the phrase "course of business" or "doing business" connotes regularity of activity. Thus, since the sale of the vessels was an isolated transaction, made pursuant to the government's privatization policy, and which transaction could no longer be repeated or carried on with regularity, such sale was not in the course of trade or business and was not subject to VAT.

Similarly, the sale of the power plants in this case is not subject to VAT since the sale was made pursuant to PSALM's mandate to privatize NPC's assets, and was not undertaken in the course of trade or business. In selling the power plants, PSALM was merely exercising a governmental function for which it was created under the EPIRA law.[15] (Boldfacing and underscoring supplied)

Applying our ruling in G.R. No. 198146 involving the same parties and similar issues, the sale of the generating assets — the Masinloc, Ambuklao-Binga and Pantabangan power plants — in the present case is likewise not subject to VAT, since the sale was pursuant to the mandate of PSALM under the EPIRA to privatize NPC assets. The sale of the power plants is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize NPC generation assets.[16]

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[15] *Id*. at 275-285.

[16] *Id*. at 279.

The sale of the power plants is clearly not the same as the sale of electricity by generation companies, transmission, and distribution companies, which is subject to VAT under Section 108 of the NIRC. Thus, we do not find any merit in the arguments raised by the CIR.

We likewise do not find PSALM liable to pay VAT on the lease of Naga Complex; collection of income from participation fee, site visit fee, plant CDs, photocopying charges and data room access fee; and collection of receivables from employees for the excess utilization of allowed mobile phone services, inventory variance receivable from custodian, refund from a successor-generation company of the insurance premiums paid by PSALM and interest received from mandatory dollar deposit.

Under the EPIRA, PSALM, as the conservator of NPC assets, operates and maintains NPC assets and manages its liabilities in trust for the national government, until the NPC assets could be sold or disposed of.[17] Thus, during its corporate life, PSALM has powers relating to the management of its personnel and leasing of its properties as may be necessary to discharge its mandate. Section 51 of the EPIRA law provides:

SECTION 51. *Powers.* — The Corporation shall, in the performance of its functions and for the attainment of its objective, have the following powers:

> (a) To formulate and implement a program for the sale and privatization of the NPC assets and IPP contracts and the liquidation of NPC debts and stranded contract costs, such liquidation to be completed within the term of existence of the PSALM Corp.;
>
> (b) To take title to and possession of, administer and conserve the assets transferred to it; to sell or dispose of the same at such price and under such terms and conditions as it may deem necessary or proper, subject to applicable laws, rules and regulations;

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[17] *Power Generation Employees Association-NPC v. National Power Corporation*, G.R. No. 187420, 9 August 2017, 835 SCRA 645, 670.

(c) To take title to and possession of the NPC IPP contracts and to appoint, after public bidding in transparent and open manner, qualified independent entities who shall act as the IPP Administration in accordance with this Act;

(d) To calculate the amount of the stranded debts and stranded contract costs of NPC which shall form the basis for ERC in the determination of the universal charge;

(e) To liquidate the NPC stranded contract costs, utilizing the proceeds from sales and other property contributed to it, including the proceeds from the universal charge;

(f) To adopt rules and regulations as may be necessary or proper for the orderly conduct of its business or operations;

(g) To sue and be sued in its name;

(h) **To appoint or hire, transfer, remove and fix the compensation of its personnel;** *Provided, however*, That the Corporation shall hire its own personnel only if absolutely necessary, and as far as practicable, shall avail itself of the services of personnel detailed from other government agencies;

(i) **To own, hold, acquire, or lease real and personal properties as may be necessary or required in the discharge of its functions**;

(j) To borrow money and incur such liabilities, including the issuance of bonds, securities or other evidences of indebtedness utilizing its assets as collateral and/or through the guarantees of the National Government: *Provided, however*, That all such debts or borrowings shall have been paid off before the end of its corporate life;

(k) To restructure existing loans of the NPC;

(l) To collect, administer, and apply NPC's portion of the universal charge; and

(m) To structure the sale, privatization or disposition of NPC assets and IPP contracts and/or their energy output based on such terms and conditions which shall optimize the value and sale prices of said assets. (Emphasis supplied)

Since the lease of Naga Complex and collection of income and receivables are within PSALM's powers necessary to discharge

its mandate under the law and likewise undertaken in the exercise of PSALM's governmental function, we do not find these activities subject to VAT. To reiterate, VAT is ultimately a tax on consumption, and it is levied only on the sale, barter or exchange of goods or services by persons who engage in such activities, **in the course of trade or business**.[18]

Accordingly, the CTA Third Division and CTA EB erred in finding PSALM liable for deficiency VAT in the amount of ₱9,566,062,571.44. Since PSALM has no VAT liability in this case, there is no necessity to rule upon the issue of deficiency interest and delinquency interest.

WHEREFORE, we **GRANT** the petition. The Decision of the Court of Tax Appeals in CTA Case No. 8475, dated 2 December 2014, which found petitioner Power Sector Assets and Liabilities Management Corporation liable to pay the amount of ₱9,566,062,571.44 as deficiency value-added tax for the taxable year 2008, inclusive of the deficiency interest and delinquency interest, is **REVERSED** and **SET ASIDE**. Assessment No. VT-08-00072 is hereby ordered **CANCELLED**.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.*, concur.

FIRST DIVISION

[G.R. No. 229509. July 3, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BABYLYN MANANSALA *y* CRUZ,** *accused-appellant.*

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[18] *Commissioner of Internal Revenue v. Magsaysay Lines, Inc.*, 529 Phil. 64 (2006).

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); THE PROSECUTION HAS THE BURDEN TO ESTABLISH THE INTEGRITY OF THE DANGEROUS DRUG, THIS BEING THE *CORPUS DELICTI* OF THE CASE, WHICH PRESUPPOSES THAT AN UNBROKEN CHAIN OF CUSTODY OVER THE SUBJECT ILLEGAL DRUG, FROM THE TIME OF ITS CONFISCATION UNTIL ITS PRESENTATION IN COURT, IS CLEARLY AND SUFFICIENTLY PROVED. — While generally the findings of the RTC, as affirmed by the CA, are binding and conclusive upon this Court, a careful examination of the records of the case reveals that the lower courts overlooked some significant facts and circumstances which, if considered in their true light, must compel appellant's exoneration. It is axiomatic of course, that to secure the conviction of the appellant, all the elements of the crime charged against her must be proven. And among the fundamental principles to which undivided fealty is given is that, in a criminal prosecution for violation of Section 5 and Section 11 of RA 9165, as amended, the State is mandated to prove that the illegal transaction did in fact take place; and there is no stronger or better proof of this fact than the presentation in court of the actual and tangible seized drug itself mentioned in the inventory, and as attested to by the so-called insulating witnesses named in the law itself. Hence, it is the prosecution's burden to establish the integrity of the dangerous drug, this being the *corpus delicti* of the case. This presupposes that an unbroken chain of custody over the subject illegal drug, from the time of its confiscation until its presentation in court, must be clearly and sufficiently proved.

2. ID.; ID.; SECTION 21, ARTICLE II OF RA 9165; CHAIN OF CUSTODY RULE; THE SEIZED ITEMS MUST BE INVENTORIED AND PHOTOGRAPHED IMMEDIATELY AFTER SEIZURE OR CONFISCATION, IN THE PRESENCE OF THE ACCUSED OR HIS/HER REPRESENTATIVE OR COUNSEL, AND THE THREE INSULATING WITNESSES; IN CASE OF NON-COMPLIANCE THEREWITH, THE PROSECUTION IS MANDATED TO PROVE THERE WAS JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE

INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS WERE PROPERLY PRESERVED. — The Chain of Custody Rule is embodied in Section 21, Article II of RA 9165, the law applicable at the time of the commission of the crimes charged x x x. Plainly stated, "the provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination." The Court understands that strict compliance with the above-mentioned rule is not always possible. However, in case of non-compliance therewith, the prosecution is mandated to prove that (a) there was justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items were properly preserved. Here, the Court finds that the prosecution failed to comply with the rule requiring the presence of the three insulating witnesses.

3. ID.; ID.; ID.; ID.; THE PROSECUTION MUST ALLEGE AND PROVE THE REASONS FOR THE ABSENCE OF THE THREE REQUIRED WITNESSES AND SHOW THAT EARNEST EFFORTS WERE MADE TO SECURE THEIR ATTENDANCE; JUSTIFIABLE REASONS FOR NON-COMPLIANCE WITH THE REQUIRED THREE-WITNESSES. — In the landmark case of *People v. Lim*, this Court stressed the importance of the presence of the three insulating witnesses and ruled that where they are absent, the prosecution must allege and prove the reasons for their absence and likewise show that earnest efforts were made to secure their attendance. The Court explained: It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as: (1) **their attendance was impossible because the place of arrest was a remote area**; (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf**; (3) **the elected official themselves were involved**

in the punishable acts sought to be apprehended; (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove[d] futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention**; or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.** Earnest effort to secure the attendance of the necessary witnesses must be proven. x x x. Regrettably, in this case the prosecution made no effort at all to explain or justify why two of the three required witnesses — a representative from the DOJ and an elected public official — were not present during the buy-bust operation against appellant, nor did it show that earnest efforts were in fact exerted to secure or obtain their presence or attendance thereat.

4. **ID.; ID.; ID.; ID.; THE PRESENCE OF THE INSULATING WITNESSES IS A HIGH PREROGATIVE REQUIREMENT, THE NON-FULFILLMENT OF WHICH CASTS SERIOUS DOUBTS UPON THE INTEGRITY OF THE *CORPUS DELICTI* ITSELF — THE VERY PROHIBITED SUBSTANCE ITSELF — AND IMPERILS AND JEOPARDIZES THE PROSECUTION'S CASE. —** The Court, in a plethora of cases, has repeatedly stressed that the presence of the required insulating witnesses at the time of the inventory is mandatory, and that their presence thereat serves both a crucial and a critical purpose. Indeed, under the law, the presence of the so-called insulating witnesses is a high prerogative requirement, the non-fulfillment of which casts serious doubts upon the integrity of the *corpus delicti* itself —the very prohibited substance itself — and for that reason imperils and jeopardizes the prosecution's case.

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.*:

In yet another drug-related case, the Court is constrained to acquit the offender for non-compliance with the chain of custody rule laid down in Section 21 of Republic Act (RA) No. 9165.[1]

On appeal is the February 9, 2016 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07017 which affirmed the September 8, 2014 Joint Decision[3] of the Regional Trial Court (RTC) of Manila, Branch 13, in Criminal Case Nos. 11-288493-94 convicting Babylyn Manansala *y* Cruz (appellant) of the crimes of illegal sale and illegal possession of methamphetamine hydrochloride, or *shabu*, under Sections 5 and 11 (3), Article II of RA 9165, or the Comprehensive Dangerous Drugs Act of 2002.

Factual Antecedents

Pertinent portions of the two Informations charging appellant are quoted below:

Criminal Case No. 11[-]288493

That on or about December 8, 2011, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver, transport or distribute any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale to a police officer/poseur-buyer ZERO POINT ZERO ONE TWO (0.012) [gram] of white crystalline substance known as "*shabu*" placed in a transparent plastic sachet marked as "DAID" containing methamphetamine hydrochloride, which is a dangerous drug.

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[1] 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.

[2] CA *rollo*, pp. 86-103; penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Rodil V. Zalameda and Pedro B. Corales.

[3] Records at pp. 110-118; penned by Judge Emilio Rodolfo Y. Legaspi III.

CONTRARY TO LAW.[4]

Criminal Case No. 11[-]288494

That on or about December 8, 2011 in the City of Manila, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in her possession and under her custody and control one (1) heat sealed transparent plastic sachet containing zero point zero two three (0.023) gram of white crystalline substance known as "*shabu*" marked as "DAID-1" containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[5]

Arraigned thereon, appellant entered a negative plea to both indictments.[6]

Version of the Prosecution

The prosecution anchored its case mainly on the testimony of PO3 John Alfred Taruc (PO3 Taruc), which testimony is summarized, as follows:

In the morning of December 8, 2011, a confidential informant came to the Manila Police District (MPD) District Anti-Illegal Drugs — Special Operations Task Unit (DAID-SOTU) to report that he had set a drug deal at 6:00 p.m. at Taft Avenue, corner Kalaw Street, with a certain alias "Bek Bek",[7] later identified as herein appellant.[8] Acting on said information, the Chief of DAID-Special Operation Task Group (SOTG), PCINSP Robert Casimiro Domingo, formed a buy-bust team[9] with PO3 Taruc as poseur-buyer[10] and SPO1 Melany Amata (SPO1 Amata), PO3

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[4] *Id*. at 2.

[5] *Id*. at 3.

[6] *Id.* at 33.

[7] TSN, April 5, 2013, pp. 5-6.

[8] *Id*. at 27.

[9] Records, p. 21.

[10] TSN, April 5, 2013, p. 8.

Modesto Bornel, and PO3 Enrique Lalu as back-up.[11] The buy bust money consisting of one ₱1,000.00 bill bearing serial no. HW675766[12] was marked with PO3 Taruc's initials.[13] The team arrived at the target area at 6:00 p.m.[14] Upon meeting appellant, the confidential informant introduced PO3 Taruc as the buyer of the *shabu*.[15] PO3 Taruc then gave appellant the marked ₱1,000.00 bill.[16] Appellant placed the marked money in the right pocket of her pants[17] and brought out a small plastic sachet[18] containing a white crystalline substance which she handed over to PO3 Taruc. Thereafter, PO3 Taruc removed his bull cap, which was the pre-arranged signal, to summon the back-up operatives to come forth as the transaction had been consummated.[19] Appellant was then immediately arrested and ordered to empty her pockets.[20] The marked money and another plastic sachet of *shabu* were recovered from appellant.[21] PO3 Taruc proceeded to mark the purchased plastic sachet as "DAID" and the other sachet as "DAID-1" while SPO1 Amata took pictures.[22] An inventory of the seized items was then made in the presence of one media representative named Rene Crisostomo.[23] After the inventory, appellant was brought to the office of the MPD DAID[24] and the seized items were turned

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[11] *Id*. at 9.

[12] Records, p. 26.

[13] TSN, April 5, 2013, p. 6.

[14] *Id*. at 10.

[15] *Id*. at 11.

[16] *Id*. at 12.

[17] *Id*.

[18] *Id*. at 13.

[19] *Id*.

[20] *Id*. at 15.

[21] *Id*.

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

[23] *Id*. at 20.

[24] *Id*. at 21.

over to the Police Investigator, PO2 Voltaire S. Yap (PO2 Yap), and to Police Inspector Eduardo Vito Pama (PI Pama) who then prepared and signed the request for laboratory examination of the seized items.[25] After this, PO3 Taruc and PI Pama brought the specimen to the crime laboratory.[26] The seized items were received by forensic chemist PI Elisa G. Reyes (Forensic Chemist Reyes), who then conducted tests on the white crystalline substance contained in the two plastic sachets, both of which tested positive for the presence of methamphetamine hydrochloride, commonly known as *shabu*. The results of the laboratory test were contained in Chemistry Report No. D-1211-11.[27]

Version of Appellant

The appellant denied the accusations against her. Appellant testified that, in the afternoon of December 8, 2011, at around 2:30, she went to visit her husband at the Manila City Jail. After the visit, she boarded a jeepney on her way home. Subsequently, five men in civilian attire likewise boarded the jeepney and instructed her to alight therefrom. She was then taken to the DAID office where the police officers demanded money for her release.[28]

Ruling of the Regional Trial Court

On September 8, 2014, the RTC of Manila, Branch 13, rendered its Joint Decision finding appellant guilty beyond reasonable doubt of violation of Sections 5 and 11 of RA 9165.

The RTC upheld the validity of the buy-bust operation and gave more credence to the testimony of PO3 Taruc than to the denial of appellant because it found no ill motive on the part of the police officers to falsely accuse appellant. The RTC likewise found that the chain of custody of the seized items was established by the prosecution.

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[25] Records, p. 9

[26] TSN, April 5, 2013, p. 23.

[27] Records, p. 10.

[28] TSN, August 29, 2014, pp. 3-14.

The RTC thus disposed of it, this wise —

In Criminal Case No. 11-288493

WHEREFORE, in view of the foregoing, this Court finds the accused BABYLYN MANANSALA y CRUZ GUILTY beyond reasonable doubt as principal for violation of Section 5 of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (for pushing shabu) as charged and she is sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a Fine in the amount of ₱500,000.00.

In Criminal Case No. 11-288494

WHEREFORE, in view of the foregoing, this Court finds the accused BABYLYN MANANSALA y CRUZ GUILTY beyond reasonable doubt as principal for violation of Section 11 (3) of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (for possession of shabu) as charged and she is sentenced to suffer imprisonment in an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years and to pay a Fine in the amount of ₱350,000.00.

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SO ORDERED.[29]

Ruling of the Court of Appeals

On appeal, appellant contended that the prosecution failed to prove the integrity of the seized *shabu* as the apprehending officers did not strictly comply with the Chain of Custody Rule spelled out in Section 21 of RA 9165.

In its Decision of February 9, 2016, the CA denied the appeal. In affirming the RTC Decision, the CA ratiocinated that all elements of the crime of illegal sale of *shabu* were duly established by the evidence presented by the prosecution.[30] The CA, like the RTC, found that the testimony of PO3 Taruc deserved more credence since testimonies of the police officers in dangerous drug cases carry with them the presumption of

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[29] Records, pp. 116-117.

[30] *Rollo*, p. 8.

regularity in the performance of official functions.[31] The CA held that as between the categorical statements of the prosecution witnesses and the bare denial of appellant, the former must perforce prevail.[32] The CA further declared that in these two cases, the links in the custody of the seized drugs were duly established, to wit: *first*, PO3 Taruc recovered the *shabu* from appellant; *second*, PO3 Taruc made a physical inventory of the confiscated items in the presence of a media representative and then turned it over to the assigned police investigator, PO2 Yap, who prepared the request for laboratory examination; *third*, PO2 Yap and PO3 Taruc transmitted the seized *shabu* to the Philippine National Police (PNP) Crime Laboratory Office for examination; and *fourth*, Forensic Chemist Reyes issued Chemistry Report No. D-1211-11 stating that the specimen yielded positive result for *methamphetamine hydrochloride*, a dangerous drug.[33]

Undeterred, appellant instituted the instant appeal insisting that her guilt had not been proved beyond reasonable doubt.

Our Ruling

There is merit in the present appeal.

While generally the findings of the RTC, as affirmed by the CA, are binding and conclusive upon this Court, a careful examination of the records of the case reveals that the lower courts overlooked some significant facts and circumstances which, if considered in their true light, must compel appellant's exoneration.

It is axiomatic of course, that to secure the conviction of the appellant, all the elements of the crime charged against her must be proven. And among the fundamental principles to which undivided fealty is given is that, in a criminal prosecution for violation of Section 5 and Section 11 of RA 9165, as amended,

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

[32] *Id*. at 17.

[33] *Id*. at 16.

the State is mandated to prove that the illegal transaction did in fact take place; and there is no stronger or better proof of this fact than the presentation in court of the actual and tangible seized drug itself mentioned in the inventory, and as attested to by the so-called insulating witnesses named in the law itself. Hence, it is the prosecution's burden to establish the integrity of the dangerous drug, this being the *corpus delicti* of the case.[34] This presupposes that an unbroken chain of custody over the subject illegal drug, from the time of its confiscation until its presentation in court, must be clearly and sufficiently proved.[35]

The Chain of Custody Rule is embodied in Section 21, Article II of RA 9165, the law applicable at the time of the commission of the crimes charged, and provides:

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 drags, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination.

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[34] *People v. Vistro*, G.R. No. 225744, March 6, 2019.

[35] *People v. Tumangong*, G.R. No. 227015, November 26, 2018.

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drags, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however,* That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours.

x x x x x x x x x

Plainly stated, "the provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination."[36]

The Court understands that strict compliance with the above-mentioned rule is not always possible. However, in case of non-compliance therewith, the prosecution is mandated to prove that (a) there was justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items were properly preserved.[37]

Here, the Court finds that the prosecution failed to comply with the rule requiring the presence of the three insulating witnesses. As can be gleaned from the testimony of PO3 Taruc, only one out of the three required witnesses was present at the time of seizure and apprehension, *viz.*:

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[36] *People v. Casco*, G.R. No. 212819, November 28, 2018.

[37] *People v. Dumagay*, G.R. No. 216753, February 7, 2018.

Q: In that inventory appears a name with signature of PO3 [Taruc], do you know who is this person?
A: Yes Sir.

Q: Whose signature appears over the name of that person?
A: That is my signature Sir.

Q: In this Inventory also appears a name of Rene Crisostomo as witness. Do you [know] who is this person?
A: A media person Sir.

Q: And whose signature appears over the name of this person?
A: Rene Crisostomo Sir.

Q: How were you able to know that the signature that appears over the name of Rene Crisostomo was indeed his signature?
A: I was there when he signed that document Sir.

Q: Now Mr. Witness when you [were] preparing this Inventory where was the accused at that time?
A: She was beside me Sir.[38]

In the landmark case of *People v. Lim*,[39] this Court stressed the importance of the presence of the three insulating witnesses and ruled that where they are absent, the prosecution must allege and prove the reasons for their absence and likewise show that earnest efforts were made to secure their attendance. The Court explained:

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) **their attendance was impossible because the place of arrest was a remote area**; (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf**; (3) **the elected official themselves were involved in the punishable acts sought to be apprehended**; (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public**

[38] TSN, April 5, 2013, p. 20.

[39] G.R. No. 231989, September 4, 2018.

> **official within the period required under Article 125 of the Revised Penal Code prove[d] futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention**; or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* teaches:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to [the] state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.

Regrettably, in this case the prosecution made no effort at all to explain or justify why two of the three required witnesses — a representative from the DOJ and an elected public official — were not present during the buy-bust operation against

appellant, nor did it show that earnest efforts were in fact exerted to secure or obtain their presence or attendance thereat.

This Court, in *People v. Malana*,[40] took the view that a buy-bust team can easily gather the three required witnesses, considering that its operation is, by its nature, a planned activity. Here, the apprehending team had more than enough time to comply with the requirements under RA 9165. PO3 Taruc himself testified that they received the tip from their confidential informant in the morning of December 8, 2011.[41] Then, they immediately made preparations for the buy-bust operation which took place later that day at 6:00 p.m.[42] Therefore, it is safe to say that the buy-bust team had ample time to comply with the requirements of the law had they exerted the slightest of efforts. Needless to say, this failure is not helped by the fact that during the trial, the prosecution utterly failed to offer any explanation for non-compliance with the law.

The Court, in a plethora of cases,[43] has repeatedly stressed that the presence of the required insulating witnesses at the time of the inventory is mandatory, and that their presence thereat serves both a crucial and a critical purpose. Indeed, under the law, the presence of the so-called insulating witnesses is a high prerogative requirement, the non-fulfillment of which casts serious doubts upon the integrity of the *corpus delicti* itself — the very prohibited substance itself — and for that reason imperils and jeopardizes the prosecution's case.[44]

WHEREFORE, the appeal is **GRANTED**. The February 9, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC

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[40] G.R. No. 233747, December 5, 2018.

[41] TSN, April 5, 2013, p. 5.

[42] *Id*. at 6.

[43] *People v. Mendoza*, 736 Phil. 749, 761 (2014); *People v. Tomawis*, G.R. No. 228890, April 18, 2018; *People v. Callejo*, G.R. No. 227427, June 6, 2018; *People v. Pagsigan*, G.R. No. 232487, September 3, 2018; *Mapandi v. People*, G.R. No. 200075, April 4, 2018; *Ramos v. People,* G.R. No. 233572, July 30, 2018; *People v. Lumudag*, G.R. No. 201478, August 23, 2017.

[44] *People v. Gaylon*, G.R. No. 219086, March 19, 2018.

No. 07017 is **REVERSED** and **SET ASIDE**. Accordingly, appellant Babylyn Manansala *y* Cruz is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is being lawfully held for another cause.

Let a copy of this Decision be furnished the Superintendent, Correctional Institute for Women, Mandaluyong City, for immediate implementation. The said Superintendent is **DIRECTED** to report the action taken to this Court, within five (5) days from receipt of this Decision.

SO ORDERED.

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

Gesmundo, J., on official leave.

SECOND DIVISION

[G.R. No. 231361. July 3, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RESSURRECCION RESSURRECCION *y* ROBLES,[*] JONATHAN MANUEL *y* OTIG, ANICETO DECENA *y* GONZAGA, JERRY ROBLES *y* UNATO,** *accused*, **CAROL ALCANTARA *y* MAPATA and JOSELITO CRUZ *y* DE GUZMAN,** *accused-apellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165);

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[*] Also "Resurreccion Robles Resurreccion" and "Resurreccion Resurreccion *y* Robles" in some parts of the record.

ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; THE STATE BEARS NOT ONLY THE BURDEN OF PROVING THESE ELEMENTS, BUT ALSO OF PROVING THE *CORPUS DELICTI* OR THE BODY OF THE CRIME. — The accused-appellants were charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, 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 must 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. On the other hand, to reach a conviction in a case involving the crime of illegal possession of dangerous drugs, the following must be proved beyond reasonable doubt: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. In either case, however, 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.; SECTION 21, ARTICLE II OF RA 9165; CHAIN OF CUSTODY RULE; MANDATORY PROCEDURES TO MAINTAIN THE INTEGRITY OF THE CONFISCATED DRUGS USED AS EVIDENCE; 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 REQUISITE TO MAKE A FINDING OF GUILT. — 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 requisite to make a finding of guilt. In this connection, Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crimes, 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) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. This must be so because the possibility of abuse is great given 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.

3. **ID.; ID.; ID.; ID.; THE PHYSICAL INVENTORY AND THE PHOTOGRAPHING OF THE SEIZED ITEMS MUST BE MADE IMMEDIATELY AFTER, OR AT THE PLACE OF APPREHENSION, EXCEPT WHEN THE SAME IS NOT PRACTICABLE THAT THE INVENTORY AND PHOTOGRAPHING CAN BE DONE AS SOON AS THE BUY-BUST TEAM REACHES THE NEAREST POLICE STATION OR THE NEAREST OFFICE OF THE APPREHENDING OFFICER/TEAM, BOTH IN THE PRESENCE OF THE REQUIRED THREE WITNESSES.** — Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation.** The said inventory must be done **in the presence of the aforementioned required witness,** all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and

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

4. ID.; ID.; ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE MANDATORY PROCEDURE DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID AND INVALID, PROVIDED THE PROSECUTION SATISFACTORILY PROVES THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED. — It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. This Court has emphasized that the prosecution should explain the reasons behind the procedural lapses.

5. ID.; ID.; ID.; ID.; THE PRESENCE OF THE REQUIRED WITNESSES AT THE TIME OF THE APPREHENSION AND INVENTORY IS MANDATORY; RATIONALE. — In the present case, the apprehending team led by PO1 Gaerlan did not conduct the buy-bust operation or the inventory post-operation in the presence of the required witnesses. x x x. Cruz testified that no person from the media or any elected public official was present during the buy-bust operation or during the post-operation inventory. x x x. It bears emphasis that the

presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis,* the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows: The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest.** It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

6. ID.; ID; ID.; ID.; NONCOMPLIANCE OF THE MANDATORY REQUIREMENTS UNDER JUSTIFIABLE GROUNDS, AS LONG AS THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICER/ TEAM, SHALL NOT RENDER VOID AND INVALID SUCH SEIZURES AND CUSTODY OVER SAID ITEMS, PROVIDED THE PROSECUTION MUST FIRST RECOGNIZE ANY LAPSE ON THE PART OF THE POLICE OFFICERS, AND BE ABLE TO JUSTIFY THE SAME. — This Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always be advised to do this 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 again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti.* Thus, this adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody. Concededly, Section 21 of the IRR of RA 9165 provides that "noncompliance of these requirements under justifiable grounds, as long as the

integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items." For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.

7. ID.; ID.; ID.; ID.; BREACHES OF THE MANDATORY PROCEDURE 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. — 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* would have been compromised. As the Court explained in *People v. Reyes:* 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.

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

CAGUIOA, *J.*:

Before this Court is an ordinary appeal[1] filed by the accused-appellants Carol Alcantara *y* Mapata (Alcantara) and Joselito Cruz *y* De Guzman (Cruz) (collectively accused-appellants) assailing the Decision[2] dated September 27, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05961, which affirmed the Decision[3] dated February 3, 2011 of the Regional Trial Court of San Mateo, Rizal, Branch 76 (RTC) in Criminal Case Nos. 7140 and 7141, finding Alcantara and Cruz guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002,"[4] as amended.

The Facts

Two (2) Informations were filed against the accused-appellants in this case, along with other accused Ressureccion R. Ressurreccion (Ressurreccion), Jonathan O. Manuel (Manuel), Aniceto G. Decena (Decena) and Jerry U. Robles (Robles), that read as follows:

Criminal Case No. 7140.

That on or about the 2nd day of October, 2003, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, in conspiracy with one another, and acting as an organized or syndicated crime

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[1] See Notice of Appeal dated October 18, 2016; *rollo,* pp. 19-20.

[2] *Rollo,* pp. 2-18. Penned by Associate Justice Melchor Q.C. Sadang with Associate Justices Celia C. Librea-Leagogo and Nina G. Antonio-Valenzuela, concurring.

[3] CA *rollo,* pp. 62-80. Penned by Presiding Judge Josephine Zarate Fernandez.

[4] Titled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

group for the purpose of gain, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to another person a total weight of 0.06 gram of white crystalline substance contained in three (3) heat-seated transparent plastic sachets, which gave positive result to the test for Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.[5]

Criminal Case No. 7141

That on or about the 2nd day of October, 2003, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, in conspiracy with one another, and acting as an organized or syndicated crime group for the purpose of gain, without being authorized by law, did then and there willfully, unlawfully and knowingly have in their possession, direct custody and control a total weight of 1.02 grams of white crystalline substance contained in twenty-seven (27) heat-sealed transparent plastic-sachets and one (1) unsealed transparent plastic bag which gave positive result to the test for Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.[6]

The prosecution alleged[7] that at around 11:35 a.m. on October 2, 2003, PO1 Richie Gaerlan (PO1 Gaerlan), a member of the Anti-Illegal Drugs Special Operations Task Force of the Marikina City Police, was informed by an informant about an ongoing sale of *shabu* by *alias* Jonjon, later identified as Manuel, at Bangkaan St., Concepcion 1, Marikina City. The confidential informant told PO1 Gaerlan that he could introduce him to Manuel so he could buy *shabu* from the latter and PO1 Gaerlan would be able to arrest him.[8]

PO1 Gaerlan immediately went to the place to verify the information relayed by the informant. When he arrived, there

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[5] *Rollo,* p. 3.

[6] *Id.*

[7] See Appellee's Brief dated March 13, 2014, CA *rollo,* pp. 102-118.

[8] TSN, March 11, 2004, p. 3.

were several persons waiting for their turn to buy *shabu.* The informant then introduced PO1 Gaerlan to Manuel and told the latter that PO1 Gaerlan was a scorer of *shabu.* Manuel said that he ran out of stock, and then told PO1 Gaerlan and the informant to go to the house of a certain *alias "nanay"* in San Mateo, Rizal. After the said encounter, PO1 Gaerlan went back to his office and informed the Chief of Police, P/Sr Insp. Ramchrisen V. Haveria, about the arrangement with Manuel. Afterwards, they immediately coordinated with the Philippine Drug Enforcement Agency (PDEA), and they were given a reference control number which was NOC-0210-03-09. This reference control number was entered in the Pre-Operational Report dated October 2, 2003 prepared by the team who was to conduct the planned buy-bust operation later in the day.[9]

The team of PO1 Gaerlan then proceeded to prepare a plan to conduct a buy-bust-operation in San Mateo, Rizal. It was agreed that PO1 Gaerlan was the designated poseur-buyer and was then given three powder dusted one-hundred-peso bills bearing serial numbers D895476, BF333820, and FC154170.[10] In addition, they agreed that PO1 Gaerlan would remove his cap to signal that the sale had been consummated.[11] They then coordinated with the San Mateo Police Station, through a letter of coordination, for the conduct of the buy-bust operation. Three members of the San Mateo Police — SPO4 Ramon Cruz, PO2 Dionise Salcedo, and PO1 Pedro Avelino, Jr. joined the team of PO1 Gaerlan as backup.[12]

Shortly after, they proceeded with the informant to the house of *alias "nanay"* located in Sunnyville 5, Ampid at San Mateo, Rizal. Upon arrival, they noticed that several people were coming in and out of the said house. After briefly observing the place, PO1 Gaerlan and the informant approached the house.[13]

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[9] TSN, March 11, 2004, pp. 3-4; CA *rollo,* p. 106.

[10] TSN, April 20, 2004, p. 8.

[11] TSN, March 11, 2004, p. 10.

[12] TSN, March 11, 2004, pp. 6-7; CA *rollo,* p. 106.

[13] TSN, March 11, 2004, pp. 7-8.

On their way, PO1 Gaerlan heard a male voice from inside the house who said "*Dalawang piso sa akin.*" At the gate, they were met by the doorman who asked them "*Magkano bibilhin ninyo?*" to which they answered "*Tres x x x lang.*" The doorman was later identified as Cruz.[14]

After the doorman allowed them to enter the house, he then pointed them to an older woman, later identified as accused Ressurreccion, and PO1 Gaerlan and the informant approached her to give her the marked money. Ressurreccion told them to wait, and while they were waiting, PO1 Gaerlan noticed that there were several persons seated in front of a table who were repacking suspected *shabu.*[15] Manuel was packing the suspected *shabu* inside sachets, accused Robles was cutting plastic sachets, Decena was heat sealing the plastic sachets using an improvised burner, and they would then pass all the packed suspected *shabu* to Alcantara.

Ressurreccion approached the table and put the marked money on the top of the table. Alcantara then gave Ressurreccion three plastic sachets containing suspected *shabu.* Ressurreccion, in turn, gave the plastic sachets to PO1 Gaerlan. PO1 Gaerlan then stepped outside and removed his bullcap to signal the consummation of the sale. Upon seeing this go-signal, the other police operatives rushed to the house but someone shouted "raid!" so PO1 Gaerlan immediately went back inside and arrested Ressurreccion. The other accused tried to escape but they were apprehended by the other members of PO1 Gaerlan's team and were subsequently informed of their constitutional rights.[16]

PO1 Christopher Años (PO1 Años), a member of PO1 Gaerlan's team, seized the following items that were on top of the table: 1) money in different denominations amounting to ₱3,500.00; 2) 30 plastic sachets of suspected *shabu;* 3) three bundles of plastic sachets; 4) three pairs of scissors; and 5) one

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[14] TSN, March 11, 2004, pp. 8-9; CA *rollo,* p. 107.

[15] TSN, March 11, 2004, pp. 9-10.

[16] TSN, March 11, 2004, pp. 10-12.

improvised burner.[17] PO1 Años put the necessary markings on the seized items, and listed the serial numbers of the seized peso bills.[18]

Afterwards, the team brought the suspects to the San Mateo Police Station to be blottered, while the specimens were brought to the Eastern Police District Crime Laboratory for examination. From the San Mateo Police Station, all the accused were brought to the Marikina Police Station and then to the Amang Rodriguez Medical Center for medical check-up. Ressurreccion was also taken to Camp Crame for powder dust testing.[19]

Based on the Physical Science Report No. D-1879-03E dated October 3, 2003 of Forensic Chemical Officer Police Senior Inspector Annalee Forro who examined the specimens submitted by the buy-bust team, 30 heat-sealed plastic sachets contained *Methamphetamine Hydrochloride* or *shabu*.[20] In addition, according to Chemistry Report Number 0-430-03 dated October 2, 2003 by Forensic Chemical Officer Police Inspector Sandra Decena Go, Ressurreccion tested positive for the presence of a bright ultra-violet fluorescent powder on both the palmar and dorsal sides of both her hands.[21]

On the other hand, the defense alleged[22] that Alcantara was the daughter-in-law of Ressurreccion. While she was in Ressurreccion's house on October 2, 2003, seven men suddenly barged in and conducted a search thereat. Thereafter, three of the men brought Ressurreccion outside of the house while the other four continued with the search and took a mountain bike, DVD player, video camera, and jewelries. They then brought Ressurreccion inside a vehicle so Alcantara likewise rode the

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[17] TSN, April 20, 2004, pp. 13-19.

[18] TSN, March 11, 2004, p. 14.

[19] TSN, March 11, 2004, p. 14.

[20] Records, p. 14.

[21] *Id*. at 18.

[22] See Brief for the Accused-appellants dated October 2, 2013; CA *rollo,* pp. 32-60.

same so she can accompany her. The vehicle stopped at a house in Daangbakal to unload the things taken from them and then they were subsequently brought to Marikina Police Station where they were informed that a case involving dangerous drugs would be filed against them.[23]

As for Cruz, the defense alleged that he was in the house of Ressurreccion on October 2, 2003 because Ressurreccion asked him to clean her house along with the other accused Decena and Robles. They alleged that while Cruz was cleaning the house, three persons entered the house looking for a certain "Jonjon Buddha." Afterwards, they just arrested Cruz and boarded him in a vehicle with Alcantara, Ressurreccion, and Manuel. Cruz alleged that while the commotion was happening and even while they were being boarded in the vehicle, there were no representatives from the barangay or the media.[24] Although Ressurreccion earlier asked her grandchildren to call a barangay official and police officer from San Mateo, Rizal, they arrived only after they were already inside the vehicle.[25] They were then brought to a house in Daangbakal and then to Marikina Police Station.[26] Cruz testified that while they were being questioned in Marikina Police Station, there were still no members of the IBP or members of the media.[27]

Ruling of the RTC

After trial on the merits, in its Decision dated February 3, 2011,[28] the RTC convicted Cruz and Alcantara, together with the other accused, of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

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[23] CA *rollo,* pp. 40-41.

[24] *Id*.; TSN, May 14, 2009, p. 9.

[25] TSN, May 14, 2009, p. 9.

[26] TSN, May 14, 2009, pp. 9-10.

[27] TSN, May 14, 2009, p. 10.

[28] CA *rollo,* pp. 62-80.

1. In Criminal Case No. 7140, finding accused(s) Ressurreccion Ressurreccion y Robles, Carol Alcantara y Mapata and Joselito Cruz y De Guzman GUILTY beyond reasonable doubt of the crime of SALE OF DANGEROUS DRUG (violation of Section 5, 1st paragraph Article II, RA 9165) and sentencing each of them to suffer the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00); The charge against Jonathan Manuel y Otig, Aniceto Decena y Gonzaga and Jerry Robles y Unato are hereby DISMISSED upon reasonable doubt.

2. In Criminal Case No. 7141, finding accused(s) Ressurreccion Ressurreccion y Robles, Carol Alcantara y Mapata, Joselito Cruz y De Guzman, Jonathan Manuel y Otig, Aniceto Decena y Gonzaga and Jerry Robles y Unato GUILTY beyond reasonable doubt of the crime of POSSESSION OF DANGEROUS DRUG (violation of Section 11, 2nd paragraph, No. 3 Article II, RA 9165) and sentencing each of them to Twelve (12) years and one (1) day to Twenty (20) years and a fine of Three Hundred Thousand Pesos (₱300,000.00).

The plastic sachets of shabu or Methylamphetamine Hydrochloride subject matter of these cases are hereby ordered forfeited in favor of the government and the Branch Clerk of Court is hereby directed to safely deliver the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

The accused are to be credited for the time spent for their preventive detention in accordance with Art. 29 of the Revised Penal Code as amended by R.A. 6127 and E.O. 214.

Accused Ressurreccion Ressurreccion y Robles, Carol Alcantara y Mapata, Jonathan Manuel y Otig, Aniceto Decena y Gonzaga, Jerry Robles y Onato and Joselito Cruz y De Guzman are hereby ordered committed to the National Bilibid Prisons in Muntinlupa City for service of sentence.

SO ORDERED.[29]

The RTC ruled that the prosecution proved all the essential elements of the crimes charged.[30] Further, it found an unbroken chain of custody in the handling of the dangerous drugs,

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[29] *Id*. at 80.

[30] CA *rollo,* pp. 74-78.

considering that: (a) PO1 Gaerlan and PO1 Años immediately conducted an inventory and placed markings on the seized items at the place of the arrest; (b) the dangerous drugs were thereafter brought to the Eastern Police District Crime Laboratory for laboratory examination; (c) the items were received and examined by Police Senior Inspector Annalee Forro who determined that the confiscated items were indeed *methampethamine hydrochloride.* The RTC ruled that proper chain of custody was established, especially since the police officers are presumed to have performed their duties in a regular manner unless there is evidence to the contrary which suggests ill-motive or deviation from the regular performance of duties.[31]

Aggrieved, the accused-appellants appealed to the CA.[32]

Ruling of the CA

In the questioned Decision[33] dated September 27, 2016, the CA affirmed the RTC's conviction of the accused-appellants, holding that the prosecution was able to prove the elements of the crimes charged. The CA gave credence to the testimony of the prosecution witnesses as they are police officers presumed to have performed their duties in a regular manner.

It further held that "non-compliance with Section 21 of RA 9165 does not necessarily affect the integrity of the evidence and result in the acquittal of the accused" and "what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items because the same will be utilized in ascertaining the guilt or innocence of the accused"[34] and went on to hold that the prosecution was able to establish the proper chain of custody.

Hence, the instant appeal.

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[31] *Id*. at 78-79.

[32] See Notice of Appeal dated March 23, 2011, records, p. 606.

[33] *Rollo,* pp. 2-18.

[34] *Id*. at 14.

Issue

Proceeding from the foregoing, for resolution of this Court is the issue of whether the RTC and the CA erred in convicting the accused-appellants.

The Court's Ruling

The appeal is meritorious. The Court acquits the accused-appellants for failure of the prosecution to prove their guilt beyond reasonable doubt.

The accused-appellants were charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, 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 must 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.[35] On the other hand, to reach a conviction in a case involving the crime of illegal possession of dangerous drugs, the following must be proved beyond reasonable doubt: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[36]

In either case, however, 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.[37] 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,[38] the law nevertheless also requires

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

[36] *People v. Vasquez,* 724 Phil. 713, 732 (2014).

[37] *People v. Guzon,* 719 Phil. 441, 450-451 (2013).

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

strict compliance with procedures laid down by it to ensure that rights are safeguarded.

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.[39] 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 requisite to make a finding of guilt.[40]

In this connection, Section 21, Article II of RA 9165,[41] the applicable law at the time of the commission of the alleged crimes, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used

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[39] *People v. Guzon, supra* note 37 at 451, citing *People v. Dumaplin,* 700 Phil. 737 (2012).

[40] *Id*., citing *People v. Remigio,* 700 Phil. 452 (2012).

[41] 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[.]

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

This must be so because the possibility of abuse is great given 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.[42]

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation.** The said inventory must be done **in the presence of the aforementioned required witness,** all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[43] 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**

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

[43] IRR of RA 9165, Art. II, Section 21 (a).

nature, a planned activity. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[44] This Court has emphasized that the prosecution should explain the reasons behind the procedural lapses.[45]

In the present case, the apprehending team led by PO1 Gaerlan did not conduct the buy-bust operation or the inventory post-

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[44] *People v. Ceralde,* G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

[45] *People v. Dela Victoria,* G.R. No. 233325, April 16, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64112>; *People v. Descalso,* G.R. No. 230065, March 14, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64066>; *People v. Año,* G.R. No. 230070, March 14, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63982>; *People v. Lumaya,* G.R. No. 231983, March 7, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63985>; *People v. Magsano,* G.R. No. 231050, February 28, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63959>; *People v. Ramos,* G.R. No. 233744, February 28, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63948>; *People v. Manansala,* G.R. No. 229092, February 21,2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63936>; *People v. Paz,* G.R. No. 229512, January 31, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63919>; *People v. Miranda,* G.R. No. 229671, January 31, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63999>; *People v. Mamangon,* G.R. No. 229102, January 29,2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64016 >; *People v. Jugo,* G.R. No. 231792, January 29, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63908>; *People v. Alvaro,* G.R. No. 225596, January 10, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63871>; *People v. Almorfe,* 631 Phil. 51, 60 (2010).

operation in the presence of the required witnesses. PO1 Gaerlan testified in this wise:

Q: Now, after giving their names and informing them of their constitutional rights and the law they had violated, Mr. Witness, what, if any, did you and your companions do then, if you did anything?

A: I immediately placed the markings on the evidence confiscated from Ressureccion Ressurreccion and the other evidence was marked by PO1 Años, sir.

Q: After that, what happened next, Mr. Witness?

A: We immediately brought them to our office and afterwards to the Eastern Police District Crime Laboratory for drug testing and laboratory examination, sir.

Q: Tell us what happened to the plastic sachets which were the subject of the sale and the plastic sachets which were recovered from that table, Mr. Witness?

A: We brought them to the EPD Crime Lab., sir.

Q: Together with the accused, Mr. Witness?

A: Yes, sir.

Q: You said that the items which were the subject of the sale and the items confiscated from that table were marked, Mr. Witness, who marked these plastic sachets?

A: PO1 Años, sir.

Q: And where were you when these were marked by PO1 Años?

A: We were facing each other, sir.[46]

Meanwhile, PO1 Años testified as follows:

Q: Where were you when the other accused were arrested?

A: I was inside the house and putting some markings on the evidence, sir.

Q: After the arrest of these persons, where were they taken?

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[46] TSN, March 11, 2004, pp. 13-14.

A: They were taken first at the San Mateo Police Station to be blottered there and then we brought them to our office, Marikina Police Station, sir.[47]

Cruz testified that no person from the media or any elected public official was present during the buy-bust operation or during the post-operation inventory. He testified as follows:

Q: Mr. Witness, when you were brought outside of the house before you were boarded inside the vehicle, who else were there aside from the police officers and your co-accused?

A: There were [many] people watching us, sir.

Q: Are there persons coming from the barangay?

A: None, sir, but Nanay Siony [Ressurreccion] asked her grandchildren to call a barangay official and police officer from San Mateo, Rizal, sir.

Q: But prior to you boarding that vehicle, was there any barangay official at that time?

A: None, sir.

Q: So where did the police officers bring you?

A: First, we were brought at Daangbakal Fairlane, sir.

Q: After that?

A: Then we proceeded to Marikina, sir.

Q: So from Daangbakal, you proceeded to the precinct of Marikina?

A: Yes, sir.

Q: What transpired after that?

A: Our names were taken, sir.

Q: In the precinct, were there members of the media?

A: None, sir.

Q: When you were being questioned, were you with any person who are members of the IBP?

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[47] TSN, April 20, 2004, p. 21.

A: None, sir.[48]

This testimony of Cruz was never challenged by the prosecution during his cross-examination. Neither did the prosecution witnesses offer a version which would contradict the same. The prosecution did not also address the issue in their pleadings and instead relied only on the presumption that police officers performed their functions in the regular manner.

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,*[49] 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,*[50] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that were evidence of the *corpus delicti,* and thus adversely affected the trustworthiness of the incrimination of the accused.[51]

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

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[48] TSN, May 14, 2009, pp. 9-10.

[49] G.R. No. 228890, April 18, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241>.

[50] 736 Phil. 749 (2014).

[51] *Id.* at 764.

confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[52] (Emphasis in the original)

It is important to point out that the apprehending team in this case had more than ample time to comply with the requirements established by law. PO1 Gaerlan testified that before executing the operation, they even coordinated with PDEA via phone call and with the San Mateo Police through a letter of coordination.[53] Hence, the police officers had all the time to coordinate with the required witnesses — namely, an elected official, a representative from the DOJ, and a member of the media — so as to be compliant with the law. The records of this case, however, indubitably reveal that neither the police officers nor the prosecution offered any explanation for such deviation.

This Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must

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[52] *People v. Tomawis, supra* note 49.

[53] TSN, March 11, 2004, pp. 5-7.

always be advised to do this within the bounds of the law.[54] Without the insulating presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the sachets of *shabu,* the evils of switching, "planting" or contamination of the evidence again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti.* Thus, this adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.[55]

Concededly, Section 21 of the IRR of RA 9165 provides that "noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items." For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.[56] 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* would have been compromised.[57] As the Court explained in *People v. Reyes*:[58]

> 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**

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[54] *People v. Ramos,* 791 Phil. 162, 175 (2016).

[55] *People v. Mendoza, supra* note 50 at 764.

[56] See *People v. Alagarme,* 754 Phil. 449, 461 (2015).

[57] See *People v. Sumili,* 753 Phil. 342, 350 (2015).

[58] 797 Phil. 671 (2016).

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.[59]

In sum, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, the accused-appellants must perforce be acquitted.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated September 27, 2016 of the Court of Appeals in CA-G.R. CR HC No. 05961 is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellants **CAROL ALCANTARA *y* MAPATA** and **JOSELITO CRUZ *y* DE GUZMAN** are **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause their immediate release unless they are being lawfully held in custody for another reason. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

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

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[59] *Id*. at 690.

THIRD DIVISION

[G.R. No. 232678. July 3, 2019]

ESTEBAN DONATO REYES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; SUFFICIENCY OF COMPLAINT OR INFORMATION; EVERY ELEMENT CONSTITUTING THE OFFENSE MUST BE ALLEGED IN THE INFORMATION SINCE THE PROSECUTION HAS THE DUTY TO PROVE EACH AND EVERY ELEMENT OF THE CRIME CHARGED IN THE INFORMATION TO WARRANT A FINDING OF GUILT FOR THE CRIME CHARGED; THUS, THE INFORMATION MUST CORRECTLY REFLECT THE CHARGE AGAINST THE ACCUSED BEFORE ANY CONVICTION MAY BE MADE. — Under Section 6, Rule 110 of the Rules of Court, the complaint or information is sufficient if it states the names of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. It is imperative that an indictment fully states the elements of the specific offense alleged to have been committed. The sufficiency of the allegations of facts and circumstances constituting the elements of the crime charged is crucial in every criminal prosecution because of the ever-present obligation of the State to duly inform the accused of the nature and cause of the accusation. Every element constituting the offense must be alleged in the Information since the prosecution has the duty to prove each and every element of the crime charged in the information to warrant a finding of guilt for the crime charged. Thus, the Information must correctly reflect the charge against the accused before any conviction may be made.

2. ID.; ID.; ID.; ID.; THE FUNDAMENTAL TEST IN DETERMINING THE SUFFICIENCY OF THE AVERMENTS IN A COMPLAINT OR INFORMATION

IS WHETHER THE FACTS ALLEGED THEREIN, IF HYPOTHETICALLY ADMITTED, CONSTITUTE THE ELEMENTS OF THE OFFENSE; ELEMENTS OF VIOLATION OF SECTION 5(i) OF THE ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (VAWC) (REPUBLIC ACT NO. 9262) SUFFICIENTLY ALLEGED IN THE INFORMATION IN CASE AT BAR. — The fundamental test in determining the sufficiency of the averments in a complaint or information is whether the facts alleged therein, if hypothetically admitted, constitute the elements of the offense. To meet the test of sufficiency, therefore, it is necessary to refer to the law defining the offense charged which, in this case, is Section 3(c) of R.A. No. 9262, in relation to Section 5(i), which provides as follows: Section 3. *Definition of Terms*. — As used in this Act: x x x C. "Psychological violence" refers to acts or omissions, causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children. x x x. Section 5(i) of R.A No. 9262 penalizes some forms of psychological violence that are inflicted on victims who are women and children through the following acts: x x x (i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and *denial of financial support or custody* of *minor children* or access to the woman's child/children. x x x. In the context of Section 6, Rule 110, the Court finds that the x x x Information contains the recital of facts necessary to constitute the crime charged. The June 5, 2006 Information stated in no uncertain terms that: (1) the offended party, AAA, is the wife of the offender Reyes; (2) AAA sustained mental and emotional anguish; and (3) such anguish is inflicted by offender Reyes when he deliberately and unlawfully denied AAA with financial support.

3. CRIMINAL LAW; THE ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (VAWC) (REPUBLIC ACT NO. 9262); SECTION 5(i) THEREOF;

ELEMENTS OF VIOLATION THEREOF. — In *Dinamling v. People*, the Court had the occasion to enumerate the elements of violation of Section 5(i) of R.A. No. 9262, to wit: (1) The offended party is a woman and/or her child or children; (2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode; (3) The offender causes on the woman and/or child mental or emotional anguish; and (4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, *denial of financial support* or custody of minor children or access to the children or similar acts or omissions.

4. ID.; ID.; ID.; ID.; ACCUSED'S ACT OF DEPRIVING HIS WIFE OF FINANCIAL SUPPORT WHICH CAUSED HER TO EXPERIENCE MENTAL AND EMOTIONAL SUFFERING WHICH ADVERSELY AFFECTED HER HEALTH CONSTITUTES PSYCHOLOGICAL VIOLENCE; ELEMENT OF PSYCHOLOGICAL VIOLENCE AND MENTAL OR EMOTIONAL ANGUISH, PROVED. — Psychological violence is certainly an indispensable element of violation of Section 5(i) of R.A. No. 9262. Equally essential is the element of the mental or emotional anguish which is personal to the complainant. Psychological violence is the means employed by the perpetrator, while mental or emotional suffering is the effect caused to or the damage sustained by the offended party. To establish psychological violence, it is necessary to adduce proof of the commission of any of the acts enumerated in Section 5(i) or similar of such acts. We concur with the similar findings of the courts *a quo* that the prosecution had duly proved, through the clear and convincing testimonies of AAA and her daughter, that Reyes committed psychological violence against AAA when he deprived her of financial support beginning July 2005 and onwards which caused her to experience mental and emotional suffering to the point that even her health condition was adversely affected.

5. ID.; ID.; ID.; ID.; THE ACCUSED WILL NOT BE EXONERATED FOR VIOLATION OF R.A. NO. 9262 EVEN IF HIS MARRIAGE TO THE VICTIM IS DECLARED VOID *AB INITIO, AS* THE OFFENDER NEED

NOT BE RELATED OR CONNECTED TO THE VICTIM BY MARRIAGE OR FORMER MARRIAGE, FOR HE COULD BE SOMEONE WHO HAS OR HAD A SEXUAL OR DATING RELATIONSHIP ONLY OR HAS A COMMON CHILD WITH THE VICTIM. — Reyes will not be exonerated even assuming that his marriage is declared void *ab initio* by the court. R.A. No. 9262 defines and criminalizes violence against women and their children perpetrated by the woman's husband, former husband or any person against whom the woman has or had a sexual or dating relationship with, or with whom the woman has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or likely to result in, *inter alia*, economic abuse or psychological harm or suffering. Thus, the offender need not be related or connected to the victim by marriage or former marriage, as he could be someone who has or had a sexual or dating relationship only or has a common child with the victim. In the case at bench, it is undisputed that AAA had borne Reyes four children out of their relationship.

6. ID.; ID.; SECTION 5(e) OF R.A. NO. 9262; ECONOMIC ABUSE; CRIMINAL LIABILITY FOR VIOLATION OF SECTION 5(e) OF R.A. NO. 9262 ATTACHES WHEN THE ACCUSED DEPRIVES THE WOMAN OF FINANCIAL SUPPORT WHICH SHE IS LEGALLY ENTITLED TO. — The Court agrees with the observation of the CA that if properly indicted, Reyes can also be convicted of violation of Section 5(e), par. 2 for having committed economic abuse against AAA. Section 5(e), par. 2 identifies the act or acts that constitute the violence of economic abuse, the pertinent portions of which states: x x x (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, x x x; Indeed, criminal liability for violation of Section 5(e) of R.A. No. 9262 attaches when the accused deprives the woman of financial support which she is legally entitled to. Deprivation or denial of support, by itself, is already specifically penalized therein. Here, we note that Reyes, although gainfully employed after June 2005, deliberately refused to provide financial support to AAA.

7. ID.; ID.; SECTION 5 (i) OF R.A. NO. 9262; PROPER IMPOSABLE PENALTY FOR VIOLATION THEREOF. — Having ascertain the guilt of Reyes for violation of Section 5(i), We shall now proceed to determine the appropriate penalty.

> Section 6 of R.A. No. 9262 provides: Section. 6. *Penalties*. — The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules: x x x (f) Acts falling under Section 5(h) and Section 5(i) shall be punished by *prision mayor*. If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in this section. In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (₱100,000.00) but not more than Three hundred thousand pesos (₱300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court. Applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty shall be taken from the penalty next lower in degree, *i.e., prision correccional*, or anywhere from six (6) months and one (1) day to six (6) years, while the maximum term shall be that which could be properly imposed under the law, which is eight (8) years and one (1) day to ten (10) years of *prision mayor*, there being no aggravating or mitigating circumstances attending the commission of the crime. This Court deems it proper to impose on petitioner Reyes the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. Also, petitioner Reyes is **DIRECTED** to **PAY** a fine in the sum of ₱200,000.00. He is also required to submit himself to a mandatory psychological counselling or psychiatric treatment, and to report his compliance therewith to the court of origin.

APPEARANCES OF COUNSEL

Roy Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* filed by petitioner Esteban Donato Reyes (*Reyes*) seeking to reverse

and set aside the June 23, 2017 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR No. 38609 which affirmed the March 3, 2016 Decision[2] of the Regional Trial Court, Branch 89, Quezon City (*RTC*), in Criminal Case No. Q-06-143139, finding him guilty beyond reasonable doubt of the crime of Violation of Section 5(i) of Republic Act No. 9262 (*R.A. No. 9262*), otherwise known as the *Anti-Violence Against Women and Their Children Act of 2004* (*VAWC*), committed against AAA.[3]

The antecedent facts are as follows:

An Information, dated June 5, 2006, was filed on September 26, 2006 before the RTC against Reyes designating the crime as one for violation of Section 5(e), paragraph 2 of R.A. No. 9262. On March 12, 2007, a Temporary Protection Order (*TPO*) was issued by the RTC directing Reyes to resume the delivery of monthly financial support to private complainant, AAA, in the amount of ₱20,000.00 to be deducted from his net monthly salary of Two Thousand Five Hundred Dollars (US$2,500.00), reckoned from the time it was withheld in July 2005. Upon motion of AAA, with the conformity of the public prosecutor, the RTC issued on August 30, 2007 a Hold Departure Order[4] (*HDO*) against Reyes. In the October 28, 2008 Order[5] of the RTC, the TPO issued on March 12, 2007 was made permanent.

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[1] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Marlene Gonzales-Sison and Jhosep Y. Lopez, concurring; *rollo*, pp. 26-37.

[2] Penned by Judge Cecilyn E. Burgos-Villavert; *id.* at 38-44.

[3] The real names of persons (other than the accused) and places or any other information tending to reveal the identity of the private complainant and those of her immediate family or household members are withheld in accordance with Republic Act No. 9262, or the *Anti-Violence Against Women and their Children Act of 2004* (Sec. 44); Republic Act No. 7610, or *the Special Protection of Children Against Abuse, Exploitation and Discrimination Act* (Sec. 29); A.M. No. 04-10-11-SC, known as "*Rule on Violence Against Women and Their Children*," effective November 15, 2004, (Sec. 40); the case of *People v. Cabalquinto*, 533 Phil. 703, 705-709 (2006); and and per this Court's Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC.

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

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

On June 11, 2009, Reyes filed a Motion to Quash[6] the Information anchored on the ground that the allegations set forth therein do not constitute the crime of violation of Section 5(e), par. 2 of R.A. No. 9262. He contended that "*abandoning without financial support*," which is different from deprivation or denial of financial support, is not criminalized under R.A. No. 9262. Reyes posited that the June 5, 2006 Information should be quashed as it does not charge any offense, otherwise, his constitutional right to due process and right to be informed of the nature and the cause of accusation against him, would be infringed. By way of Comment/Opposition,[7] the prosecution maintained that the totality of facts as alleged in the Information constitutes the crime of violation of Section 5(e), par. 2 of R.A. No. 9262.

In its Order[8] dated November 24, 2009, the RTC ruled that on the basis of the allegations in the Information, Reyes is being charged with violation of Section 5(i) of R.A. No. 9262 and not with violation of Section 5(e), par. 2. Consequently, the RTC directed the Office of the City Prosecutor to amend the Information by designating the proper crime to which Reyes should be charged. The RTC held that the amendment of the Information was proper, since Reyes has not been arraigned at that time, and inclusion sought would not prejudice his rights being merely formal in nature. Reyes' Motion to Quash was denied by the trial court.

Upon arraignment, Reyes pleaded not guilty to the crime of violation of Section 5(i) of R.A. No. 9262. After pre-trial was terminated, trial on merits ensued.

Evidence for the prosecution tends to show that AAA and Reyes were married on May 15, 1969. Four children were born out of this union, of whom only three are living, and who are all now of legal ages. Reyes was seldom at home since he used

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[6] *Id.* at 77-83.

[7] *Id.* at 84-86.

[8] *Id.* at 90-91.

to render military service as a Philippine Air Force pilot, and later he worked as a commercial pilot for the Philippine Airlines. At the time the complaint for violation of the VAWC was filed against him, Reyes was employed as a pilot based in Angola, Africa tasked to deliver relief goods by air. Sometime in 2005, AAA learned that Reyes got married to a certain Marilou Osias Ramboanga who had borne him four children and with whom he is living with up to the present.

AAA claimed that Reyes used to give her and their children monthly financial support, ranging from Ten Thousand Pesos (₱10,000.00) to Twenty Thousand Pesos (₱20,000.00), but he suddenly ceased giving the same in July 2005. On top of this unpleasant situation, AAA got sick of various illness such as hypertension, cardio-vascular disease, diabetes and osteoarthritis. Due to her advancing age, AAA's health condition further deteriorated requiring her to take maintenance medicines and to undergo regular consultation, monitoring and treatment to prevent organ damage, stroke, renal failure and heart attack. According to AAA, what impelled her to file the complaint for violation of R.A. No. 9262 against Reyes was due to the latter's failure to provide her with monthly financial support.[9]

The defense presented petitioner as its lone witness. Primarily, Reyes assailed the validity of his marriage with AAA alleging that he never attended the marriage ceremony and that his supposed signature appearing in the marriage certificate was forged. He also pointed out that his supposed age of twenty-five years old as reflected in the marriage certificate was erroneous considering that he was born on August 3, 1948. Petitioner alleged that he lived with AAA in a common-law relationship, which produced three daughters and a son. He narrated that he met AAA when he went for a vacation at her aunt's house in Bicol where AAA was a housemaid. He averred that he gave AAA monthly financial support of ₱20,000.00. In addition, he also gave her Christmas bonuses, shouldered the expenses for her cataract operation, her denture and vacation

[9] *Id.* at 161-162. (Citations omitted)

in Tagaytay, as well as paid for the matriculation of her grandchildren and the materials of their second daughter. He admitted that he no longer provides AAA with financial support since July 2006 because he was disappointed with her for instituting a criminal case for Bigamy against him which he considered as an act of ingratitude. In 2007, he stopped flying as a pilot after he was prevented from leaving the Philippines by virtue of a Hold Departure Order issued against him at the instance of AAA.

The RTC Ruling

After trial, the RTC rendered its Decision dated March 3, 2016 finding accused-petitioner guilty as charged. The RTC disposed the case as follows:

> WHEREFORE, in view of the foregoing, the Court finds accused Esteban Donato Reyes GUILTY beyond reasonable doubt [of] violating Section 5(i) of Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and their Children Act, and is hereby sentenced to suffer an indeterminate penalty of THREE (3) YEARS of *prision correccional*, as minimum, to EIGHT (8) YEARS and ONE (1) DAY of *prision mayor*, as maximum.
>
> SO ORDERED.[10]

The RTC found the testimonies of the prosecution witnesses: AAA, her attending physician, Dr. Rey Caesar R. Anunciacion and the victim's daughter, to be credible and sufficient. It ruled that the evidence proffered by the prosecution has adequately established all the elements of violation of Section 5(i) of R.A. No. 9262.

Not in conformity, Reyes appealed his conviction before the CA.

The CA Ruling

On June 23, 2017, the CA rendered its assailed Decision upholding the conviction of Reyes for Violation of Section 5(i) of R.A. No. 9262, the *fallo* of which states:

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[10] *Id*. at 44.

WHEREFORE, in view of the foregoing, the appeal is DISMISSED FOR LACK OF MERIT. The Decision dated March 3, 2016 issued by the Regional Trial Court of Quezon City, Branch 89 in Criminal Case No. Q-06-143139 is AFFIRMED.

SO ORDERED.[11]

The CA echoed the conclusion reached by the RTC that Reyes committed psychological violence against his wife AAA when he suddenly stopped giving her financial support and by reason of which, she suffered emotional and mental anguish. According to the CA, Reyes has an obligation to financially support his wife AAA and their marriage is valid until annulled by the court. It held that Reyes could not escape liability by the mere expedient of claiming that his marriage with AAA is void because violation of Section 5(i) of R.A. No. 9262 can be committed even against a woman with whom the accused had a sexual or dating relationship, or with whom he has a common child. The CA opined that Reyes can also be convicted for violation of Section 5(e), assuming that he is indicted for the said crime, because said provision criminalizes the mere act of depriving a woman of financial support legally due her.

Maintaining his innocence of the crime charged, Reyes filed the present petition and posited the following issues, to wit:

I. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED THE RULING OF THE HONORABLE REGIONAL TRIAL COURT DIRECTING HEREIN PETITIONER TO RESUME GIVING REGULAR MONTHLY FINANCIAL SUPPORT TO AAA IN THE AMOUNT OF ₱20,000.00 TO BE DEDUCTED DIRECTLY FROM HIS NET MONTHLY SALARY RECKONED FROM THE TIME IT WAS WITHHELD IN JULY 2005.

II. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED THE DECISION OF THE HONORABLE REGIONAL TRIAL COURT, FINDING THE PETITIONER GUILTY BEYOND

[11] *Id*. at 140.

> REASONABLE DOUBT OF VIOLATING SECTION 5(i) OF REPUBLIC ACT NO. 9262 OTHERWISE KNOWN AS THE ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT AND SENTENCING HIM TO SUFFER AN INDETERMINATE PENALTY OF THREE (3) YEARS OF *PRISION CORRECCIONAL*, AS MINIMUM, TO EIGHT (8) YEARS AND ONE (1) DAY OF *PRISION MAYOR*, AS MAXIMUM.[12]

Petitioner insists that the Information, dated June 5, 2006, failed to allege any of the acts punishable under either Section 5(e), par. 2 or Section 5(i) of R.A. No. 9262. He contends that the defective criminal Information should have been quashed at the first instance by the RTC because it effectively deprived him of his right to due process.

The OSG counters that it is apparent from a perusal of the Information that Reyes is charged under Section 5(e), par. 2 for having committed economic abuse against AAA when he abandoned her and failed to give her financial support. The OSG submits that the CA is correct in not only affirming the conviction of Reyes under Section 5(i), but in finding that he can be also held criminally liable under Section 5(e), par. 2 because his purpose in depriving AAA with support is to cow her from further filing cases against him or to withdraw those already filed. The OSG asserts that petitioner's guilt for violation of the provisions of Sections 5(e), par. 2 and 5(i) of R.A. No. 9262 has been established by the prosecution beyond cavil of a doubt.

The petition is devoid of merit.

Reyes stands charged with violation of Section 5(i) of R.A. No. 9262. By alleging that the Information should have been quashed by the RTC for lack of the essential elements of the crime of violation of Section 5(i) of R.A. No. 9262, Reyes is essentially averring that the recital of facts therein do not constitute the offense charged.

Under Section 6, Rule 110 of the Rules of Court, the complaint or information is sufficient if it states the names of the accused;

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[12] *Id*. at 15.

the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. It is imperative that an indictment fully states the elements of the specific offense alleged to have been committed.[13]

The sufficiency of the allegations of facts and circumstances constituting the elements of the crime charged is crucial in every criminal prosecution because of the ever-present obligation of the State to duly inform the accused of the nature and cause of the accusation.[14] Every element constituting the offense must be alleged in the Information[15] since the prosecution has the duty to prove each and every element of the crime charged in the information to warrant a finding of guilt for the crime charged. Thus, the Information must correctly reflect the charge against the accused before any conviction may be made.

The fundamental test in determining the sufficiency of the averments in a complaint or information is whether the facts alleged therein, if hypothetically admitted, constitute the elements of the offense.[16] To meet the test of sufficiency, therefore, it is necessary to refer to the law defining the offense charged which, in this case, is Section 3(c) of R.A. No. 9262, in relation to Section 5(i), which provides as follows:

> Section 3. *Definition of Terms*. — As used in this Act:
>
> x x x x x x x x x
>
> C. "Psychological violence" refers to acts or omissions, causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or

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[13] *People v. Cutamora*, 396 Phil. 405, 414 (2000).

[14] *People v. PO2 Valdez, et al.*, 679 Phil. 279, 283 (2012).

[15] *Andaya v. People*, 526 Phil. 480, 497 (2006).

[16] *People v. Balao, et al.*, 655 Phil. 563, 571-572 (2011).

psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

x x x x x x x x x

Section 5(i) of R.A No. 9262 penalizes some forms of psychological violence that are inflicted on victims who are women and children through the following acts:

x x x x x x x x x

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and *denial of financial support or custody* of *minor children* or access to the woman's child/children.[17]

In *Dinamling v. People*,[18] the Court had the occasion to enumerate the elements of violation of Section 5(i) of R.A. No. 9262, to wit:

(1) The offended party is a woman and/or her child or children;
(2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;
(3) The offender causes on the woman and/or child mental or emotional anguish; and
(4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, *denial of financial support* or custody of minor children or access to the children or similar acts or omissions.[19]

Were the elements of violation of Section 5(i) sufficiently alleged in the June 5, 2006 Information? To answer this query

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[17] Emphasis ours.

[18] 761 Phil. 356, 373 (2015).

[19] Emphasis ours.

and for easy reference, the accusatory portion of the Information is hereto reproduced, as follows:

> That on or about the month of July, 2005 and continuously up to the present, in Quezon City, Philippines, the said accused, did then and there, willfully, unlawfully and feloniously commit economic abuse upon his wife, AAA, by then and there abandoning her without any financial support thereby depriving her of her basic needs and inflicting upon her psychological and emotional suffering and/or injuries, to the damage and prejudice of the said offended party.
>
> CONTRARY TO LAW.[20]

In the context of Section 6, Rule 110, the Court finds that the afore-quoted Information contains the recital of facts necessary to constitute the crime charged. The June 5, 2006 Information stated in no uncertain terms that: (1) the offended party, AAA, is the wife of the offender Reyes; (2) AAA sustained mental and emotional anguish; and (3) such anguish is inflicted by offender Reyes when he deliberately and unlawfully denied AAA with financial support.

Psychological violence is certainly an indispensable element of violation of Section 5(i) of R.A. No. 9262. Equally essential is the element of the mental or emotional anguish which is personal to the complainant. Psychological violence is the means employed by the perpetrator, while mental or emotional suffering is the effect caused to or the damage sustained by the offended party.[21] To establish psychological violence, it is necessary to adduce proof of the commission of any of the acts enumerated in Section 5(i) or similar of such acts. We concur with the similar findings of the courts *a quo* that the prosecution had duly proved, through the clear and convincing testimonies of AAA and her daughter, that Reyes committed psychological violence against AAA when he deprived her of financial support beginning July 2005 and onwards which caused her to experience mental and emotional suffering to the point that even her health condition was adversely affected.

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[20] Records, p. 1.

[21] *AAA v. BBB*, G.R. No. 212448, January 11, 2018.

Reyes argues that he cannot be held liable for violation of R.A No. 9262 because he has no obligation to financially support AAA since he never contracted marriage with her. Petitioner is mistaken.

We find that the National Statistics Office certified copy of a marriage certificate presented by the prosecution serves as positive evidence of the existence of the marriage between Reyes and AAA. The certified copy of the marriage contract, issued by a public officer in custody thereof, is admissible as the best evidence of its contents. The marriage contract plainly indicates that a marriage was celebrated between Reyes and AAA on May 15, 1969, and it should be accorded the full faith and credence given to public documents.[22] As correctly pointed out by the CA, their marriage is deemed valid until declared otherwise in a judicial proceeding. Hence, Reyes is obliged to support his wife, AAA, the amount of which shall be in proportion to the resources or means of the said petitioner and to the needs of the latter.[23]

Reyes will not be exonerated even assuming that his marriage is declared void *ab initio* by the court. R.A. No. 9262 defines and criminalizes violence against women and their children perpetrated by the woman's husband, former husband or any person against whom the woman has or had a sexual or dating relationship with, or with whom the woman has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or likely to result in, *inter alia*, economic abuse or psychological harm or suffering. Thus, the offender need not be related or connected to the victim by marriage or former marriage, as he could be someone who has or had a sexual or dating relationship only or has a common child with the victim. In the case at bench, it is undisputed that AAA had borne Reyes four children out of their relationship.

The Court agrees with the observation of the CA that if properly indicted, Reyes can also be convicted of violation of

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[22] *Tenebro v. Court of Appeals*, 467 Phil. 723, 740 (2004).

[23] *Lim-Lua v. Lua*, 710 Phil. 211, 221 (2013).

Section 5(e), par. 2 for having committed economic abuse against AAA. Section 5(e), par. 2 identifies the act or acts that constitute the violence of economic abuse, the pertinent portions of which states:

> (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physically or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:
>
> x x x x x x x x x
>
> (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, x x x;
>
> (3) Depriving or threatening to deprive the woman or her child of a legal right;
>
> x x x x x x x x x

Indeed, criminal liability for violation of Section 5(e) of R.A. No. 9262 attaches when the accused deprives the woman of financial support which she is legally entitled to. Deprivation or denial of support, by itself, is already specifically penalized therein.[24]

Here, we note that Reyes, although gainfully employed after June 2005, deliberately refused to provide financial support to AAA. According to Reyes, he stopped giving monetary support to AAA because she filed a Bigamy case against him. The Court finds his excuse unacceptable and will not at all exculpate him from criminal liability under the VAWC. It is noteworthy that AAA charged Reyes with Bigamy not merely to torment or harass him but to enforce her right and protect her interest as petitioner's legal wife considering that he contracted a second

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[24] *Melgar v. People*, G.R. No. 223477, February 14, 2018.

marriage with one Marilou Osias Ramboanga during the subsistence of his marriage with AAA. Evidently, the denial of financial support is designed to subjugate AAA's will and control her conduct, either to pressure her to withdraw said criminal case for Bigamy or dissuade her from pursuing it, or at least, to discourage her from filing additional cases against him.

There is nothing in the definition nor in the enumeration of the acts constituting psychological violence and economic abuse that is vague and ambiguous that will confuse Reyes as what conducts are penalized under the VAWC. They are worded with sufficient definiteness and clarity that persons of ordinary intelligence can understand what act is prohibited, and need not guess as to its meaning nor differ in its application. The express language of R.A. No. 9262 reflects the intent of the legislature for liberal construction as will best ensure the attainment of the object of the law according to its true intent, meaning and spirit — to promote the protection and safety of victims of violence against women and children.[25]

Lastly, the Court finds that Reyes should be compelled to comply with the directive under the TPO pertaining to the resumption of providing monthly financial support to AAA. It bears stressing that not an iota of evidence was adduced by him to show that he is no longer employed and/or he failed to obtain another gainful employment and/or that he has no resources or means to provide the same.

Having ascertain the guilt of Reyes for violation of Section 5(i), We shall now proceed to determine the appropriate penalty.

Section 6 of R.A. No. 9262 provides:

> Section. 6. *Penalties*. — The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:
>
> x x x x x x x x x

[25] *Go-Tan v. Spouses Tan*, 588 Phil. 532, 541 (2008).

(f) Acts falling under Section 5(h) and Section 5(i) shall be punished by *prision mayor*.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in this section. In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (₱100,000.00) but not more than Three hundred thousand pesos (₱300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

Applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty shall be taken from the penalty next lower in degree, *i.e., prision correccional*, or anywhere from six (6) months and one (1) day to six (6) years, while the maximum term shall be that which could be properly imposed under the law, which is eight (8) years and one (1) day to ten (10) years of *prision mayor*, there being no aggravating or mitigating circumstances attending the commission of the crime.[26] This Court deems it proper to impose on petitioner Reyes the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

Also, petitioner Reyes is **DIRECTED** to **PAY** a fine in the sum of ₱200,000.00. He is also required to submit himself to a mandatory psychological counselling or psychiatric treatment, and to report his compliance therewith to the court of origin.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals dated June 23, 2017 in CA-G.R. CR No. 38609 is hereby **AFFIRMED** with **MODIFICATIONS**.

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[26] Art. 64. *Rules for the application of penalties which contain three periods*. — In cases in which the penalties prescribed by law contain three periods, x x x, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

x x x x x x x x x

(1) Petitioner Esteban Donato Reyes is found **GUILTY** beyond reasonable doubt of Violation of Section 5(i) of Republic Act No. 9262 and is sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

(2) Petitioner is **ORDERED** to **PAY** a fine equivalent to Two Hundred Thousand Pesos (₱200,000.00); and

(3) Further, petitioner is **DIRECTED** to **UNDERGO** a mandatory psychological counselling or psychiatric treatment, and to report his compliance therewith to the court of origin within fifteen (15) days after the completion of such counselling or treatment.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 237486. July 3, 2019]

PHILCO AERO, INC.,* *petitioner, vs.* **DEPARTMENT OF TRANSPORTATION SECRETARY ARTHUR P. TUGADE, BASES CONVERSION AND DEVELOPMENT AUTHORITY, VIVENCIO B. DIZON, MEGAWIDE CONSTRUCTION CORP., and GMR INFRASTRUCTURE LTD., doing business as joint venturers under the name and style of MEGAWIDE-GMR,** *respondents.*

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* Also referred to as "Philco Aero Consortium" in some parts of the *rollo.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT INFRASTRUCTURE PROJECTS; REPUBLIC ACT NO. 8975 (AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS); JURISDICTION OF THE SUPREME COURT TO ISSUE INJUNCTIONS AGAINST THE GOVERNMENT. — [S]ection 3 of Republic Act (R.A.) No. 8975 expressly vests jurisdiction upon the Supreme Court to issue any TRO, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private acting under the government's direction, to restrain, prohibit or compel the following acts: (a) acquisition, clearance and development of the right-of-way and/or site or location of any national government project; (b) bidding or awarding of contract/project of the national government as defined under Section 2 hereof; (c) commencement prosecution, execution, implementation, [and] operation of any such contract or project; (d) termination or rescission of any such contract/project; and (e) the undertaking or authorization of any other lawful activity necessary for such contract/project. Hence, direct recourse to this Court is in order.

2. ID.; ID.; ID.; GUIDELINES AND PROCEDURES FOR ENTERING INTO JOINT VENTURE AGREEMENTS BETWEEN GOVERNMENT AND PRIVATE ENTITIES; THREE-STAGE FRAMEWORK; TERMINATION OF THE NEGOTIATIONS IS ALLOWED AT STAGE ONE, PRIOR TO THE ACCEPTANCE OF THE UNSOLICITED PROPOSAL, AND AT STAGE TWO, WHEN DETAILED NEGOTIATIONS PROVE UNSUCCESSFUL. — Substantively, the applicable rule is the Guidelines and Procedures for Entering into Joint Venture Agreements between Government and Private Entities, particularly Annex C. Annex C states in detail the stages in negotiated Joint Venture Agreements (Guidelines) x x x. Stage One refers to the submission of the unsolicited proposal by the proponent, which is subject to the initial evaluation of the government. Once the proposal is accepted, negotiations may then proceed. Stage Two refers to the negotiation phase, the determination of eligibility of the proponent, and the preparation of documents for

competitive challenge should an agreement be reached. Lastly, Stage Three pertains to the completion of the negotiation phase and the completed competitive challenge. The case of *SM Land, Inc. v. Bases Conversion and Development Authority* defines that only in two instances may termination of the negotiations be allowed: at Stage One, prior to the acceptance of the unsolicited proposal; and at Stage Two, when detailed negotiations prove unsuccessful, to wit: A review of the outlined three-stage framework reveals that there are only two occasions where pre-termination of the Swiss Challenge process is allowed: at Stage One, prior to acceptance of the unsolicited proposal; and at Stage Two, should the detailed negotiations prove unsuccessful. In the Third Stage, the BCDA can no longer withdraw with impunity from conducting the Competitive Challenge as it became ministerial for the agency to commence and complete the same.

3. ID.; ID.; ID.; NO VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS. — [W]hether petitioner's right to due process was violated in view of the award of the contract to Megawide-GMR depends on which stage was successfully reached by the parties. The records of the case reveal that petitioner offered an unsolicited proposal to the Government; hence, Stage One was reached. Stage Two came into play when a series of negotiations as to the terms and conditions of the proposal ensued. However, the Government opted to withdraw from negotiating with petitioner at this point, evidenced by a letter which categorically declared the termination of the negotiations and the reasons therefor x x x. Such withdrawal is completely acceptable under the Guidelines, which reads: Stage Two — x x x. x x x **However, should negotiations not result to an agreement acceptable to both parties, the Government Entity shall have the option to reject the proposal by informing the private sector participant in writing stating the grounds for rejection** x x x. Moreover, in a Letter dated January 18, 2018, the BCDA and the DOTr apprised petitioner that its proposal was rejected because of non-feasibility x x x Contrary to the stance of the petitioner, the *SM Land, Inc.* case is inapplicable because of difference in factual milieu. In the former, negotiations were proven successful; hence, it becomes mandatory for the competitive challenge to proceed, while in the latter, negotiations fell through and there was no agreement reached between the parties. Thus, petitioner

cannot insist that its right to due process was violated when the contract was awarded to Megawide-GMR. It must be emphasized that petitioner did not acquire a right to a completed competitive challenge under Stage Three of the Guidelines.

4. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; WITHOUT ACTUAL AND EXISTING RIGHTS ON THE PART OF THE APPLICANT, AND IN THE ABSENCE OF FACTS BRINGING THE MATTER WITHIN THE CONDITIONS FOR ITS ISSUANCE, THE INJUNCTIVE WRIT MUST BE STRUCK DOWN FOR BEING ISSUED IN GRAVE ABUSE OF DISCRETION. — Anent the application for the issuance of an injunctive writ, we decline to grant the same. A writ of preliminary injunction and a TRO are injunctive reliefs and preservative remedies for the protection of substantive rights and interests. Essential to granting the injunctive relief is the existence of an urgent necessity for the writ in order to prevent serious damage. It is granted only to protect actual and existing substantial rights. Without actual and existing rights on the part of the applicant, and in the absence of facts bringing the matter within the conditions for its issuance, the ancillary writ must be struck down for being issued in grave abuse of discretion. x x x [T]here was no actual and existing right on the part of petitioner to seek the relief prayed for. To stress, petitioner did not acquire any right when the negotiations with the CIAC fell through. In the absence of the same, the issuance of an injunctive writ is improper.

APPEARANCES OF COUNSEL

Balgos Gumaru Tan & Javier for petitioner.
Office of the Solicitor General for public respondents.

D E C I S I O N

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

Before us is a Petition for *Certiorari,* Prohibition, and *Mandamus* with Prayer for the Issuance of a Writ of Preliminary

Injunction and/or Temporary Restraining Order (TRO)[1] filed by Philco Aero, Inc. (petitioner).

The Clark International Airport Corporation (CIAC) which is authorized to operate and manage the Clark Aviation Complex, was created by virtue of Executive Order No. 192, Series of 1994 (E.O. No. 192).

Under E.O. No. 192, the CIAC shall be a wholly-owned subsidiary corporation of the Clark Development Corporation (CDC) and shall be formed in accordance with the Corporation Code and existing rules and regulations promulgated by the Securities and Exchange Commission (SEC).[2]

The CIAC shall be subject to the policies, rules and regulations promulgated by the Bases Conversion Development Authority (BCDA)/CDC.[3]

Sometime in 2008, CIAC declared its invitation to qualified entities to participate in the design, financing, construction, and operation of the Diosdado Macapagal International Airport (DMIA) Passenger Terminal 2 in the Clark Freeport Zone.[4]

In response, petitioner submitted to CIAC its expression of interest and unsolicited proposal.[5] Upon CIAC's acknowledgment of the receipt of such proposal, it advised the petitioner that it shall conduct detailed negotiations with it to determine petitioner's eligibility and to discuss the technical and financial aspects of its unsolicited proposal.[6]

Pursuant to such advice, CIAC and petitioner underwent a series of negotiations. On July 31, 2010, the CIAC signified its approval of the advancement of the negotiations to Stage

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[1] *Rollo,* pp. 3-21.

[2] Executive Order No. 192 (1994), Sec. 1.

[3] *Id.*

[4] *Rollo,* p. 4.

[5] *Id.* at 22-50.

[6] *Id.* at 52.

Two, as defined in the Annex C of the 2008 Joint Ventures Guidelines issued by the National Economic and Development Authority (NEDA).[7]

Negotiations continued until July 19, 2011 when CIAC informed petitioner, in a letter, of its intent to cease in participating in any negotiation.[8]

Petitioner sought the reconsideration of the same, which was denied by the CIAC.

The project was eventually awarded to Megawide Construction Corp., and GMR Infrastructure Ltd. (collectively as Megawide-GMR) as joint venturers by the Department of Transportation (DOTr) and BCDA.[9]

Aggrieved, petitioner filed a Petition for *Certiorari,* Prohibition, and *Mandamus* with a Prayer for the Issuance of a Writ of Preliminary Injunction and/or TRO before this Court.

Petitioner contends that said award to Megawide-GMR was illegal and violative of its right to due process because its unsolicited proposal for the engineering, procurement, and construction of the DMIA Passenger Terminal 2 was duly approved and already partially made the subject of a series of negotiations.

The Issues

I.

WHETHER OR NOT THE AWARD OF THE CONTRACT TO MEGAWIDE-GMR WAS ILLEGAL; and

II.

WHETHER OR NOT SAID AWARD VIOLATES PETITIONER'S RIGHT TO DUE PROCESS.

The Court's Ruling

We dismiss the petition.

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[7] *Id*. at 149.

[8] *Id*.

[9] *Id*. at 150.

Preliminarily, Section 3 of Republic Act (R.A.) No. 8975[10] expressly vests jurisdiction upon the Supreme Court to issue any TRO, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private acting under the government's direction, to restrain, prohibit or compel the following acts: (a) acquisition, clearance and development of the right-of-way and/or site or location of any national government project; (b) bidding or awarding of contract/project of the national government as defined under Section 2 hereof; (c) commencement prosecution, execution, implementation, [and] operation of any such contract or project; (d) termination or rescission of any such contract/project; and (e) the undertaking or authorization of any other lawful activity necessary for such contract/project.

Hence, direct recourse to this Court is in order.

Substantively, the applicable rule is the Guidelines and Procedures for Entering into Joint Venture Agreements between Government and Private Entities, particularly Annex C. Annex C states in detail the stages in negotiated Joint Venture Agreements (Guidelines), to wit:

Stage One — A private sector entity submits an unsolicited proposal to the Government Entity, or the Government Entity seeks out a JV partner after failed competition for a JV activity deemed manifestly advantageous to Government. The private sector entity submits a proposal to the Government Entity for a projected JV activity/ undertaking. The Government Entity, through its JV-SC, is tasked with the initial evaluation of the proposal. Upon completion of the initial evaluation, the Head of the Government Entity, upon recommendation of the JV-SC, shall either issue an acceptance or non-acceptance of the proposal. The Government Entity concerned

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[10] AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS BY PROHIBITING LOWER COURTS FROM ISSUING TEMPORARY RESTRANING ORDERS. PRELIMINARY INJUNCTIONS OR PRELIMINARY MANDATORY INJUNCTIONS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES.

shall act on the proposal within ten (10) working days upon submission of complete documents by the private sector entity. An acceptance shall not bind the Government Entity to enter into the JV activity, but, shall mean that authorization is given to proceed with detailed negotiations on the terms and conditions of the JV activity. In case of non-acceptance, the private sector entity shall be informed of the reasons/grounds for non-acceptance.

Stage Two — The parties negotiate and agree on the terms and conditions of the JV activity. The following rules shall be adhered to in the conduct of detailed negotiations and the preparation of the proposal documents in case of successful negotiations:

1. Both parties shall negotiate on, among others, the purpose, terms and conditions, scope, as well as all legal, technical, and financial aspects of the JV activity.

2. The JV-SC shall determine the eligibility of the private sector entity to enter into the JV activity in accordance with Sec. IV.2 (Eligibility Requirements) under Annex A hereof.

3. Negotiations shall comply with the process, requirements and conditions as stipulated under Sections 6 (General Guidelines) and 7 (Process for Entering into JV Agreements) of the Guidelines. Once negotiations are successful, the Head of the Government Entity and the authorized representative of the private sector entity shall issue a signed certification that an agreement has been reached by both parties. Said certification shall also state that the Government Entity has found the private sector participant eligible to enter into the proposed JV activity and shall commence the activities for the solicitation for comparative proposals. However, should negotiations not result to an agreement acceptable to both parties, the Government Entity shall have the option to reject the proposal by informing the private sector participant in writing stating the grounds for rejection and thereafter may accept a new proposal from private sector participants, or decide to pursue the proposed activity through alternative routes other than JV. The parties shall complete the Stage Two process within thirty (30) calendar days upon acceptance of the proposal under Stage One above.

4. After an agreement is reached, the contract documents, including the selection documents for the competitive challenge are prepared.

Stage Three – Once the negotiations have been successfully completed, the JV activity shall be subjected to a competitive challenge, as follows:

1. The Government Entity shall prepare the tender documents pursuant to Section II (Selection/Tender Documents) of Annex A hereof. The eligibility criteria used in determining the eligibility of the private sector entity shall be the same as those stated in the tender documents. Proprietary information shall, however, be respected and protected, and treated with confidentiality. As such, it shall not form part of the tender and related documents. The Head of the Government Entity shall approve all tender documents including the draft contract before the publication of the invitation for comparative proposals.

2. Within seven (7) calendar days from the issuance of the Certification of a successful negotiation referred to in Stage Two above, the JV-SC shall publish the invitation for comparative proposals in accordance with Section III.2. (Publication of Invitation to Apply for Eligibility and to Submit Proposal) under Annex A hereof.

3. The private sector entity shall post the proposal security at the date of the first day of the publication of the invitation for comparative proposals in the amount and form stated in the tender documents.

4. The procedure for the determination of eligibility of comparative proponents/private sector participants, issuance of supplemental competitive selection bulletins and pre-selection conferences, submission and receipt of proposals, opening and evaluation of proposals shall follow the procedure stipulated under Annex A hereof. In the evaluation of proposals, the best offer shall be determined to include the original proposal of the private sector entity. If the Government Entity determines that an offer made by a comparative private sector participant other than the original proponent is superior or more advantageous to the government than the original proposal, the private sector entity who submitted the original proposal shall be given the right to match such superior or more advantageous offer within thirty (30) calendar days from receipt of notification from the Government Entity of the results of the competitive selection. Should no matching offer be received within the stated period, the JV activity shall be awarded to the comparative private sector participant submitting the most advantageous proposal. If a matching offer

is received within the prescribed period, the JV activity shall be awarded to the original proponent. If no comparative proposal is received by the Government Entity, the JV activity shall be immediately awarded to the original private sector proponent.

5. Within seven (7) calendar days from the date of completion of the Competitive Challenge, the JV-SC shall submit the recommendation of award to the Head of the Government Entity. Succeeding activities shall be in accordance with Sections VIII. (Award and Approval of Contract) and X (Final Approval) of Annex A hereof.[11]

In sum, Stage One refers to the submission of the unsolicited proposal by the proponent, which is subject to the initial evaluation of the government. Once the proposal is accepted, negotiations may then proceed. Stage Two refers to the negotiation phase, the determination of eligibility of the proponent, and the preparation of documents for competitive challenge should an agreement be reached. Lastly, Stage Three pertains to the completion of the negotiation phase and the completed competitive challenge.

The case of *SM Land, Inc. v. Bases Conversion and Development Authority*[12] defines that only in two instances may termination of the negotiations be allowed: at Stage One, prior to the acceptance of the unsolicited proposal; and at Stage Two, when detailed negotiations prove unsuccessful, to wit:

A review of the outlined three-stage framework reveals that there are only two occasions where pre-termination of the Swiss Challenge process is allowed: at Stage One, prior to acceptance of the unsolicited proposal; and at Stage Two, should the detailed negotiations prove unsuccessful. In the Third Stage, the BCDA can no longer withdraw with impunity from conducting the Competitive Challenge as it became ministerial for the agency to commence and complete the same. x x x

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[11] Guidelines and Procedures for Entering into Joint Venture Agreements Between Government and Private Entities <www.neda.gov.ph/references/Guidelines.pdf> (visited June 28, 2019).

[12] 741 Phil. 269, 305 (2014).

Hence, whether petitioner's right to due process was violated in view of the award of the contract to Megawide-GMR depends on which stage was successfully reached by the parties.

The records of the case reveal that petitioner offered an unsolicited proposal to the Government; hence, Stage One was reached. Stage Two came into play when a series of negotiations as to the terms and conditions of the proposal ensued. However, the Government opted to withdraw from negotiating with petitioner at this point, evidenced by a letter which categorically declared the termination of the negotiations and the reasons therefor, *viz.*:

> In view of the new DMIA Land Use Plan and current policy pronouncement of the National Government to conduct public bidding for the Public-Private Partnership (PPP) projects, please be informed that the CIAC Board of Directors has directed the Joint Venture Selection Committee (JVSC) to terminate the joint venture negotiation process under the NEDA JV Guidelines.[13]

Such withdrawal is completely acceptable under the Guidelines, which reads:

> Stage Two — The parties negotiate and agree on the terms and conditions of the JV activity. The following rules shall be adhered to in the conduct of detailed negotiations and the preparation of the proposal documents in case of a successful negotiations:
>
> x x x x x x x x x
>
> x x x **However, should negotiations not result to an agreement acceptable to both parties, the Government Entity shall have the option to reject the proposal by informing the private sector participant in writing stating the grounds for rejection** and thereafter may accept a new proposal from private sector participants, or decide to pursue the proposed activity through alternative routes other than JV. The parties shall complete the Stage Two process within thirty (30) calendar days upon acceptance of the proposal under Stage One above. (Emphasis supplied)

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[13] *Rollo,* p. 170.

Moreover, in a Letter[14] dated January 18, 2018, the BCDA and the DOTr apprised petitioner that its proposal was rejected because of non-feasibility, to wit:

x x x x x x x x x

> In fact, may we point out that the CIAC did not whimsically reject your proposal. Based on CIAC's evaluation, Philco Aero's proposal was found to be **non-feasible** with the change in plans and requirements of the airlines as well as the change in government policy to bid our PPP projects. The truth of the matter is, Philco Aero's unsolicited proposal was rejected based on its own shortcomings and weaknesses. x x x (Emphasis in the original)

Contrary to the stance of the petitioner, the *SM Land, Inc.* case is inapplicable because of difference in factual milieu. In the former, negotiations were proven successful; hence, it becomes mandatory for the competitive challenge to proceed,[15] while in the latter, negotiations fell through and there was no agreement reached between the parties. Thus, petitioner cannot insist that its right to due process was violated when the contract was awarded to Megawide-GMR. It must be emphasized that petitioner did not acquire a right to a completed competitive challenge under Stage Three of the Guidelines.

With these, there was no showing that the CIAC was arbitrary in discontinuing its negotiations with petitioner for the former complied with the requirements under the law for its termination. Thus, CIAC cannot be faulted from withdrawing from its negotiations with petitioner. More so when it can legally do the same under the rules.

Anent the application for the issuance of an injunctive writ, we decline to grant the same.

A writ of preliminary injunction and a TRO are injunctive reliefs and preservative remedies for the protection of substantive rights and interests. Essential to granting the injunctive relief

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[14] *Id*. at 84-86.

[15] *Id*.

is the existence of an urgent necessity for the writ in order to prevent serious damage.[16]

It is granted only to protect actual and existing substantial rights. Without actual and existing rights on the part of the applicant, and in the absence of facts bringing the matter within the conditions for its issuance, the ancillary writ must be struck down for being issued in grave abuse of discretion.[17]

Based on the discussion above, there was no actual and existing right on the part of petitioner to seek the relief prayed for. To stress, petitioner did not acquire any right when the negotiations with the CIAC fell through. In the absence of the same, the issuance of an injunctive writ is improper.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 238334. July 3, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROSELINE KASAN *y* ATILANO and HENRY LLACER *y* JAO,** *accused-appellants.*

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[16] *Australian Professional Realty Inc. v. Municipality of Padre Garcia, Batangas,* 684 Phil. 283, 289 (2012).

[17] *Spouses Lim v. Court of Appeals,* 763 Phil. 328, 337 (2015).

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY; THE PROSECUTION MUST ACCOUNT FOR EACH LINK TO ENSURE THE INTEGRITY OF THE SEIZED DRUG. — 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. The chain of evidence is constructed by proper exhibit handling, storage, labelling, and recording, and must exist from the time the evidence is found until the time it is offered in evidence. 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. The chain of custody rule 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, by accident or otherwise.

2. ID.; ID.; ID.; THE SEIZED DRUGS NOT MARKED, INVENTORIED OR PHOTOGRAPHED AT THE PLACE OF ARREST CANNOT BE JUSTIFIED BY BARE ALLEGATION OF "SECURITY REASONS." — The seized drugs were not marked, inventoried, or photographed at the place of arrest. x x x The police officers, nonetheless, invoked "security reasons" to justify their failure to mark, inventory, and photograph the drug items at the *situs criminis.* Standing alone, such bare allegation should be rejected. What exactly these "security reasons" were and why the place of arrest was considered to be risky for marking and inventory or taking of photographs – are material details which the arresting officers failed to present during the trial.

3. ID.; ID.; ID.; THE ABSENCE OF REQUIRED WITNESSES AT THE TIME OF THE INVENTORY AND TAKING OF

PHOTOGRAPHS MUST BE ACCOUNTED FOR. — Only an elected official was present at the time of the inventory and taking of photograph. RA 9165, as amended, requires an elected public official and a representative of the National Prosecution Service or the media during inventory and taking of photographs. The law requires the presence of these witnesses primarily to ensure not only the compliance with the chain of custody rule but also remove any suspicion of switching, planting, or contamination of evidence. x x x As it was, the arresting officers here did not even bother to explain why they only managed to secure a barangay kagawad to witness the inventory and taking of photographs. It is incumbent upon the prosecution to account for the absence of the other required witness, *i.e.* media representative or DOJ representative, by presenting a justifiable reason therefor, or at the very least, by showing that the apprehending officers truly exerted genuine and sufficient efforts to secure the presence of this witness or these witnesses.

4. **ID.; ID.; ID.; THE PARTIES' STIPULATION TO DISPENSE WITH THE TESTIMONY OF THE FORENSIC CHEMIST MUST CONTAIN THE VITAL PIECES OF INFORMATION REQUIRED. —** [T]he parties stipulated that PSI Rendielyn Sahagun was the forensic chemical officer who prepared Chemistry Report No. D-1297-2015 pursuant to the Request for Laboratory Examination. By reason of this stipulation, the parties agreed to dispense with her testimony. *People v. Cabuhay* ordained that the parties' stipulation to dispense with the testimony of the forensic chemist should include: In *People v. Pajarin*, the Court ruled that in case of a stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he had taken the precautionary steps required to preserve the integrity and evidentiary value of the seized item, thus: **(1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial**. Here, the parties' stipulation to dispense with the testimony of the forensic chemist did not contain the vital pieces of information required. x x x [Also,] the testimony from any prosecution witness on how the drug items were brought from the crime laboratory and submitted in evidence to the court below [was absent.]

5. ID.; ID.; ID.; STRICT ADHERENCE TO THE CHAIN OF CUSTODY RULE MUST BE OBSERVED; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS CANNOT SUBSTITUTE FOR COMPLIANCE AND MEND THE BROKEN LINKS. — 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-à-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 of custody 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. x x x [T]he 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 plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision[1] dated September 29, 2017 of the Court of Appeals in CA-G.R. CR HC No. 08530 entitled

[1] Penned by Associate Justice Edwin D. Sorongon with the concurrence of Associate Justices Ramon R. Garcia and Maria Filomena D. Singh, members of the Thirteenth Division, *rollo*, pp. 2-12.

"People of the Philippines v. Roseline Kasany Atilano and Henry Llacer y Jao," affirming the conviction of Roseline Kasan and Henry Llacer for violation of Section 5 of Republic Act (RA) No. 9165,[2] and Henry Llacer for violation of Section 11 of RA 9165.

The Proceedings Before the Trial Court

The Charge

By Information[3] dated December 11, 2015, in Criminal Case No. 15-3938, appellants Roseline Kasan and Henry Llacer were charged with violation of Section 5 of RA 9165, *viz*:

> On the 10th day of December 2015, in the City of Makati, the Philippines, accused, conspiring and confederating together and both of them mutually helping and aiding one another, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully, and feloniously sell, deliver, and give away Methamphetamine Hydrochloride weighing zero point eighteen (0.18) gram, a dangerous drug, in consideration of Php500.
>
> CONTRARY TO LAW.

By separate Information[4] dated December 14, 2015, in Criminal Case No. 15-3939, appellant Henry Llacer was also charged with violation of Section 11 of RA 9165, thus:

> On the 10th day of December 2015, in the City of Makati, the Philippines, accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully, and feloniously have in his possession, direct custody and control of zero point zero nine (0.09) gram of Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.
>
> CONTRARY TO LAW.

The cases were both raffled to Regional Trial Court, Branch 65, Makati City.

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[2] Comprehensive Dangerous Drugs Act of 2002.

[3] RTC Record, pp. 2-3.

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

In Criminal Case No. 15-3938, appellants Roseline Kasan and Henry Llacer, when arraigned, pleaded "not guilty."[5]

In Criminal Case No. 15-3939, appellant Henry Llacer, when arraigned, also pleaded "not guilty."[6]

The Prosecution's Evidence

SPO1 Mike Lester Pacis and SPO2 Rommel Ladiana, both police officers assigned at Station Anti-Legal Drugs Special Operation Task Group (SAIDSOTG), Makati Police Station, identified and confirmed[7] the contents of their Joint Affidavit of Arrest[8] dated December 10, 2015. According to them, on December 10, 2015, about 1 o'clock in the morning, they arrested appellants for illegal sale and possession of dangerous drugs. Before the incident, they were briefed by their team leader that per report of the confidential informant, a certain "*alias* Bakulaw" and "*alias* Penny" of JB Roxas St., Brgy. Olympia, Makati were engaged in illegal drug activities in the area.[9]

Consequently, they coordinated with the Philippine Drug Enforcement Agency (PDEA) for narcotics operation[10] and formed a buy-bust team with SPO1 Pacis as designated poseur buyer and SPO2 Ladiana, as immediate back-up. SPO1 Pacis received the ₱500-bill (marked money) with Serial No. WN785257 and with initials "MLP" on its upper-right portion. They agreed on the pre-arranged signal: SPO1 Pacis will tap the shoulder of the suspect.[11]

SPO1 Pacis took a motorcycle and proceeded to the corner of Osmeña and JB Roxas Sts., Brgy. Olympia, Makati City to

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[5] *Id.* at 45.

[6] *Id.*

[7] TSN, May 4, 2016, pp. 3-5 and pp. 24-25.

[8] RTC Record, pp. 33-34.

[9] *Id.* at 33.

[10] *Id.*

[11] *Id.*

meet with the informant. The rest of the team rode a privately-owned vehicle going to the area. There, SPO1 Pacis, together with the informant, walked toward the spot where "Bakulaw" and "Penny" were allegedly selling drugs.[12] SPO1 Pacis saw a woman, wearing shorts and a gray blouse, casually standing in front of a house. The informant told him that the woman was "Penny." SPO2 Ladiana covertly followed SPO1 Pacis and strategically positioned himself close by. The informant introduced PO1 Pacis to "Penny" (later identified as appellant Roseline Kasan), telling her that PO1 Pacis wanted to buy *shabu*.[13]

"Penny" asked SPO1 Pacis "*Magkano kailangan mo? (How much do you need?)*," to which the latter replied "*Limang daan, Ate (Five hundred pesos, miss).*" "*Akin na (Give it to me)*" said "Penny." "Bakulaw" (later identified as appellant Henry Llacer) approached and asked "*Magkano* (How much?" "Penny" replied "*Lima* (Five)." "Bakulaw" took out one plastic sachet of *shabu* and handed it to SPO1 Pacis. "*Eto* (Here)." SPO1 Pacis took the plastic sachet (later marked "MLP") and slid it in his right pocket.[14]

Thereupon, SPO1 Pacis tapped "Bakulaw's" shoulder and grabbed him and "Penny." He introduced himself to them as a police officer. As soon as, SPO2 Ladiana saw the pre-arranged signal, he immediately closed in. SPO1 Pacis apprised "Bakulaw" and "Penny" of their constitutional rights. He also frisked "Bakulaw" and recovered from the latter's right pocket one small plastic sachet of *shabu* (later marked "MLP-1"). SPO1 Pacis further retrieved from "Penny's" right hand the buy-bust money.[15]

For security reasons, they brought petitioners and the seized items to the barangay hall of Brgy. Olympia, Makati City. Since

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[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

there was no available barangay official there, the team proceeded, instead, to the barangay hall of Brgy. West Pembo, Makati City. There, they conducted the inventory in the presence of Barangay Kagawad Rodrigo Neri. They also photographed petitioners and the seized items. The seized items were subsequently turned over to case investigator PO3 Roque Carlo Paredes II, then to the crime laboratory.[16]

The prosecution and the defense stipulated on the testimonies of the other prosecution witnesses as borne in the trial court's Order[17] dated January 21, 2016, viz:

> The prosecution and the defense likewise stipulated on the subject matter of the testimonies of PO3 Roque Carlo M. Paredes, PSI Rendielyn Sahagun and Brgy. Kagawad Rodrigo Neri, to wit: 1) that PO3 Paredes is the police investigator on (the) case who prepared the Investigation Report as well as the requests to the PNP Crime Laboratory Office for the laboratory examination of the items allegedly recovered and the drug test on the persons of the accused; 2) that PSI Sahagun was the forensic chemical officer who prepared Chemistry Report No. D-1297-2015 pursuant to the Request for Laboratory Examination; 3) the qualification of PSI Sahagun as an expert witness in preparing Chemistry Report No. D-1297-2015; 4) that Brgy. Kagawad Neri acted as independent witness during the inventory of the items allegedly recovered; and 5) that they had no personal knowledge as to the circumstances regarding the alleged confiscation of the items from the persons of the accused. Hence, their testimonies in open court were already dispensed with.[18]

The prosecution submitted the following documentary and object evidence: 1) SAID-SOTG Case Referral and Final Investigation Report;[19] 2) petty cash voucher and the marked ₱500-bill;[20] 3) PDEA Coordination Form and Pre-Operation Report

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[16] *Id.*

[17] *Id.* at 49-50.

[18] *Id.* at 50.

[19] *Id.* at 88-90.

[20] *Id.* at 91-92.

both bearing Control No. 10001-122015-0155;[21] 4) Inventory Receipt[22] dated December 10, 2015; 5) PDEA Spot Report[23] dated December 10, 2015; 6) Request for Drug Test[24] dated December 10, 2015; 7) Request for Laboratory Examination[25] dated December 10, 2015; 8) Chemistry Report No. D-1297-15;[26] 9) Chain of Custody Form;[27] 10) plastic sachet marked "MLP"; 11) plastic sachet marked "MLP-1"; 12) SAID-SOTG Custody Form[28] dated December 10, 2015; 13) photographs taken during the inventory and marking of evidence;[29] 14) mug shots of appellants;[30] 15) appellants' medical certificates;[31] 16) Joint Affidavit of Arrest[32] dated December 10, 2015 of SPO1 Mike Lester Pacis and SPO2 Rommel Ladiana; and 17) Affidavit of Undertaking[33] dated December 10, 2015 of PO3 Roque Carlo Paredes II.

The Defense's Evidence

Appellant Roseline Kasan claimed she and Henry Llacer were framed-up. She testified that on December 9, 2015, around 3:30 o'clock in the afternoon, she was inside her room, sleeping with her daughter, when two men suddenly barged in. She reacted with a slew of curses directed against these men. She asked

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[21] *Id.* at 93-94.

[22] *Id.* at 95.

[23] *Id.* at 96-97.

[24] *Id.* at 98.

[25] *Id.* at 99.

[26] *Id.* at 100.

[27] *Id.* at 101.

[28] *Id.* at 102.

[29] *Id.* at 103-104.

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

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

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

[33] *Id.* at 112.

what they were doing inside her room. The men then took hold of her, causing her daughter to wake up. Her daughter asked the men why they were taking her mother. Her daughter hugged her but the men pulled her daughter away.[34]

The men asked her about a person she did not know. She shouted and cursed. The men then dragged her to the ground floor and slapped her. They continued dragging her out of the house toward a parked motorcycle. A lot of people witnessed the incident.[35]

They brought her to the barangay hall where the police officers showed her an illegal drug, claiming it belonged to her. She never possessed or used illegal drugs. She was a massage therapist earning ₱800 per session. The father of her daughter, an American-Indian based in Las Vegas gave them support. She got arrested on December 9 and not December 10, 2015.[36] Henry Llacer was her *kumpare*. The police asked ₱20,000.00 from each of them in exchange for their release.[37]

Henry Llacer denied ever selling or being in possession of dangerous drugs. On December 9, 2015, around 3 o'clock in the afternoon, he was inside his room on the second floor of his residence. Three armed men in civilian clothes went up to his room. They did not show him any search warrant. One of them poked a gun on him, asking him if he was "Olan." He replied that "Olan" was in another house. They forcibly handcuffed and hurt him because he was resisting. He asked "*Bakit n'yo po ako inaaresto, wala naman po akong kasalanan?* (Why are you arresting me? I am not at fault)." They replied "*Sumama ka na lang doon ka na lang magpaliwanag* (Just come with us. You can explain yourself later)."[38]

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[34] TSN, May 25, 2016, pp. 4-5.

[35] *Id.* at 5.

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

[37] *Id.* at 8.

[38] TSN, June 1, 2016, pp. 4-5.

He was taken to the police station. After a few minutes, SPO1 Pacis told him and Roseline that they could call and ask their relatives to produce ₱20,000.00 for each of them in exchange for their liberty. They were given until midnight to raise the money otherwise they would be charged. There were four others, aside from him and Roseline, who were also arrested. These four were released because they were able to pay the police officers.[39] They were first detained at the police station, and around midnight, they were taken to Brgy. Palanan for medical examination.[40] From Brgy. Palanan, they were brought to Brgy. West Pembo where they arrived around 4 o'clock in the morning of December 10, 2015. At West Pembo, SPO1 Pacis brought out two plastic sachets and a ₱500-bill and laid these out on a table. SPO1 Pacis asked Barangay Kagawad Rodrigo Neri to sign something.[41]

The Trial Court's Ruling

By Decision[42] dated June 29, 2016, the trial court found both Roseline Kasan and Henry Llacer guilty of violation of Section 5 of RA 9165 in Criminal Case No. 15-3938; and Henry Llacer also guilty of violation of Section 11 of RA 9165 in Criminal Case No. 15-3939.

The trial court held that the collective evidence of the prosecution proved there was a valid buy-bust operation which resulted in the purchase of 0.18 gram of *shabu* (marked "MLP") from both appellants and the subsequent recovery from Henry Llacer of 0.09 gram (marked "MLP-1"). The prosecution was able to prove that the integrity and identity of the *corpus delicti* were preserved. Thus, the trial court decreed:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

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

[40] *Id.* at 9.

[41] *Id.* at 10.

[42] Penned by Presiding Judge Edgardo M. Caldona, RTC Record, pp. 139-146.

1. In Criminal Case No. 15-3938, the court finds both accused Roseline Kasan y Atilano and Henry Llacer y Jao GUILTY beyond reasonable doubt of the crime of violation of Section 5, Article II, R.A. No. 9165 and sentences them to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00)

2. In Criminal Case No. 15-3939, the court finds accused Henry Llacer y Jao GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II, R.A. No. 9165 and sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00)

The period of detention of both accused should be given full credit.

The Branch Clerk of Court is directed to transmit the plastic sachets containing shabu subject matter of these cases to the PDEA for said agency's appropriate disposition.

Let the dangerous drugs subject matter of these cases be disposed of in the manner provided for by law.

SO ORDERED.[43]

The Proceedings Before the Court of Appeals

On appeal, Roseline Kasan and Henry Llacer brought to fore the alleged procedural lapses in the entrapment operation and the prosecution's failure to prove the *corpus delicti* of the offenses charged.[44]

In refutation, the Office of the Solicitor General (OSG), through Assistant Solicitor General Derek Puertollano and Senior State Solicitor Arturo Medina defended the verdict of conviction. The OSG essentially argued that the integrity and evidentiary value of the seized drugs were properly preserved in compliance with the chain of custody rule.[45]

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[43] *Id.* at 145-146.

[44] CA *rollo*, pp. 43-44.

[45] *Id.* at 73-78.

The Court of Appeals' Ruling

The Court of Appeals affirmed through its assailed Decision dated September 29, 2017. It held there was a valid buy-bust operation which led to appellants' arrest and the confiscation of the dangerous drugs in question. It also found that the arresting officers substantially complied with the chain of custody rule and the integrity of the *corpus delicti* was duly preserved. Lastly, it gave credence and respect to the trial court's factual findings and its assessment of the credibility of witnesses.[46]

The Present Appeal

Appellants Roseline Kasan and Henry Llacer now fault the Court of Appeals for affirming their conviction despite the following procedural infirmities. *First*, the apprehending team failed to immediately mark the seized items, conduct an inventory, and take photographs immediately at the place of arrest. *Second*, during the inventory, only an elected public official was present.[47] *Third*, it was not PO3 Roque Carlo Paredes II, the designated police investigator, who turned over the specimens to the crime laboratory, but SPO1 Pacis himself took a sharp departure from the ordinary course of things. *Fourth*, the stipulated testimony of PO3 Paredes did not provide a clear picture of how he handled the seized items. *Fifth*, the stipulated testimony of the forensic chemist did not contain any information on how the *corpus delicti* was handled during its chemical analysis.[48]

The OSG submits anew that the integrity and evidentiary value of the seized drugs were properly preserved. The plastic sachets were duly marked by SPOl Pacis at the barangay hall of Brgy. West Pembo and not at the *situs criminis* for security reasons. The inventory and photograph were done in appellants' presence. The two plastic sachets were duly submitted by PO3 Paredes to the forensic laboratory. The marked plastic sachets

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[46] *Id.* at 92-96.

[47] *Id.* at 39-43.

[48] *Id.* at 43-44.

were confirmed to have contained *shabu* and to have been duly submitted in evidence to the trial court. Finally, the police officers regularly performed their official duty.[49]

Issue

Did the Court of Appeals err in affirming the verdict of conviction despite the procedural deficiencies in the chain of custody compliance?

Ruling

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.[50] The chain of evidence is constructed by proper exhibit handling, storage, labelling, and recording, and must exist from the time the evidence is found until the time it is offered in evidence.[51]

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.[52]

The chain of custody rule 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, by accident or otherwise.[53] *People v. Beran*[54]

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[49] *Id.* at 73-78.

[50] *People v. Barte*, 806 Phil. 533, 542 (2017).

[51] *People v. Balibay*, 742 Phil. 746, 756 (2014).

[52] *People v. Dahil*, 750 Phil. 212, 231 (2015).

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

[54] 724 Phil. 788, 810 (2014) (citations omitted).

further emphasized why the integrity of the confiscated illegal drug must be safeguarded, *viz*:

> By 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 or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses. Needless to state, the lower court should have exercised the utmost diligence and prudence in deliberating upon accused-appellants' guilt. It should have given more serious consideration to the pros and cons of the evidence offered by both the defense and the State and many loose ends should have been settled by the trial court in determining the merits of the present case.
>
> Thus, every fact necessary to constitute the crime must be established, and the chain of custody requirement under R.A. No. 9165 performs this function in buy-bust operations as it ensures that any doubts concerning the identity of the evidence are removed."

Appellants Roseline Kasan and Henry Llacer were charged with violation of Section 5 of RA 9165 on December 11, 2015. In addition, appellant Henry Llacer was charged with violation of Section 11 of RA 9165 on even date. The applicable law is RA 9165, as amended by RA 10640, *viz*:

> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance

of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

In open court, SPO1 Pacis and SPO2 Ladiana identified and confirmed the veracity of their Joint Affidavit of Arrest dated December 10, 2015, *viz*:

x x x x x x x x x

As a matter of procedure, inventory was conducted at the place of arrest but for security reasons, operating team decided to convey the arrested suspects together with the seized evidence at the Brgy. Hall of Brgy. Olympia, Makati City to conduct the inventory. Due to the unavailability of an elected official in the said barangay to witness the said process, the team conducted inventory at the Brgy. Hall of Brgy. West Rembo (sic), Makati City in the very presence of Kagawad RODRIGO NERI. For evidentiary purposes this procedure was photographed after doing so arrested suspect, together with the pieces of evidence were turned over to the Case Investigator PO3 Roque Carlo M. Paredes II for formal disposition and proper investigation, then to Crime Laboratory and Medical Examination of the suspect.[55]

x x x x x x x x x

On its face, the joint affidavit of arrest of SPO1 Pacis and SPO2 Ladiana bears the following procedural deficiencies in the chain of custody of the drugs in question.

First. The seized drugs were not marked, inventoried, or photographed at the place of arrest.

In *People v. Ramirez*,[56] the Court acquitted the appellant because the marking was not done in the presence of the apprehended violator immediately upon confiscation to truly ensure that they were the same items which entered 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

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[55] RTC Record, p. 34.

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

hall were too substantial that one could not help but think that the evidence could have been tampered.

Here, appellants got arrested at the corner of Osmeña and JB Roxas Sts., Brgy. Olympia, Makati City. But police officers brought them first to the barangay hall of Brgy. Olympia, Makati City. Since there was no available barangay official there, the team transferred to the barangay hall of Brgy. West Pembo, Makati City. It was only after two hours from the time of arrest that the seized items were finally marked by SPO1 Pacis.[57] All through the two-hour gap, the drug items were exposed to switching, planting and contamination while in transit.

The police officers, nonetheless, invoked "security reasons" to justify their failure to mark, inventory, and photograph the drug items at the *situs criminis*. Standing alone, such bare allegation should be rejected. What exactly these "security reasons" were and why the place of arrest was considered to be risky for marking and inventory or taking of photographs — are material details which the arresting officers failed to present during the trial. In *People v. Lim*,[58] it was held that "*immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault.*" This principle was applied in *People v. Tampan*[59] wherein one of the grounds in acquitting the accused therein was the arresting officers' failure to explain why the inventory and taking of photograph were not immediately done at the *situs criminis*, thus:

The physical inventory and photographing of the seized items were not executed immediately at the place of apprehension and seizure.

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[57] TSN, May 4, 2016, pp. 14-15.

[58] G.R. No. 231989, September 4, 2018.

[59] G.R. No. 222648, February 13, 2019.

While these procedures may be conducted at the nearest police station or at the nearest office of the apprehending officer/team, substantial compliance with Section 21 of R.A. No. 9165 may be allowed if attended with good and sufficient reason, a condition that was not met in this case. In People v. Lim, it has been held that "immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault." **The apprehending officers in the present case undoubtedly did not show that the immediate physical inventory and photograph posed a threat on the safety and security of the police officers, or of the confiscated dangerous substance nor did they offer any other acceptable reason for not complying strictly with the requirement of immediate inventory and photograph at the place of arrest**. x x x (Emphasis supplied)

Second. Only an elected official was present at the time of the inventory and taking of photograph. RA 9165, as amended, requires an elected public official and a representative of the National Prosecution Service or the media during inventory and taking of photographs.[60] The law requires the presence of these witnesses primarily to ensure not only the compliance with the chain of custody rule but also remove any suspicion of switching, planting, or contamination of evidence.[61]

People v. Sipin[62] enumerated some of the valid justifications for non compliance with the witness requirement, *viz*:

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in

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[60] Section 21, Article II of RA 9165, as amended by RA 10640.

[61] *People v. Santos*, G.R. No. 236304, November 5, 2018.

[62] G.R. No. 224290, June 11, 2018.

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.

As it was, the arresting officers here did not even bother to explain why they only managed to secure a barangay *kagawad* to witness the inventory and taking of photographs. It is incumbent upon the prosecution to account for the absence of the other required witness, *i.e*. media representative or DOJ representative, by presenting a justifiable reason therefor, or at the very least, by showing that the apprehending officers truly exerted genuine and sufficient efforts to secure the presence of this witness or these witnesses.[63]

In *People v. Lumumba*,[64] the presence of only one witness, a media representative, during the inventory and taking of photographs was considered a breach of the first link. In that case, the arresting officers' explanation that the media representative was the only witness they could secure at that time because the elected barangay officials refused to participate, was not a justifiable ground for non-compliance of the requirement for the presence of the insulating witnesses. As stated, there was no attempt to even give an explanation in this case.

Third. Notably, the parties stipulated that PSI Rendielyn Sahagun was the forensic chemical officer who prepared Chemistry Report No. D-1297-2015 pursuant to the Request for Laboratory Examination. By reason of this stipulation, the parties agreed to dispense with her testimony.[65]

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[63] *People v. Reyes*, G.R. No. 238594, November 5, 2018.

[64] G.R. No. 232354, August 29, 2018.

[65] RTC Record, p. 50.

People v. Cabuhay[66] ordained that the parties' stipulation to dispense with the testimony of the forensic chemist should include:

> In *People v. Pajarin*, the Court ruled that in case of a stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he had taken the precautionary steps required to preserve the integrity and evidentiary value of the seized item, thus: **(1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial**. (Emphasis supplied)

Here, the parties' stipulation to dispense with the testimony of the forensic chemist did not contain the vital pieces of information required in *Cabuhay*: *i.e*. PSI Sahagun received the seized drugs as marked, properly sealed, and intact; PSI Sahagun resealed the drug items after examination of the content; and, PSI Sahagun placed her own marking on the drug items — thus leaving a huge gap in the chain of custody of the seized drugs. *People v. Ubungen*[67] emphasized that stipulation on the testimony of a forensic chemist should cover the management, storage, and preservation of the seized drugs, thus:

> Clear from the foregoing is the lack of the stipulations required for the proper and effective dispensation of the testimony of the forensic chemist. While the stipulations between the parties herein may be viewed as referring to the handling of the specimen at the forensic laboratory and to the analytical results obtained, they do not cover the manner the specimen was handled before it came to the possession of the forensic chemist and after it left her possession. **Absent any testimony regarding the management, storage, and preservation of the illegal drug allegedly seized herein after its qualitative examination, the fourth link in the chain of custody of the said illegal drug could not be reasonably established**. (Emphasis supplied)

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[66] G.R. No. 225590, July 23, 2018.

[67] G.R. No. 225497, July 23, 2018.

Finally, the fourth link was also broken because of the absence of the testimony from any prosecution witness on how the drug items were brought from the crime laboratory and submitted in evidence to the court below. In *People v. Alboka*,[68] the prosecution's failure to show who brought the seized items before the trial court was considered a serious breach of the chain of custody rule.

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 appellant's right to liberty. Verily, therefore, a verdict of acquittal is in order.

Strict adherence to the chain of custody rule must be observed;[69] 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-à-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 of custody may be impossible to obtain at all times because of varying field conditions.[70] 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.[71]

Here, the prosecution failed to substantiate their claim of "security reasons" in not immediately conducting the inventory and photograph at the *situs criminis*. Too, the prosecution failed to concretely establish how the forensic chemist managed, stored, and preserved the seized drugs. Also, the prosecution failed to

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[68] G.R. No. 212195, February 21, 2018.

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

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

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

establish who brought the seized items to the trial court. 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," will not come to play either.

A point of emphasis. At least twelve years and one day of imprisonment is imposed for each count of unauthorized possession of dangerous drugs or unauthorized sale 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.[72]

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, appellants must be unshackled, acquitted, and released from restraint.

Suffice it to state that the presumption of regularity in the performance of official functions[73] 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.[74] 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 appeal is **GRANTED**. The assailed Decision dated September 29, 2017 in CA-G.R. CR HC No. 08530

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

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

[74] See *People v. Cabiles*, G.R. No. 220758, June 7, 2017, 827 SCRA 89, 97.

is **REVERSED** and **SET ASIDE**. Appellants **ROSELINE KASAN *y* ATILANO** and **HENRY LLACER *y* JAO** are **ACQUITTED** of illegal sale of dangerous drugs in Criminal Case No. 15-3938. Further, appellant **HENRY LLACER *y* JAO** is also **ACQUITTED** of illegal possession of dangerous drugs in Criminal Case No. 15-3939.

The Superintendent of the Correctional Institution for Women, Mandaluyong City, Metro Manila is ordered to immediately **RELEASE ROSELINE KASAN *y* ATILANO** from detention unless she is being held in custody for some other lawful cause; and to **REPORT** to this Court her compliance within five (5) days from notice.

Likewise, the Superintendent of the New Bilibid Prisons, Muntinlupa City, Metro Manila is ordered to immediately **RELEASE HENRY LLACER *y* JAO** from detention unless he is being held in custody for some other lawful cause; and to **REPORT** to this Court his compliance within five (5) days from notice.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 242018. July 3, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LYNDON CAÑETE[*] *y* FERNANDEZ and PETERLOU PIMENTEL *y* BENDEBEL,** *accused-appellants.*

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[*] Lyndon is also spelled as "Lydon" and Cañete also appears as "Canete" in some parts of the records.

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); SECTION 21 ARTICLE II THEREOF; MANDATORY PROCEDURAL REQUIREMENTS IN THE SEIZURE, CUSTODY, AND DISPOSITION OF DANGEROUS DRUGS; FAILURE TO COMPLY WITH THE MANDATORY PROCEDURE IS EXCUSABLE ONLY IF THERE EXISTS JUSTIFIABLE GROUNDS, AND THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING TEAM. — Section 21, Article II of RA 9165 lays down the x x x procedural requirements in the seizure, custody, and disposition of dangerous drugs x x x. Prescinding therefrom, Section 21 (a) of the Implementing Rules and Regulations (IRR) of RA 9165 supplies additional custody requirements and further added a "saving clause" in case such requirements are not met x x x. The requirements laid down in Section 21 of RA 9165 and its IRR are couched in strict and mandatory terms. Thus, failure to comply with the procedure found therein is excusable only if the following requisites obtain: (1) that there exist "justifiable grounds"; **and** (2) that the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. As a consequence, once lapses in procedure are shown, the prosecution must recognize such and accordingly justify the same in order to warrant the application of the saving clause. Stated differently, in order not to render void the seizure and custody over the evidence obtained, the burden is therefore on the prosecution to establish the following: (i) that such non-compliance was based on justifiable grounds, and (ii) that the integrity and evidentiary value of the seized item were properly preserved.

2. ID.; ID.; ID.; ID.; THE APPREHENDING TEAM MUST CONDUCT A PHYSICAL INVENTORY OF THE SEIZED ITEMS AND THE PHOTOGRAPHING OF THE SAME IMMEDIATELY AFTER, OR AT THE PLACE OF APPREHENSION, EXCEPT IF THIS IS NOT PRACTICABLE THAT THE INVENTORY AND PHOTOGRAPHING CAN BE MADE AT THE NEAREST POLICE STATION OR THE NEAREST OFFICE OF THE APPREHENDING OFFICER/TEAM, BOTH IN THE

PRESENCE OF THE REQUIRED THREE WITNESSES. — [T]he Court in *People v. Musor* (*Musor*) held that the phrase "immediately after seizure and confiscation" — pertaining to the physical inventory and photographing of the seized items — meant compliance with the procedure **at the place of apprehension**. The Court explained: Section 21, paragraph 1 of RA 9165 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. Further, the inventory must be done in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof. **The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable that the IRR allows the inventory and photographing at 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. In other words, the buy-bust team has enough time and opportunity to bring with them said witnesses. Moreover, **while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with**. The reason is simple: it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.

3. **ID.; ID.; ID.; ID.; REQUIRED THREE WITNESSES; WHERE THE PROSECUTION AND DEFENSE ARE POLARIZED ON THE VERSION OF EVENTS, IT IS THE NEUTRAL TESTIMONY OF THE INSULATING WITNESSES THAT WILL BE CONTROLLING IN PROVIDING THE COURTS WITH A TRUE ACCOUNT OF THE FACTS AS THEY UNFOLDED. —** As revealed by the records, at the time the

drug was allegedly seized and confiscated from accused-appellants, only the police officers were present. Likewise, at the time the item was marked inside the service vehicle of the buy-bust team, there were yet no other witnesses to observe the same. x x x [I]t was only at the time of the inventory and photographing that the three (3) witnesses required under RA 9165 came into the picture. This is a blatant disregard of the safeguards intended by the law, which is to place disinterested "insulating witnesses" at the earliest point of contact where the evil of planting of evidence is most present. It is precisely in this scenario where the evidence was marked **inside a police vehicle with only the police officers present** that such witnesses are needed in order to remove any cloud of doubt as to the identity and integrity of the confiscated item. Where the prosecution and defense are polarized on the version of events, it is the neutral testimony of the insulating witnesses that will be controlling in providing the courts with a true account of the facts as they unfolded. Here, where the pattern of deviations is bordering on impropriety, the Court is especially deprived of that benefit.

4. ID.; ID.; ID.; ID.; PROCEDURAL LAPSES DO NOT *IPSO FACTO* NEGATE A CONVICTION, BUT THE EXISTENCE OF SUCH LAPSES HAS SHIFTED THE BURDEN ON THE PROSECUTION TO ESTABLISH THROUGH COMPETENT EVIDENCE THAT SUCH NON-COMPLIANCE WAS BASED ON JUSTIFIABLE GROUNDS, AND THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEM WERE PROPERLY PRESERVED. — Following the pronouncements in *Musor*, the authorities failed to follow the requirement that the inventory and photographs be done at the place of apprehension. The CA committed grave error in this regard when It held that the apprehending team was free to conduct the inventory and photographing elsewhere and not necessarily where the seized item was marked. And, even assuming that the performance of such procedure was impracticable at the billiard hall, again following *Musor*, the buy-bust team, without justifiable reason or cause, still bypassed the nearest PNP and PDEA stations by still choosing to go to Camp Abelon. The Court cannot discern why the police officers would wantonly disregard the requirements of the law without so much as an explanation why the nearest stations could not provide the same measure of security as Camp Abelon. Based on the records,

the buy-bust team decided to transfer elsewhere as people were already starting to gather. Such reason alone is clearly insufficient to justify a transfer of venue. Considering that the deviation was of their own doing, it was incumbent upon them to make of record a justifiable ground for doing so. As already discussed above, the preceding procedural lapses do not *ipso facto* negate a conviction. However, the existence of such lapses has shifted the burden on the prosecution to establish the following through competent evidence: (i) that such non-compliance was based on justifiable grounds, and (ii) that the integrity and evidentiary value of the seized item were properly preserved. They failed in this regard. With this in mind, the Court reiterates that the first requisite was not complied with; it is therefore futile to discuss compliance with the second requisite given that they are concurring elements.

5. ID.; ID.; ID.; ID.; WHERE THE PROCEDURE IN THE MOVEMENT OF THE DRUGS IS PLACED IN ISSUE, THE FAILURE OF THE PROSECUTION TO SPECIFY THE EXACT WEIGHT OF THE DRUGS ALLEGEDLY SEIZED FROM THE ACCUSED ERODES THE CREDIBILITY OF THE ENTIRE BUY-BUST OPERATION; THE COURT IS DUTY-BOUND TO ACQUIT ACCUSED-APPELLANTS WHEN THE VERY IDENTITY AND INTEGRITY OF THE *CORPUS DELICTI* IS PLACED IN SERIOUS DOUBT. — It comes to the attention of the Court that the Information inexplicably failed to specify the exact weight of the *shabu* allegedly seized from accused-appellants. While it is conceded that no motion to quash was filed by accused-appellants to question the sufficiency of the Information, such a deficiency, to the mind of the Court, creates further doubt on the identity of the seized item — next to the question of *what* substance was involved is *how much* of the substance was purportedly sold. Given the fungible nature of drugs, indicating the quantity of the drugs at the inception of the criminal process is a vital safeguard to ensure the identity of the drugs from the time of seizure until production to the court. The Court finds reprehensible the careless and unprecise attitude of the prosecution as anathema to the effective and intelligent means of defense of the accused-appellants. Moreover, in this case where the procedure in the movement of the drugs is placed in issue, the failure of the prosecution to supply such information further erodes the credibility of the entire buy-bust operation.

> x x x [T]he series of lapses committed by the apprehending team has created serious doubt on whether the accused-appellants are guilty of the crime charged. With the very identity and integrity of the *corpus delicti* placed in serious doubt, the Court is duty-bound to acquit accused-appellants.

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

CAGUIOA, *J.*:

Before the Court is an appeal[1] under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated April 24, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01688-MIN. The CA Decision affirmed the Decision[3] dated March 31, 2017 of the Regional Trial Court of Pagadian City, Branch 20 (RTC), in Criminal Case No. 10417-2K12, which found herein accused-appellants Lyndon Cañete *y* Fernandez and Peterlou Pimentel *y* Bendebel (collectively, accused-appellants) guilty of violation of Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the *Comprehensive Dangerous Drugs Act of 2002.*

The Facts

An Information was filed against accused-appellants for violation of Section 5, RA 9165, which reads in part:

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[1] See Notice of Appeal dated August 10, 2018; *rollo*, pp. 21-23.

[2] *Rollo*, pp. 3-20. Penned by Associate Justice Ruben Reynaldo G. Roxas, with Associate Justices Edgardo T. Lloren and Oscar V. Badelles concurring.

[3] CA *rollo*, pp. 34-38. Penned by Presiding Judge Dennis P. Vicoy.

[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).

"That on the 17th of January 2012, at 5:00 o'clock in the afternoon, more or less, in Poblacion, Tukuran, Zamboanga del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another and without having been authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to IO1 Rolly Calangi, a member of PDEA, who posed as buyer, one heat sealed transparent plastic sachet containing methamphetamine hydrochloride or *shabu* for Three Hundred Pesos (₱300.00), knowing the same to be a dangerous drug.

CONTRARY TO LAW."[5]

When arraigned, accused-appellants entered a plea of "not guilty."[6] Trial on the merits ensued.

The records present two versions of the antecedents. As gathered by the CA, the prosecution's version is as follows:

On 17 January 2012, the Philippine Drug Enforcement Agency (PDEA) Provincial Office, Pagadian City received a report from a confidential informant regarding appellants' drug activities. Acting on this report, Agent Pollisco conducted a buy-bust briefing with the confidential informant, Agent Rolly R. Calangi, Agent Alerta, Agent Judilla, and member of the Provincial Intelligence Branch.

During the briefing, Agent Calangi was designated as poseur-buyer and was given ₱300.00 worth of buy-bust money. Agent Alerta, on the other hand, was designated as back-up arresting officer.

Thereafter, the buy-bust team proceeded to the target area at Tukuran, Zamboanga del Sur. Upon reaching a billiard hall behind the Freedom Stage, the confidential informant alighted from his motorcycle and entered the hall, while the rest of the team positioned themselves along the National Highway.

A few moments later, the confidential informant went out of the billiard hall with appellant [Peterlou Pimentel (Pimentel)], and introduced Agent Calangi to the latter as an interested buyer of shabu. Pimentel told Agent Calangi that a sachet of shabu costs ₱300.00. Agent Calangi signified his interest to buy a sachet and handed the buy-bust money to Pimentel.

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[5] *Rollo*, p. 4.

[6] *Id.*

Pimentel then called someone inside the billiard hall, from where emerged appellant [Lyndon Cañete (Cañete)]. Pimentel gave the buy-bust money to Cañete and returned inside the billiard hall. Cañete, on the other hand, went across the road. As instructed by Pimentel, Agent Calangi waited for Cañete's return.

After about five minutes, Cañete returned and handed to Agent Calangi something wrapped in cigarette foil. Upon inspection, Agent Calangi found the foil to contain a sachet of shabu. He then placed the foil and sachet inside his pocket and immediately proceeded to the buy-bust team's location, together with the confidential informant, while Cañete re-entered the billiard hall.

Agent Calangi told the buy-bust team of the transaction that transpired and showed to them the cigarette foil with the sachet of shabu. The buy-bust team decided to return to the billiard hall, leaving the confidential informant behind.

Upon reaching the billiard hall, Agent Calangi saw Cañete sitting on a bench, while Pimentel was standing near a billiard table. He immediately approached and held Cañete and identified himself as a PDEA agent. Upon Agent Calangi's instructions, Agent Alerta, on the other hand, approached and held Pimentel. Both appellants were bodily searched and placed on (*sic*) handcuffs after being informed of the cause of their arrest and their Miranda rights. During the search, Agent Calangi recovered from Cañete the ₱300.00 buy-bust money.

As people were starting to gather, Agent Pollisco decided to move his team and appellants out of the vicinity. They proceeded to their service vehicle, where Agent Calangi marked the confiscated evidence, *viz*:

> Item No. 1 – Quantity 1 Heat-sealed transparent sachet containing white crystalline substance suspected to be shabu (buy-bust evidence) with markings RRC BB dated 1-17-12;
>
> Item No. 2 – Quantity 1 Aluminum Foil with markings RRC-1 dated 1-17-12;
>
> Item No. 3 – Quantity 1 Cigarette Foil with Markings RRC-2 dated 1-17-12; and
>
> Item No. 4 – Quantity 3 ₱100 Bills Buy-Bust Money with Serial Numbers AZO75114; AZO75119 and AZO75114[.]

With Agent Calangi still in custody of the seized evidence, the buy-bust team proceeded to the PDEA Office in Pagadian City.

However, due to a power interruption, the team had to go instead to the Provincial Intelligence Branch Office to conduct an inventory of the evidence. Present during the inventory were appellants, media representative Vanessa Cagas, elected official Ernesto Mondarte, and Department of Justice Representative Prosecutor Mary Ann Tugbang-Torres.

Thereafter, the investigator, Agent Decano, took a photograph of the evidence. A letter request for laboratory examination was likewise prepared and submitted by Agent Calangi to the Zamboanga del Sur Crime Laboratory.

PSI Christine Grace Bustillo received the letter request and examined the submitted specimen, which tested positive for methamphetamine hydrochloride or shabu.[7]

Meanwhile, accused-appellants rely on a different narration of facts for their defense, to wit:

At around 5:00 o'clock in the afternoon on January 17, 2012 at Poblacion, Tukuran, Lyndon was working as a watcher for Jun Bangas' Billiard Hall ("billiard hall" for brevity); when suddenly, an unknown female and two (2) unknown armed males approached him, pointing their gun at him. They grabbed him and pulled his arms behind his back.

Thereafter, he was bodily searched twice by these operatives and recovered from him, more or less, is [*sic*] *₱600.00* sum of money in ₱20.00 and ₱50.00 bills. The money recovered from him are payments made to him by the players of the billiard hall. He was then brought inside a white colored vehicle.

Lyndon and the three (3) unknown persons left Tukuran and made a stop-over at Park-In-Go, which is seventy (70) meters away from the billiard hall. While inside the vehicle, he was again frisked by his captors. He was then choked, threatened with a gun, and asked who was selling. He replied that he was only watching the billiard hall.

Afterwards, seven (7) armed persons, whom he saw earlier, before they boarded him in the vehicle approached him. They had with them Peterlou.

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

For his part, [Peterlou] testified that on the date of the alleged incident, he was at the billiard hall at Poblacion, Tukuran. He was watching a game while waiting for his younger brother when two (2) armed women entered the premises and approached Lyndon. He saw how they searched the body of Lyndon, confiscated his money and subsequently arrested him. He even saw Lyndon being brought inside a vehicle and was driven away.

Peterlou stayed at the billiard hall for thirty (30) minutes; however, three (3) unknown armed persons arrived and approached him. He was requested to come with them, because they were to ask queries about Lyndon. He acquiesced to their request and was brought to Park-In-Go Store.

Both appellants Lyndon and Peterlou were brought to Dao for their dinner. Afterwards, they headed to Camp Abelon.

They arrived at Camp Abelon at around 10:00 o'clock in the evening, where they were padlocked and forced to sign a document. It was then when the appellants first saw Agent Calangi. He was the one who showed them the document that they were forced to sign.

Apparently, an Information for selling a sachet of shabu was filed against Lyndon and Peterlou. However, they found out the exact charge that was filed against them only during arraignment.[8]

Ruling of the RTC

In the Decision dated March 31, 2017, the RTC found accused-appellants guilty beyond reasonable doubt of the crime charged:

WHEREFORE, this court finds the two accused LYNDON CA[Ñ]ETE y FERNANDEZ and PETERLOU PIMENTEL y BENDEBEL, guilty beyond reasonable doubt for Violation of Section 5, Article II of RA 9165 and both are sentenced to suffer Life Imprisonment and are ordered to pay jointly a fine of PHP500,000.00.

The PDEA of Pagadian City is hereby directed to coordinate with the Branch Clerk of Court for the destruction of the SHABU pursuant to the provisions of RA 9165 fifteen (15) days from receipt of this Decision.

SO ORDERED.[9]

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

[9] CA *rollo*, p. 38.

Without delving into specifics, the RTC mentioned lapses of procedure in the handling of the seized drug but nevertheless found that the integrity and evidentiary value of the seized item were properly preserved and established through evidence of an unbroken chain of custody.[10] The RTC likewise favored the testimony of the police officers based on the presumption that they performed their duties in a regular manner.[11]

Pleading their innocence, accused-appellants appealed to the CA.

Ruling of the CA

In the CA Decision, the CA affirmed the RTC Decision *in toto*, as follows:

> **WHEREFORE**, the appeal is **DISMISSED**. The 31 March 2017 Decision of the Regional Trial Court, Branch 20, Pagadian City, in Criminal Case No. 10417-2K12 finding appellants guilty beyond reasonable doubt of selling *shabu* defined and penalized under Section 5 of RA 9165 (The Comprehensive Dangerous Drugs Act of 2002), is **AFFIRMED *in toto*.**
>
> **SO ORDERED.**[12]

The CA sustained the conviction of accused-appellants notwithstanding certain lapses in the transmission of the *shabu* allegedly seized from them.[13] While the CA confirmed that the inventory was not conducted immediately after seizure and at the place prescribed under the law, it nevertheless found such lapses excusable under the circumstances.[14]

Hence, this appeal.

In the main, accused-appellants lament the lapses committed by the buy-bust team in effecting the seizure of the dangerous

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

[11] *Id*. at 36.

[12] *Rollo*, p. 19.

[13] See *id*. at 14-15.

[14] See *id*. at 15-16.

drug. In particular, they insist that the inventory and photographing of the seized item were not done immediately after seizure and at the nearest police station or office of the Philippine Drug Enforcement Agency (PDEA), contrary to Section 21 of RA 9165.

Issue

Whether accused-appellants are guilty beyond reasonable doubt for the crime charged.

The Court's Ruling

The appeal is granted.

Requirements under Section 21 of RA 9165 and the IRR are mandatory

Section 21, Article II of RA 9165 lays down the following procedural requirements in the seizure, custody, and disposition of dangerous drugs:

> 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**[.][15] (Emphasis supplied)

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[15] RA 9165, Sec. 21 was amended by RA 10640, entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT

Prescinding therefrom, Section 21 (a) of the Implementing Rules and Regulations (IRR) of RA 9165 supplies additional custody requirements and further added a "saving clause" in case such requirements are not met:

> **SECTION 21. C*ustody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.*** — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that **the physical inventory and photograph shall be conducted** at the place where the search warrant is served; or at the nearest police station or **at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**[.] (Emphasis supplied)

The requirements laid down in Section 21 of RA 9165 and its IRR are couched in strict and mandatory terms. Thus, failure to comply with the procedure found therein is excusable only if the following requisites obtain: (1) that there exist "justifiable

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OF 2002." RA 10640, which imposed less stringent requirements in the procedure under Section 21, was approved only on July 15, 2014.

grounds"; **and** (2) that the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.[16]

As a consequence, once lapses in procedure are shown, the prosecution must recognize such and accordingly justify the same in order to warrant the application of the saving clause.[17] Stated differently, in order not to render void the seizure and custody over the evidence obtained, the burden is therefore on the prosecution to establish the following: (i) that such non-compliance was based on justifiable grounds, and (ii) that the integrity and evidentiary value of the seized item were properly preserved.[18]

Further, the Court in *People v. Musor*[19] (*Musor*) held that the phrase "immediately after seizure and confiscation" — pertaining to the physical inventory and photographing of the seized items — meant compliance with the procedure **at the place of apprehension**. The Court explained:

> Section 21, paragraph 1 of RA 9165 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. Further, the inventory must be done in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof.
>
> **The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable that the IRR allows the inventory and photographing at the nearest police station or the nearest office of the apprehending officer/team.**

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[16] RA 9165, Sec. 21, as amended by RA 10640, Sec. 21(1).

[17] *People v. Luna*, G.R. No. 219164, March 21, 2018, p. 10.

[18] See *People v. Reyes*, 797 Phil. 671, 690 (2016); *People v. Capuno*, 655 Phil. 226, 240-241 (2011); and *People v. Garcia*, 599 Phil. 416, 432-433 (2009).

[19] G.R. No. 231843, November 7, 2018.

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. In other words, the buy-bust team has enough time and opportunity to bring with them said witnesses.

Moreover, **while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with**. The reason is simple: it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.[20] (Emphasis supplied; emphasis and italics in the original omitted)

Based on the foregoing standards, the Court shall now proceed to discuss the merits of this case.

Non-observance of procedural requirements; failure to present justifiable grounds for deviation

As uniformly found by both the RTC and the CA, there were patent deviations from the mandatory procedure required in buy-bust operations.[21] Thus, the only question left for resolution is whether in the face of such irregularities, there remains moral certainty that accused-appellants committed the crime as described in the Information.

On this score, the CA remained steadfast in convicting accused-appellants. Based on the following presentation, the CA found the lapses committed by the buy-bust team justifiable under the prevailing circumstances:

It is not disputed that the inventory was conducted at the Office of the Provincial Intelligence, Zamboanga del Sur Provincial Police

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[20] *Id*. at 10.

[21] See *rollo*, pp. 14-17; CA *rollo*, pp. 36-37.

Office, Camp Abelon, and **not at the nearest police station from the crime scene, which was the PNP Station of Labanga, and the nearest PDEA Office at Dao, Pagadian City**. This fact was fully explained by Agent Calangi. On the day the appellants were arrested, the team immediately proceeded to the PDEA Office in Dao but due to the power interruption, their team leader instructed the team to proceed to the Office of the Provincial Intelligence Branch at Camp Abelon so they can properly conduct their inventory without any disruption. **Due to the exigent circumstances, the team leader found the said location to be the most practicable despite bypassing the PNP Station of Labanga**. After all, such decision may have proceeded from the fact that the PDEA conducted said buy-bust with the coordination of the Office of the Provincial Intelligence, and not with the police officers at the Labanga Police Station.

Although the inventory and photographs were taken only at the Office of the Provincial Intelligence Branch and not at the crime scene immediately after the marking, what is important is that inventory was made, and photographs taken, of the seized sachet of *shabu* in the presence of the accused and in the presence of the representatives from media, Department of Justice (DOJ) and an elected official, who signed the inventory and was given a copy thereof as provided under Section 21.

As enumerated by Agent Calangi, the following witnesses were present during the inventory: 1) Vanessa Cagas, the media representative; 2) Honorable Ernesto Mondarte, the elected official; 3) Prosecutor Mary Ann Tugbang-Torres, the representative from DOJ; and 4) the appellants themselves. Afterwards, copies of the Certificate of Inventory, which [were] signed by the three witnesses, were given to them and the appellants. x x x

Also, **in spite of the fact that the inventory and photographs were not taken immediately after the seizure of the *shabu* at the scene of the crime**, it must be highlighted that this is a case of warrantless arrest and **the apprehending team may choose to conduct the inventory at the Office of the Provincial Intelligence Branch**. It is only the marking of the drugs seized without warrant that must be done "immediately upon confiscation" and in the presence of the accused.[22] (Emphasis supplied)

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[22] *Id*. at 15-16.

The Court is not persuaded.

While the opposing sides present differing versions of events leading to the apprehension of accused-appellants, the following facts are undisputed: (i) the team present at the place of arrest and seizure of the dangerous drug was composed entirely of PDEA members;[23] (ii) the marking was not done at the place of arrest (*i.e.*, the billiard hall), but inside the service vehicle of the buy-bust team;[24] (iii) from the place of arrest and after the marking, the buy-bust team proceeded to the PDEA Office in Pagadian City. Allegedly due to a power interruption, the buy-bust team instead went to the Office of the Provincial Intelligence, Zamboanga del Sur Provincial Police Office, Camp Abelon (Camp Abelon);[25] (iv) Camp Abelon was not the nearest police station or office from the crime scene, which was the Philippine National Police (PNP) Station of Labanga, or the PDEA Office in Dao, Pagadian City;[26] (v) the inventory and photographing of the seized drug were conducted only at Camp Abelon;[27] and (vi) the witnesses (*i.e.*, representative from the media, Department of Justice, and local elected official) were present only during the inventory and photographing at Camp Abelon.[28]

The foregoing concurrence of events, when weighed against prevailing case law, convinces the Court that the buy-bust team failed to justify their deviations from the mandatory provisions of RA 9165. For this reason alone, accused-appellants must be acquitted.

This case, while unique, is far from unusual. It is not the first time that the Court, amidst obvious deviations from the

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[23] CA *rollo*, p. 34.

[24] See *rollo*, pp. 5-6; *id*.

[25] *Id*. at 15.

[26] *Id*.

[27] *Id*.

[28] *Id*. at 15-16.

letter of the law, is made to balance the interests of the State with the rights of the accused.

First. As revealed by the records, at the time the drug was allegedly seized and confiscated from accused-appellants, only the police officers were present. Likewise, at the time the item was marked inside the service vehicle of the buy-bust team, there were yet no other witnesses to observe the same. As detailed above, it was only at the time of the inventory and photographing that the three (3) witnesses required under RA 9165 came into the picture.

This is a blatant disregard of the safeguards intended by the law, which is to place disinterested "insulating witnesses" at the earliest point of contact where the evil of planting of evidence is most present. It is precisely in this scenario where the evidence was marked **inside a police vehicle with only the police officers present** that such witnesses are needed in order to remove any cloud of doubt as to the identity and integrity of the confiscated item. Where the prosecution and defense are polarized on the version of events, it is the neutral testimony of the insulating witnesses that will be controlling in providing the courts with a true account of the facts as they unfolded. Here, where the pattern of deviations is bordering on impropriety, the Court is especially deprived of that benefit.

Second. Following the pronouncements in *Musor*, the authorities failed to follow the requirement that the inventory and photographs be done at the place of apprehension. The CA committed grave error in this regard when it held that the apprehending team was free to conduct the inventory and photographing elsewhere and not necessarily where the seized item was marked. And, even assuming that the performance of such procedure was impracticable at the billiard hall, again following *Musor*, the buy-bust team, without justifiable reason or cause, still bypassed the nearest PNP and PDEA stations by still choosing to go to Camp Abelon.

The Court cannot discern why the police officers would wantonly disregard the requirements of the law without so much as an explanation why the nearest stations could not provide

the same measure of security as Camp Abelon. Based on the records, the buy-bust team decided to transfer elsewhere as people were already starting to gather. Such reason alone is clearly insufficient to justify a transfer of venue. Considering that the deviation was of their own doing, it was incumbent upon them to make of record a justifiable ground for doing so.

As already discussed above, the preceding procedural lapses do not *ipso facto* negate a conviction. However, the existence of such lapses has shifted the burden on the prosecution to establish the following through competent evidence: (i) that such non-compliance was based on justifiable grounds, and (ii) that the integrity and evidentiary value of the seized item were properly preserved.[29] They failed in this regard. With this in mind, the Court reiterates that the first requisite was not complied with; it is therefore futile to discuss compliance with the second requisite given that they are concurring elements.

Parenthetically, upon closer examination of the records, a point of interest surfaces. It comes to the attention of the Court that the Information inexplicably failed to specify the exact weight of the *shabu* allegedly seized from accused-appellants. While it is conceded that no motion to quash was filed by accused-appellants to question the sufficiency of the Information, such a deficiency, to the mind of the Court, creates further doubt on the identity of the seized item — next to the question of *what* substance was involved is *how much* of the substance was purportedly sold. Given the fungible nature of drugs, indicating the quantity of the drugs at the inception of the criminal process is a vital safeguard to ensure the identity of the drugs from the time of seizure until production to the court. The Court finds reprehensible the careless and unprecise attitude of the prosecution as anathema to the effective and intelligent means of defense of the accused-appellants. Moreover, in this case where the procedure in the movement of the drugs is placed in issue, the failure of the prosecution to supply such information further erodes the credibility of the entire buy-bust operation.

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[29] See *People v. Reyes*, *supra* note 18, at 690; *People v. Capuno*, *supra* note 18, at 240-241; and *People v. Garcia*, *supra* note 18, at 432-433.

In sum, the series of lapses committed by the apprehending team has created serious doubt on whether the accused-appellants are guilty of the crime charged. With the very identity and integrity of the *corpus delicti* placed in serious doubt, the Court is duty-bound to acquit accused-appellants.

WHEREFORE, premises considered, the appeal is **GRANTED** and the Decision dated April 24, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 01688-MIN is hereby **REVERSED** and **SET ASIDE**. Accused-appellants Lyndon Cañete *y* Fernandez and Peterlou Pimentel *y* Bendebel are hereby **ACQUITTED** of the crime charged for failure of the prosecution to prove their guilt beyond reasonable doubt. They are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are confined for any other lawful cause.

Let a copy of this Decision be sent to the Superintendent, San Ramon Prison and Penal Farm, Zamboanga City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to the 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.

SECOND DIVISION

[G.R. No. 242315. July 3, 2019]

RIEL ARANAS *y* DIMAALA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. —** In every prosecution of the crime of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165, the following elements must be proven beyond reasonable doubt: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.

2. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE TRIAL COURT IS IN THE BEST POSITION TO ASSESS AND DETERMINE THE CREDIBILITY OF THE WITNESSES PRESENTED BY BOTH PARTIES, AND IN THE ABSENCE OF INDICATION THAT THE SAID COURT OVERLOOKED, MISUNDERSTOOD, OR MISAPPLIED THE SURROUNDING FACTS AND CIRCUMSTANCES OF THE CASE, THE SUPREME COURT FINDS NO REASON TO DEVIATE FROM ITS FACTUAL FINDINGS. —** Here, the courts *a quo* correctly ruled that the prosecution was able to establish with moral certainty all the foregoing elements, considering that: (*a*) by virtue of a valid search warrant, the police officers recovered, among others, two (2) plastic sachets of suspected *shabu* from petitioner's house; (*b*) petitioner failed to prove that his possession of the seized dangerous drugs was authorized by law; and (*c*) petitioner freely and consciously possessed the same because he hid them inside a *Katialis* ointment container. In this regard, it should be noted that the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties. Hence, since there is no indication that the said courts overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings.

3. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165), AS AMENDED BY RA 10640; SECTION 21, ARTICLE II THEREOF; CHAIN OF CUSTODY RULE; THE IDENTITY OF THE DANGEROUS DRUG MUST BE ESTABLISHED WITH**

MORAL CERTAINTY, CONSIDERING THAT THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME. — [T]he Court notes that the police officers sufficiently complied with the chain of custody rule under Section 21, Article II of RA 9165, as amended by RA 10640. In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, as amended by RA 10640, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.

4. **ID.; ID.; ID.; ID.; THE MARKING, PHYSICAL INVENTORY, AND PHOTOGRAPHY OF THE SEIZED ITEMS MUST BE CONDUCTED IMMEDIATELY AFTER SEIZURE AND CONFISCATION OF THE SAME, AND DONE IN THE PRESENCE OF THE ACCUSED OR THE PERSON FROM WHOM THE ITEMS WERE SEIZED, OR HIS REPRESENTATIVE OR COUNSEL, AS WELL AS THE REQUIRED WITNESSES. —** [T]o establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the DOJ, and any elected public official; or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

5. ID.; ID.; ID.; ID.; CONVICTION MUST STAND WHERE THE CHAIN OF CUSTODY OVER THE SEIZED DANGEROUS DRUGS REMAINED UNBROKEN, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAVE BEEN PROPERLY PRESERVED. — Records show that after petitioner was arrested, the police officers immediately took custody of the seized items. They also conducted the requisite marking, inventory, and photography thereof in the presence of an elected public official, *i.e.*, Brgy. Chairman Mendoza; a media representative, *i.e.*, Griño; and a DOJ representative, *i.e.*, Buhay, right at the place where petitioner was arrested. Subsequently, PO1 Togonon delivered the seized items to PSI Llacuna for laboratory examination, who, in turn, brought the same to EC Barcelona for safekeeping. In light of the foregoing, the Court holds that the chain of custody over the seized dangerous drugs remained unbroken, and that the integrity and evidentiary value of the *corpus delicti* have been properly preserved. Perforce, petitioner's conviction must stand.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before this Court is a petition for review on *certiorari*[1] seeking to annul and set aside the Decision[2] dated June 29, 2018 and the Resolution[3] dated September 18, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 40301, which affirmed the Judgment[4]

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[1] *Rollo*, pp. 12-25.

[2] *Id*. at 30-45. Penned by Associate Justice Ramon R. Garcia with Associate Justices Myra V. Garcia-Fernandez and Germano Francisco D. Legaspi, concurring.

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

[4] *Id*. at 62-69. Penned by Presiding Judge Dorcas P. Ferriols-Perez.

dated July 14, 2017 of the Regional Trial Court of Batangas City, Branch 84 (RTC) in Criminal Case No. 19781 finding petitioner Riel Aranas *y* Dimaala (petitioner) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[6] filed before the RTC charging petitioner with the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165. The prosecution alleged that at around six (6) o'clock in the morning of May 13, 2015, the members of the Tingloy Police Station proceeded to the residence of petitioner located at Barangay Sto. Tomas, Tingloy, Batangas to implement Search Warrant No. 15-20[7] dated May 7, 2015 (search warrant) issued by the Regional Trial Court of Batangas City, Branch 3 for an alleged violation of RA 9165. Upon arriving thereat, Police Officer 1 (PO1) Benjie[8] Casapao and PO1 Rolando Togonon (PO1 Togonon) read the contents of the said warrant to petitioner, searched his house, and accordingly, found two (2) plastic sachets of suspected *shabu* inside a *Katialis* ointment container, as well as a rolled aluminum foil and lighter on the wall. After placing petitioner under arrest, the police officers marked, inventoried, and photographed the seized items in the presence of petitioner, Barangay Chairman Aileen Mendoza (Brgy. Chairman Mendoza), media representative Benedicto Griño (Griño), and Department of Justice (DOJ) representative Judith Buhay (Buhay). Afterwards, they brought petitioner and the seized items to the police station to prepare the request for

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[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[6] Dated May 14, 2015. Records, pp. 1-2.

[7] Signed by Executive Judge Ruben A. Galvez. *Id.* at 10.

[8] "Bernie" in some parts of the records.

laboratory examination.[9] Subsequently, PO1 Togonon delivered the letter-request and the two (2) plastic sachets of suspected *shabu* to the Batangas Provincial Crime Laboratory Office, where, after examination,[10] the contents thereof yielded positive for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.[11]

For his part, petitioner interposed the defense of denial, claiming that at around three (3) o'clock in the morning of May 13, 2015, some police officers suddenly barged into his house and began searching its premises against his consent. After the search, they found illegal drugs at the second floor of his house and consequently, brought him to the police station.[12]

In a Judgment[13] dated July 14, 2017, the RTC found petitioner guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to thirteen (13) years and one (1) day, as maximum, and to pay a fine in the amount of ₱300,000.00.[14] It held that as opposed to petitioner's bare denials, the prosecution adduced sufficient proof to show that all the elements of the crime were present, and that the chain of custody over the seized dangerous drugs remained unbroken.[15] Aggrieved, petitioner appealed[16] to the CA.

In a Decision[17] dated June 29, 2018, the CA affirmed petitioner's conviction,[18] ruling that the integrity and evidentiary

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[9] Dated May 13, 2015. Records, p. 21.

[10] See Chemistry Report No. BD-130-2015 dated May 13, 2015 signed by Polic Chief Inspector Herminia Carandang Llacuna; *id*. at 23.

[11] See *rollo*, pp. 33-34 and 63-64.

[12] See *id*. at 35 and 65-66.

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

[14] *Id*. at 69.

[15] See *id*. at 66-69.

[16] See Notice of Appeal dated July 17, 2017; records, pp. 218-219.

[17] *Rollo*, pp. 30-45.

[18] *Id*. at 44.

value of the seized drugs were properly preserved from the time they were recovered in petitioner's house until they were handed over to Police Senior Inspector Herminia Carandang Llacuna (PSI Llacuna), Forensic Chemist, for laboratory examination, who, in turn, delivered the same to Evidence Custodian Joel Barcelona (EC Barcelona) for safekeeping.[19] Moreover, it found the minor inconsistencies in the testimonies of the prosecution witnesses to be trivial matters that bear little significance to the case.[20] Undaunted, petitioner sought reconsideration,[21] which was, however, denied in a Resolution[22] dated September 18, 2018; hence, this petition.

The Court's Ruling

The petition lacks merit.

In every prosecution of the crime of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165, the following elements must be proven beyond reasonable doubt: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[23]

Here, the courts *a quo* correctly ruled that the prosecution was able to establish with moral certainty all the foregoing elements, considering that: (*a*) by virtue of a valid search warrant, the police officers recovered, among others, two (2) plastic

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[19] See *id*. at 42-43.

[20] See *id*. at 41-42.

[21] See motion for reconsideration dated July 25, 2018; CA *rollo*, pp. 86-92.

[22] *Rollo*, pp. 47-48.

[23] See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 (2015) and *People v. Bio*, 753 Phil. 730, 736 (2015).

sachets of suspected *shabu* from petitioner's house; (*b*) petitioner failed to prove that his possession of the seized dangerous drugs was authorized by law; and (*c*) petitioner freely and consciously possessed the same because he hid them inside a *Katialis* ointment container.[24] In this regard, it should be noted that the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties.[25] Hence, since there is no indication that the said courts overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings.

Further, the Court notes that the police officers sufficiently complied with the chain of custody rule under Section 21, Article II of RA 9165, as amended by RA 10640.[26]

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, as amended by RA 10640, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[27] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.[28]

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[24] *Rollo*, p. 39.

[25] See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018, citing *Peralta v. People*, G.R. No. 221991, August 30, 2017, further citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

[26] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014.

[27] See *People v. Crispo*, *supra* note 23; *People v. Sanchez*, *supra* note 23; *People v. Magsano*, *supra* note 23; *People v. Manansala*, *supra* note 23; *People v. Miranda*, *supra* note 23; and *People v. Mamangon*, *supra* note 23. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[28] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

Notably, to establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[29] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.[30] The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the DOJ, and any elected public official;[31] or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service[32] *OR* the

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[29] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 23; *People v. Sanchez*, *supra* note 23; *People v. Magsano*, *supra* note 23; *People v. Manansala*, *supra* note 23; *People v. Miranda*, *supra* note 23; and *People v. Mamangon*, *supra* note 23. See also *People v. Viterbo*, *supra* note 27.

[30] In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." (*People v. Mamalumpon*, 767 Phil. 845, 855 [2015], citing *Imson v. People*, 669 Phil. 262, 270-271 [2011]. See also *People v. Ocfemia*, 718 Phil. 330, 348 [2013], citing *People v. Resurreccion*, 618 Phil. 520, 532 [2009].) Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. (See *People v. Tumulak*, 791 Phil. 148, 160-161 [2016]; and *People v. Rollo*, 757 Phil. 346, 357 [2015].)

[31] Section 21(1), Article II of RA 9165 and its Implementing Rules and Regulations.

[32] Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" [April 11,1978] and Section 3 of RA 10071, entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL

media.[33] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[34]

Records show that after petitioner was arrested, the police officers immediately took custody of the seized items. They also conducted the requisite marking, inventory, and photography thereof in the presence of an elected public official, *i.e.*, Brgy. Chairman Mendoza; a media representative, *i.e.*, Griño; and a DOJ representative, *i.e.*, Buhay, right at the place where petitioner was arrested.[35] Subsequently, PO1 Togonon delivered the seized items to PSI Llacuna for laboratory examination, who, in turn, brought the same to EC Barcelona for safekeeping. In light of the foregoing, the Court holds that the chain of custody over the seized dangerous drugs remained unbroken, and that the integrity and evidentiary value of the *corpus delicti* have been properly preserved. Perforce, petitioner's conviction must stand.

WHEREFORE, the petition is **DENIED**, the Decision dated June 29, 2018 and the Resolution dated September 18, 2018 of the Court of Appeals in CA-G.R. CR No. 40301 are hereby **AFFIRMED**. Petitioner Riel Aranas *y* Dimaala is found **GUILTY** beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of Republic Act No. 9165, as amended by Republic Act No. 10640, and accordingly, sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to thirteen (13) years and one (1) day, as maximum, and to pay a fine in the amount of ₱300,000.00.

PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" [lapsed into law on April 8, 2010].)

[33] Section 21 (1), Article II of RA 9165, as amended by RA 10640.

[34] See *People v. Miranda*, *supra* note 23. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[35] In conformity with the witness requirement under Section 21 (1), Article II of RA 9165, as amended by RA 10640.

SO ORDERED.

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

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employed in a confidential capacity; (b) teachers; (c) physicians; and (d) members of the Armed Forces of the Philippines. (Dr. Bagaoisan *vs*. Office of the Ombudsman for Mindanao, Davao City, G.R. No. 242005, June 26, 2019) p. 483

— Jurisprudence has it that for the purpose of determining nepotism, there should be no distinction between appointment and designation; otherwise, the prohibition on nepotism would be meaningless and toothless; any appointing authority may circumvent it by merely designating, and not appointing, a relative within the prohibited degree to a vacant position in the career service. (*Id*.)

— The prohibitory norm against nepotism in the public service is set out in Sec. 59, Chapter 8, Title I-A, Book V of E.O. No. 292; "nepotism" is defined therein as follows: (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited; as used in this Section, the word "relative" and members of the family referred to are those related within the third degree either of consanguinity or of affinity; one is guilty of nepotism if an appointment is issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following: (a) appointing authority; (b) recommending authority; (c) chief of the bureau or office; and (d) person exercising immediate supervision over the appointee. (*Id*.)

ADMINISTRATIVE LAW

Conduct prejudicial to the best interest of the service — It is not defined by the Civil Service Law and its rules, but is so inclusive as to put within its ambit any conduct of a public officer that tarnishes the image and integrity of his public office; it is not inconsistent with a finding of

ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (VAWC) (R. A. NO. 9262)

Application of — Criminal liability for violation of Sec. 5(e) of R.A. No. 9262 attaches when the accused deprives the woman of financial support which she is legally entitled to. (Reyes *vs*. People, G.R. No. 232678, July 3, 2019) p. 991

— Elements of violation of Sec. 5(i) of R.A. No. 9262, to wit: (1) The offended party is a woman and/or her child or children; (2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child; as for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode; (3) The offender causes on the woman and/or child mental or emotional anguish; and (4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, *denial of financial support* or custody of minor children or access to the children or similar acts or omissions. (*Id*.)

— Psychological violence is certainly an indispensable element of violation of Sec. 5(i) of R.A. No. 9262; equally essential is the element of the mental or emotional anguish which is personal to the complainant; psychological violence is the means employed by the perpetrator, while mental or emotional suffering is the effect caused to or the damage sustained by the offended party; to establish psychological violence, it is necessary to adduce proof of the commission of any of the acts enumerated in Sec. 5(i) or similar of such acts. (*Id*.)

— R.A. No. 9262 defines and criminalizes violence against women and their children perpetrated by the woman's husband, former husband or any person against whom the woman has or had a sexual or dating relationship with, or with whom the woman has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or likely to result in, *inter alia*, economic abuse or psychological

when there is doubt as to what the law is on a certain state of facts; there is a question of fact, on the other hand, when the doubt arises as to the truth or falsity of the alleged facts, or when the query necessarily invites a calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation. (Mirando, Jr. *vs*. PCSO, G.R. No. 205022, July 3, 2019) p. 785

— Only questions of law should be raised in petitions for review on *certiorari* under Rule 45 of the Rules of Court; this Court is not a trier of facts and a review of appeals is not a matter of right; nevertheless, this Court admits of exceptions subject to its sound judicial discretion; in *Medina v. Mayor Asistio, Jr.*, findings of fact by the Court of Appeals may be reviewed by this Court: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record; for this Court to review the facts of the case, these exceptions must be alleged, substantiated, and proved by the parties; the review should be granted. (Toquero *vs*. Crossworld Marine Services, Inc., G.R. No. 213482, June 26, 2019) p. 106

multiple fora having concurrent jurisdiction over the case, such as in petitions for *certiorari, mandamus*, and prohibition which are concurrently cognizable either by the Regional Trial Courts, the Court of Appeals, or the Supreme Court; the correctness of the BIR's interpretation of the 1997 NIRC under the assailed RMC is a pure question of law, because the same does not involve an examination of the probative value of the evidence presented by the litigants or any of them; being the only remedy to appeal the RTC's ruling upholding the Circular's validity on a purely legal question, direct resort to this Court, through a Rule 45 petition, was correctly availed by ANPC. (Assoc. of Non-Profit Clubs, Inc. *vs*. BIR, G.R. No. 228539, June 26, 2019) p. 300

Questions of fact — With respect to petitioner MWF's position that the CA erred in affirming with modifications the RTC, Branch 67's award of damages in favor of respondent AVSI, the Court finds the same unmeritorious; jurisprudence has held that "the issues on the award of damages which call for a re-evaluation of the evidence before the trial court, which is obviously a question of fact." (Makati Water, Inc. *vs*. Agua Vida Systems, Inc., G.R. No. 205604, June 26, 2019) p. 87

Rules on — It is a fundamental rule that precludes higher courts from entertaining matters neither alleged in the pleadings nor raised in the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal; indeed, when a party deliberately adopts a certain theory and the case is decided upon that theory in the tribunal below, he or she will not be permitted to change the same on appeal lest it cause unfairness to the adverse party; in other words, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular, but also extrajudicial and invalid; an exception to this rule is viable only when the change in theory will not require the presentation of additional evidence on both sides. (Civil Service Commission *vs*. Catacutan, G.R. No. 224651, July 3, 2019) p. 891

— In petitioner's unlawful warrantless arrest, it necessarily follows that there could have been no valid search incidental to a lawful arrest which had yielded the alleged illegal gambling paraphernalia from petitioners. (*Id*.)

ATTORNEY'S FEES AND COSTS OF LITIGATION

Award of — With respect to the amount of attorney's fees and costs of litigation, which the CA reduced from 25% to 10% of the total amount due, according to Art. 2208 of the Civil Code, attorney's fees and expenses of litigation can be awarded by the court in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered; considering petitioner's stubborn refusal to adhere to the clear and unequivocal dictates of the Franchise Agreements on the two-year prohibition period found under Sec. IV-5 thereof despite the repeated reminders of respondent AVSI, which the RTC, Branch 67 and CA assessed to be wanton and reckless, the award of attorney's fees and costs of litigation is with sufficient basis. (Makati Water, Inc. *vs*. Agua Vida Systems, Inc., G.R. No. 205604, June 26, 2019) p. 87

ATTORNEYS

Acting in their private capacity — Whether in their professional or in their private capacity, lawyers may be disbarred or suspended for misconduct; this penalty is a consequence of acts showing their unworthiness as officers of the courts, as well as their lack of moral character, honesty, probity, and good demeanor; when the misconduct committed outside of their professional dealings is so gross as to show them to be morally unfit for the office and the privileges conferred upon them by their license and the law, they may be suspended or disbarred. (Bautista *vs*. Atty. Ferrer, A.C. No. 9057 [Formerly CBD Case No. 12-3413], July 3, 2019) p. 743

Attorney's fees — Under Rule 16.03 of the Code of Professional Responsibility, a claim for attorney's fees may be asserted either in the very action in which a lawyer rendered his

CERTIFICATE OF NON-FORUM SHOPPING AND VERIFICATION

Rules on — Court recognized the authority of the President of a corporation to sign a verification and certification of non-forum shopping without authority from the board of directors. (Digitel Employees Union *vs*. Digital Telecoms Phils., Inc., G.R. No. 217529, July 3, 2019) p. 836

— Jurisprudential rules governing the submission and contents of the verification and certification of non-forum shopping were summarized in *Altres, et al. v. Empleo, et al.*, *viz*.: 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping; 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective; The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby; 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct; 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."; 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case; under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial. (People *vs*. Kasan *y* Atilano, G.R. No. 238334, July 3, 2019) p. 1021

— In cases for Illegal Sale and/or Possession of Dangerous Drugs under R.A. No. 9165, as amended by R.A. No. 10640, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal. (Aranas *y* Dimaala *vs*. People, G.R. No. 242315, July 3, 2019) p. 1062

— 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; 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. (People *vs*. Dagdag, G.R. No. 225503, June 26, 2019) p. 262

crime; the prosecution does not comply with the indispensable requirement of proving the *corpus delicti* either when the dangerous drugs are missing, or when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence ultimately presented in court; that proof of the *corpus delicti* depends on a gapless showing of the chain of custody; the Court agrees with petitioner's assertion that the *corpus delicti* was not proven as the chain of custody was defective; there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence ultimately presented in court. (*Id*.)

— It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Art. 125 of the Revised Penal Code proved futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape; earnest effort to secure the attendance of the necessary witnesses must be proven. (People *vs*. Manansala *y* Cruz, G.R. No. 229509, July 3, 2019) p. 952

— Only an elected official was present at the time of the inventory and taking of photograph; R.A. No. 9165, as amended, requires an elected public official and a

– 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; while the Court has clarified that under varied field conditions, strict compliance with the requirements of Sec. 21 of R.A. No. 9165 may not always be possible; the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 does not *ipso facto* render the seizure and custody over the items void; and this has always been 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; in this case, it is obvious that the police officers did not have a valid excuse for their deviation from Sec. 21 of R.A. No. 9165; the integrity and evidentiary value of the *corpus delicti* have thus been compromised and Buniag must accordingly be acquitted. (People *vs*. Buniag *y* Mercadera, G.R. No. 217661, June 26, 2019) p. 137

— Sec. 21 of the IRR of R.A. No. 9165 provides that "noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items"; for this provision to be effective, however, the prosecution must first (1) recognize any lapses on the part of the police officers and (2) be able to justify the same; in this case, the prosecution neither recognized, much less tried to justify, its deviations from the procedure contained in Sec. 21, R.A. No. 9165; 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 necessarily have been compromised. (People *vs*. Dagdag, G.R. No. 225503, June 26, 2019) p. 262

official within the period required under Art. 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape. (*Id*.)

— The chain of custody over the seized dangerous drugs remained unbroken, and that the integrity and evidentiary value of the *corpus delicti* have been properly preserved. (Aranas *y* Dimaala *vs*. People, G.R. No. 242315, July 3, 2019) p. 1062

— The Court has repeatedly stressed that it is the prosecution's onus to prove every link in the chain of custody – from the time the drug is seized from the accused, until the time it is presented in court as evidence; where the prosecution fails to strictly comply with the procedure under Sec. 21, Art. II of R.A. No. 9165, it must give justifiable ground for its non-compliance; generally there are four links in the chain of custody of the seized illegal drug: (i) its seizure and marking, if practicable, from the accused, by the apprehending officer; (ii) its turnover by the apprehending officer to the investigating officer; (iii) its turnover by the investigating officer to the forensic chemist for examination; and, (iv) its turnover by the forensic chemist to the court; in the present case, the prosecution miserably failed to comply with the chain of custody rule and to proffer any justifiable ground for such non-compliance; it becomes the constitutional duty of this Court to acquit the accused-appellant. (People *vs*. De Leon, G.R. No. 227867, June 26, 2019) p. 288

— The failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 of R.A. No. 9165 does not *ipso facto* render the seizure and custody over the items void; however, the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground

— 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; and only if this is not practicable that the IRR allows the inventory and photographing at 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*. Cañete *y* Fernandez, G.R. No. 242018, July 3, 2019) p. 1043

— The physical inventory and taking of photographs of the seized items must be witnessed by three insulating witnesses (*i.e*. an elected public official, a representative from the media, and a representative from the DOJ); they must also sign the inventory and be given copies of the same. (People *vs*. Rodriguez *y* Bantoto, G.R. No. 233535, July 1, 2019) p. 617

— The police officers failed to take photographs of the seized drugs; moreover, they failed to offer any explanation for its noncompliance; the last paragraph of Sec. 21 (a) contains a saving *proviso* to the effect 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"; but in order for the saving *proviso* to apply, the prosecution must first recognize and explain the lapse or lapses in procedure committed by the arresting lawmen; that did not happen in this case. (People *vs*. Bermejo *y* De Guzman, G.R. No. 199813, June 26, 2019) p. 65

— The prosecution failed to justify its non-compliance with the requirements laid down in Sec. 21, specifically, the presence of the two required witnesses during the actual inventory of the seized items; the unjustified absence of

procedure under Sec. 21 of R.A. No. 9165, they brought the seized items to the police station; *second*, although there was a media representative who signed the inventory report at the police office, such is not enough because the law requires that the mandatory witnesses should already be present during the actual inventory and not merely after the fact; moreover, there was no representative from the Department of Justice or any elected official at the time of arrest of the accused and seizure of the illegal drugs, and inventory and photography of the seized items at the police station. (People *vs*. Buniag *y* Mercadera, G.R. No. 217661, June 26, 2019) p. 137

—— To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime; as part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. (Aranas *y* Dimaala *vs*. People, G.R. No. 242315, July 3, 2019) p. 1062

(Limbo *y* Paguio *vs*. People, G.R. No. 238299, July 1, 2019) p. 678

——— Under certain conditions, strict compliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 may not always be possible; the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21, Art.. II of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved; for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had, nonetheless, been preserved; there has to be a

be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. (People *vs*. Dagdag, G.R. No. 225503, June 26, 2019) p. 262

— In every prosecution of the crime of Illegal Possession of Dangerous Drugs under Sec. 11, Art. II of R.A. No. 9165, the following elements must be proven beyond reasonable doubt: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (Aranas *y* Dimaala *vs*. People, G.R. No. 242315, July 3, 2019) p. 1062

— It is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal. (Limbo *y* Paguio *vs*. People, G.R. No. 238299, July 1, 2019) p. 678

Illegal sale and illegal possession of dangerous drugs — Appellant was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Secs. 5 and 11, Art. II of R.A. No. 9165; in order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment; on the other hand, when an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug; however, in order to sustain a conviction in both instances, the identity of

needed to sustain a guilty verdict. (People *vs*. Bermejo *y* De Guzman, G.R. No. 199813, June 26, 2019) p. 65

— The prosecution failed to: (1) prove the *corpus delicti* of the crime; (2) establish an unbroken chain of custody of the seized drugs; and (3) offer any explanation why the provisions of Sec. 21, R.A. No. 9165 were not complied with; consequently, the Court is constrained to acquit Bermejo for failure of the prosecution to prove his guilt beyond reasonable doubt. (*Id*.)

Illegal sale of shabu — Contrary to the protestation of appellant, the evidence on record shows that there had been faithful compliance with the foregoing provision by the apprehending team; process, explained. (People *vs*. Juguilon *y* Ebrada, G.R. No. 229828, June 26, 2019) p. 332

— Prior surveillance is not a prerequisite for the validity of an entrapment operation, especially when the buy-bust team is accompanied by their informant at the crime scene; similarly, the absence of marked money does not create a hiatus in the evidence for the prosecution provided that the prosecution has adequately proved the sale; also, the use of dusted money is not indispensable to prove the illegal sale of drugs, as held in *People v. Felipe*; neither is it necessary to present the informant as his testimony would merely be corroborative and cumulative. (People *vs*. Bermejo *y* De Guzman, G.R. No. 199813, June 26, 2019) p. 65

— To secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (1) the identities of the buyer and the seller, the object of the sale and the consideration for the sale; and (2) the delivery of the thing sold and the payment therefor; what is material in the prosecution of an illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation of the *corpus delicti* in court as evidence; the evidence on record showed the presence of all these elements as culled from the testimony of PO2 Villarete, who represented himself

the amount of ₱500,000.00 on appellant since the imposition of the death penalty has been proscribed by R.A. No. 9346. (People *vs*. Juguilon *y* Ebrada, G.R. No. 229828, June 26, 2019) p. 332

Presence of required witnesses — The presence of the required witnesses at the time of the inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose; hence, the CA's assessment that the brazen and wholesale deviations of Sec. 21 of R.A. No. 9165 committed by the police in the instant case are mere "minor lapses" is unquestionably incorrect; such an assessment by the CA is irresponsible and reprehensible; in *People v. Tomawis*, 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*, 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 R.A. No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. (People *vs*. Dagdag, G.R. No. 225503, June 26, 2019) p. 262

Requirement of witnesses — In this case, the reliance of the police operatives on the lone witness, Brgy. Capt. Santiago, who was the very party interested in the arrest, prosecution and conviction of appellant, as it was this *barangay* captain himself who requested the buy-bust operation against appellant, and the police operatives' failure to secure the presence of either a DOJ *or* media representative, without justifiable reasons and without exerting earnest

expiry date; there is no provision in the Franchise Agreements which shows the parties' alleged intent to exclude the expiration of the agreements from the coverage of the word *termination*. (Makati Water, Inc. *vs*. Agua Vida Systems, Inc., G.R. No. 205604, June 26, 2019) p. 87

—— Under Art. 1374 of the Civil Code, the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly; the Court has previously held that in construing an instrument with several provisions, a construction must be adopted as will give effect to all; under Art. 1374 of the Civil Code, contracts cannot be construed by parts, but clauses must be interpreted in relation to one another to give effect to the whole; there is no provision under the Franchise Agreements which expressly limits, restricts, or confines the grounds of termination to the three grounds; upon a close reading of Sec. I of the Franchise Agreements, it would reveal that the three grounds enumerated under Secs. IV-1, IV-2, and IV-3 of the Franchise Agreements refer, not to termination *per se*, but to *early termination;* referring to the grounds identified in Section IV of the Franchise Agreements, Sec. 1-1 of the agreements qualifies termination with the adverb earlier; the Court is further convinced that the term *termination* includes the expiration of the period of effectivity of the Franchise Agreements upon reading Sec. I-2 of the Franchise Agreements; the said provision deals with the extension or renewal of the agreements when the Franchise Agreements expire upon the lapse of the agreed term or duration of the agreements; in using the term *termination* in referring to the extension or renewal of the Franchise Agreements upon their expiration, it is made painstakingly clear that it was the intention of the parties to include expiration within the coverage of termination; furthermore, the Civil Code states that the stipulations of a contract shall also be understood "as bearing that import which is most adequate to render it effectual" and that "which is most in keeping with the nature and object of the contract." (*Id*.)

— The fundamental test in determining the sufficiency of the averments in a complaint or information is whether the facts alleged therein, if hypothetically admitted, constitute the elements of the offense. (*Id*.)

— Under Sec. 6, Rule 110 of the Rules of Court, the complaint or information is sufficient if it states the names of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. (*Id*.)

DAMAGES

Attorney's fees — The award of attorney's fees is legally and morally justifiable in actions for recovery of wages and where an employee was forced to litigate and thus, incur expenses to protect his rights and interest. (Meco Manning & Crewing Services, Inc. *vs*. Cuyos, G.R. No. 222939, July 3, 2019) p. 855

Award of — No damages shall be awarded to any party in accordance with the rule under Art. 1192 of the Civil Code that in case of mutual breach and the first infractor of the contract cannot exactly be determined, each party shall bear his own damages. (Tondo Medical Center *vs*. Rante, G.R. No. 230645, July 1, 2019) p. 580

— The Court finds the CA's affirmation with modification of the award of damages laden with sufficient basis; with respect to compensatory damages, the amount awarded by the RTC, Branch 67 was substantiated and based on actual performance/sales data testified under oath by respondent AVSI's witness, computing the compensatory damages on the basis of the actual sales performance of AV-Pilar and AV-Arnaiz covering a period of two years; with respect to the exemplary damages awarded by the RTC, Branch 67, the Court previously held that the courts may impose exemplary damages as an accompaniment to compensatory damages when "the guilty party acted in a wanton, fraudulent, reckless,

relations between the parties involved and the circumstances of the case; the conduct of Sio did not just violate Heritage's Code of Conduct but was likewise inimical to its business relations with PAGCOR, and thus, prejudicial to the hotel's interest; the penalties of suspension imposed upon Sio were not without valid bases and were reasonably proportionate to the infractions committed; *Areno, Jr. v. Skycable PCC-Baguio*, cited; the improper remarks hurled against valued guests and an employee of a valued client, in the present case, pose a greater threat to the interest of an employer and all the more merits a similar, if not graver, penalty; what should not be overlooked is the prerogative of an employer company to prescribe reasonable rules and regulations necessary for the proper conduct of its business and to provide certain disciplinary measures in order to implement said rules to assure that the same would be complied with; in sum, there is substantial evidence to show that Sio was guilty of the charges against her and was afforded procedural due process; hence, the act of Heritage of imposing upon her the penalties of suspension was a valid exercise of an employer's management prerogative. (The Heritage Hotel Manila *vs.* Sio, G.R. No. 217896, June 26, 2019) p. 156

EMPLOYMENT, KINDS OF

Project employment — Case law states that in order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent them from attaining regular status, employers claiming that their workers are project employees should not only prove that the duration and scope of the employment were specified at the time they were engaged, but also that there was indeed a project; "it is crucial that the employees were informed of their status as project employees at the time of hiring and that the period of their employment must be knowingly and voluntarily agreed upon by the parties, without any force, duress, or improper pressure being brought to bear upon the employees or any other circumstances vitiating their

project or undertaking; and (b) the duration and scope of which were specified at the time the employees were engaged for that project. (Mirandilla *vs*. Jose Calma Dev't. Corp., G.R. No. 242834, June 26, 2019) p. 498

EMPLOYMENT, TERMINATION OF

Backwages — An order for reinstatement entitles an employee to receive his accrued backwages from the moment the reinstatement order was issued up to the date when the same was reversed by a higher court without fear of refunding what he had received; the start of the computation of the backwages should be on the day following the last day when the dismissed employee was paid backwages, and end on the date that a higher court reversed the LA's ruling of illegal dismissal; the date of reversal should be the end date, and not the date of the ultimate finality of such reversal. (Coca-Cola Bottlers Phils., Inc. *vs*. Magno, Jr., G.R. No. 212520, July 3, 2019) p. 794

—— The base figure to be used in reckoning full backwages is the salary rate of the employee at the time of his dismissal; the amount does not include the increases or benefits granted during the period of his dismissal because time stood still for him at the precise moment of his termination, and move forward only upon his reinstatement; entitlement to such benefits must be proved by submission of proof of having received the same at the time of the illegal dismissal; increases are thus excluded from backwages. (*Id*.)

—— The base figure to be used in the computation of backwages due to the employee should include not just the basic salary, but also the regular allowances that he had been receiving, such as the emergency living allowances and the 13th month pay mandated under the law. (*Id*.)

Gross inefficiency — The Court rules that there was still just cause for Reyes' termination – gross inefficiency as with any private corporation, CMP Federal had the prerogative to set standards, within legal bounds, to be observed by its employees; in the exercise of this right, CMP Federal

his Written Explanations did Reyes request for one; thus, without first going into the merits of the administrative complaints against Reyes, and his defenses, the Court finds that Reyes was not denied procedural due process of law; the CA erred in ruling that the NLRC did not act with grave abuse of discretion when it reversed the Decision of the Labor Arbiter. (CMP Federal Security Agency, Inc. *vs*. Reyes, Sr., G.R. No. 223082, June 26, 2019) p. 217

— Reyes bewailed that he was allegedly deprived of the opportunity to be heard because no hearing or conference was conducted by the petitioners regarding the disciplinary charges against him, in violation of Sec. 2(d), Rule I, Book VI of the Omnibus Rules Implementing the Labor Code; the 2017 case of *Maula v. Ximex Delivery Express, Inc.*, citing the *En Banc* ruling in *Perez v. Phil. Telegraph and Telephone Company*, reiterated the hornbook doctrine that actual hearing or conference is not a condition *sine qua non* for procedural due process in labor cases because the provisions of the Labor Code prevail over its implementing rules; Sec. 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed 'substantially,' not strictly; this is a recognition that while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process. (*Id*.)

Negligence — The Court agrees with the NLRC and the CA that Reyes' infractions did not constitute "serious misconduct" as contemplated under the first paragraph of Art. 282 of the Labor Code; the explanations proffered by Reyes showed that he was not animated by any wrongful intent when he committed the infractions complained of; the finding that he was guilty of serious misconduct was incompatible with the charges for negligence which, by definition, requires lack of wrongful intent; the Court cannot also consider negligence as a valid ground for Reyes' dismissal; to be a valid ground for dismissal, the neglect of duty must be both gross and habitual; gross negligence implies want of care in the performance of

ESTOPPEL

Principle of — Estoppel is a principle in equity and pursuant to Art. 1432, Civil Code, it is adopted insofar as it is not in conflict with the provisions of the Civil Code and other laws; estoppel, thus, cannot supplant and contravene the provision of law clearly applicable to a case, and conversely, it cannot give validity to an act that is prohibited by law or one that is against public policy. (DepEd *vs*. Rizal Teachers Kilusang Bayan for Credit, Inc., G.R. No. 202097, July 3, 2019) p. 758

EVIDENCE

Admission of — A published treatise may be admitted as tending to prove the truth of its content if: (1) the court takes judicial notice; or (2) an expert witness testifies that the writer is recognized in his or her profession as an expert in the subject. (Arreza *vs*. Tetsushi Toyo, G.R. No. 213198, July 1, 2019) p. 522

Burden of proof and presumptions — Both the RTC and CA seriously overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent; this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases that it has proven the guilt of the accused beyond reasonable doubt, with each and every element of the crime charged in the information proven to warrant a finding of guilt for that crime or for any other crime necessarily included therein; this burden of proof never shifts; the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. (People *vs*. Dagdag, G.R. No. 225503, June 26, 2019) p. 262

Public or official record of a foreign country — Under Secs. 24 and 25 of Rule 132, a writing or document may be proven as a public or official record of a foreign country by either (1) an official publication or (2) a copy thereof attested by the officer having legal custody of the

provided that the divorce obtained by the foreign spouse enables him or her to remarry; in actions involving the recognition of a foreign divorce judgment, it is indispensable that the petitioner prove not only the foreign judgment granting the divorce, but also the alien spouse's national law. (Arreza *vs*. Tetsushi Toyo, G.R. No. 213198, July 1, 2019) p. 522

GOVERNMENT PROCUREMENT REFORM ACT (R.A. NO. 9184)

Negotiated procurement — Generally, all government procurement must be done through competitive bidding; alternative methods of procurement, however, are available under the conditions provided in R.A. No. 9184; for infrastructure projects in particular, the only alternative mode is negotiated procurement; in negotiated procurement, the procuring entity directly negotiates the contract with a technically, legally and financially capable supplier, contractor or consultant; even if the resort to negotiated procurement is justified, its application does not warrant dispensing with the other requirements under R.A. No. 9184; the respondents and the other concerned officials should still, among other things: (a) conduct a pre-procurement conference; (b) post the procurement opportunity in the Philippine Government Electronic Procurement System, the website of the Procuring Entity and its electronic procurement service provider, if any, and any conspicuous place in the premises of the Procuring Entity; and (c) require the submission of a bid security and a performance security; most important is the pre-procurement conference, which the BAC is mandated to hold for each and every procurement, except for small procurements such as infrastructure projects costing ₱5,000,000.00 and below; while Secs. 85 and 86 of the Government Auditing Code requires an appropriation prior to the execution of the contract, the enactment of R.A. No. 9184 modified this requirement by requiring the availability of funds upon the commencement of the procurement process. (Office of the Ombudsman *vs*. Celiz, G.R. No. 236383, June 26, 2019) p. 380

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 v. Jugueta,* cited. (People *vs*. SPO2 Menil *y* Bongkit, G.R. No. 233205, June 26, 2019) p. 352

INCOME TAXES

Capital and income –– As correctly argued by ANPC, membership fees, assessment dues, and other fees of similar nature only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive members; they represent funds "held in trust" by these clubs to defray their operating and general costs and hence, only constitute infusion of capital; for as long as these membership fees, assessment dues, and the like are treated as collections by recreational clubs from their members as an inherent consequence of their membership, and are, by nature, intended for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, then these fees cannot be classified as "the income of recreational clubs from whatever source" that are "subject to income tax"; instead, they only form part of capital from which no income tax may be collected or imposed. (Assoc. of Non-Profit Clubs, Inc. *vs*. BIR, G.R. No. 228539, June 26, 2019) p. 300

–– By sweepingly including in RMC No. 35-2012 all membership fees and assessment dues in its classification of "income of recreational clubs from whatever source" that are "subject to income tax," the BIR exceeded its rule-making authority; the Court declares the said interpretation to be invalid, and in consequence, sets aside the ruling of the RTC. (*Id*.)

–– The distinction between "capital" and "income" is well-settled in our jurisprudence; as held in the early case of *Madrigal v. Rafferty*, "capital" has been delineated as a "fund" or "wealth," as opposed to "income" being "the flow of services rendered by capital" or the "service of

parties belonging to the same ICC/IP group; when such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the case shall fall under the jurisdiction of the regular courts, instead of the NCIP. (Galang *vs*. Wallis, G.R. No. 223434, July 3, 2019) p. 877

— The Court thus noted that the two conditions cannot be complied with if the parties to a case either: (1) belong to different ICCs/IP groups which are recognized to have their own separate and distinct customary laws; or (2) if one of such parties was a non-ICC/IP member who is neither bound by customary laws or a Council of Elders/ Leaders, for it would be contrary to the principles of fair play and due process for parties who do not belong to the same ICC/IP group to be subjected to its own distinct customary laws and Council of Elders/Leaders; in which case, the Court ruled that the regular courts shall have jurisdiction, and that the NCIP's quasi-judicial jurisdiction is, in effect, limited to cases where the opposing parties belong to the same ICC/IP group. (*Id*.)

— The NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP group because of the qualifying provision under Section 66 of the IPRA that "no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws; the primary purpose of a proviso is to limit or restrict the general language or operation of the statute, and that what determines whether a clause is a proviso is the legislative intent, the Court stated that said qualifying provision requires the presence of two conditions before such claims and disputes may be brought before the NCIP, *i.e.*, exhaustion of all remedies provided under customary laws, and the Certification issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved. (*Id*.)

— The Court has repeatedly held that jurisdiction over the subject matter is determined by examining the material allegations of the complaint and the relief sought. (*Id*.)

LAND REGISTRATION

Buyer in good faith — A person, to be considered a buyer in good faith, should buy the property of another without notice that another person has a right to, or interest in, such property, and should pay a full and fair price for the same at the time of such purchase, or before he has notice of the claim or interest of some other persons in the property; as to registered and titled land, the buyer has no obligation to inquire beyond the four corners of the title; to prove good faith, he must only show that he relied on the face of the title to the property; and such proof of good faith is sufficient; however, the rule applies only when the following conditions concur, namely: *one*, the seller is the registered owner of the land; *two*, the latter is in possession thereof; and, *three*, the buyer was not aware at the time of the sale of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his capacity to convey title to the property; absent any of the foregoing conditions, the buyer has the duty to exercise a higher degree of diligence by scrutinizing the certificate of title and examining all factual circumstances in order to determine the seller's title and capacity to transfer any interest in the property; all the foregoing conditions obtained herein; as such, petitioners had no duty to inquire beyond the four corners of the title. (EEG Dev't. Corp. *vs*. Heirs of Victor C. De Castro (Deceased), G.R. No. 219694, June 26, 2019) p. 172

LAND REGISTRATION ACT

Forged or fraudulent deed — Generally, a forged or fraudulent deed is a nullity that conveys no title; however, this generality is not cast in stone; the exception, to the effect that a fraudulent document may become the root of a valid title, exists where there is nothing in the certificate of title to indicate at the time of the transfer

registered under the Torrens system would be required to inquire in every instance as to whether the title has been regularly or irregularly issued by the court; being innocent purchasers for value, petitioners merited the full protection of the law. (EEG Dev't. Corp. *vs*. Heirs of Victor C. De Castro (Deceased), G.R. No. 219694, June 26, 2019) p. 172

LIBEL

Commission of — Libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to cause dishonor, discredit or contempt of a natural or juridical person, or to blacken the memory of one who is dead; thus, it is an offense of injuring a person's character or reputation through false and malicious statements; in *Manila Bulletin Publishing Corporation v. Domingo*, the Court said that: Despite being included as a crime under the Revised Penal Code (RPC), a civil action for damages may be instituted by the injured party, which shall proceed independently of any criminal action for the libelous article and which shall require only a preponderance of evidence, as what Atty. Canoy did in this case; beyond question, the words imputed to Atty. Canoy as a veritable mental asylum patient, a madman and a lunatic, in its plain and ordinary meaning, are conditions or circumstances tending to dishonor or discredit him; these are defamatory or libelous *per se*. (Nova Communications, Inc. *vs*. Atty. Canoy, G.R. No. 193276, June 26, 2019) p. 12

— Under Art. 354 of the RPC, it is provided that every defamatory imputation is presumed to be with malice, even if the same is true, unless it is shown that it was made with good intention and justifiable motive, except in the following circumstances: 1. A private communication made by any person to another in the performance of any legal, moral or social duty; and 2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings

Privileged communication — A privileged communication may be classified as either absolutely privileged or qualifiedly privileged; the absolutely privileged communication are not actionable even if the same was made with malice, such as the statements made by members of Congress in the discharge of their duties for any speech or debate during their session or in any committee thereof, official communications made by public officers in the performance of their duties, allegations or statements made by the parties or their counsel in their pleadings or during the hearing, as well as the answers of the witnesses to questions propounded to them; the qualifiedly privileged communications are those which contain defamatory imputations but which are not actionable unless found to have been made without good intention or justifiable motive, and to which "private communications" and "fair and true report without any comments or remarks" belong; the defamatory words imputed to Atty. Canoy cannot be considered as "private communication" made by one person to another in the performance of any legal, moral or social duty; neither is it a fair and true report without any comments or remarks. (Nova Communications, Inc. *vs*. Atty. Canoy, G.R. No. 193276, June 26, 2019) p. 12

— As alleged by the petitioners, the subject articles were centered in the rebellion of Col. Noble, and Atty. Canoy was merely mentioned incidentally; this allegation does not help the position of the petitioners; rather, it even weakens their cause, as it further established the existence of malice in causing dishonor, discredit or put in contempt the person of Atty. Canoy; it is true that every defamatory remark directed against a public person in his public capacity is not necessarily actionable but if the utterances are false, malicious, or unrelated to a public officer's performance of his duties or irrelevant to matters of public interest involving public figures, the same may be actionable. (*Id*.)

— In the case of *Borjal v. CA*, fair commentaries on matters of public interest is provided as another exception by

coming from other people, such as petitioner and his own mother, the report fails to prove that the said difficulties were tantamount to serious psychological disorder that would render him incapable of performing the essential marital obligations; as case law holds, "in determining the existence of psychological incapacity, a clear and understandable causation between the party's condition and the party's inability to perform the essential marital covenants must be shown. (*Id*.)

— Under Art. 36 of the Family Code, as amended, psychological incapacity is a valid ground to nullify a marriage; however, in deference to the State's policy on marriage, psychological incapacity does not merely pertain to any psychological condition; according to case law, psychological incapacity should be confined to the most serious cases of personality disorders that clearly manifest utter insensitivity or inability to give meaning and significance to the marriage; it should refer to no less than a mental – not merely physical – incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage, as provided under Article 68 of the Family Code. (*Id*.)

— While respondent's purported womanizing caused the couple's frequent fights, such was not established to be caused by a psychological illness; in a long line of cases, the Court has held that sexual infidelity, by itself, is not sufficient proof that petitioner is suffering from psychological incapacity; it must be shown that the acts of unfaithfulness are manifestations of a disordered personality which make the spouse completely unable to discharge the essential obligations of marriage; for failing to sufficiently prove the existence of respondent's psychological incapacity within the contemplation of Art. 36 of the Family Code, the petition is granted. (*Id*.)

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042, AS AMENDED)

Application of — Sec. 10 of R.A. No. 8042, as amended by R.A. No. 10022, provides that if the recruitment or placement agency is a juridical being, its corporate officers, directors, and partners, as the case may be, shall be jointly and solidarily liable with the corporation or partnership for the claims and damages against it. (Meco Manning & Crewing Services, Inc. *vs*. Cuyos, G.R. No. 222939, July 3, 2019) p. 855

MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES

Award of — As stated by the NLRC in its Decision, "After the check-up, disability benefits (sic) was not extended to the deceased seaman; this to us (sic) evinced is bad faith on the part of the respondent"; bad faith is not simply bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud"; since petitioners are in bad faith, the award of moral damages amounting to fifty thousand pesos (50,000.00) is proper; as to the award of exemplary damages, the New Civil Code provides that, "exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages"; the award of exemplary damages amounting to fifty thousand pesos (50,000.00) is proper; "the Court also holds that respondent is entitled to attorney's fees in the concept of damages and expenses of litigation; attorney's fees are recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest"; under Art. 2208 of the New Civil Code, attorney's fees may be recovered in actions for indemnity under workmen's compensation and employer's liability laws; hence, the award of attorney's fees ten percent (10%) of the aggregate

order or resolution takes the nature of a final order susceptible to appeal; in leaving out the determination of the amount of damages, a summary judgment is not removed from the category of final judgments. (*Id*.)

MURDER

Elements — Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Art. 248 of the Revised Penal Code; and (4) the killing is not parricide or infanticide. (People *vs*. Corpuz *y* Daguio, G.R. No. 220486, June 26, 2019) p. 187

Penalty — The crime of Murder is penalized under Art. 248 of the RPC, as amended by R.A. No. 7659, with *reclusion perpetua* to death; in the absence of any aggravating circumstance, both the trial court and the Court of Appeals correctly meted the penalty of *reclusion perpetua*. (People *vs*. Corpuz *y* Daguio, G.R. No. 220486, June 26, 2019) p. 187

OMBUDSMAN

Investigative and prosecutorial powers — It is established that this Court generally does not interfere when the Office of the Ombudsman has made its finding on the existence of probable cause; this exercise is an executive function, and is in accordance with its constitutionally-granted investigatory and prosecutorial powers; in *Presidential Ad Hoc Committee on Behest Loans v. Tabasondra*: The Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not; this is basically his prerogative; in recognition of this power, the Court has been consistent not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers; the rationale underlying the Court's ruling has been explained in numerous cases; the rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but

of undue injury; that is, the losses that would have been unavoidable in the ordinary course of business, as contemplated by *Presidential Commission on Good Government;* public respondent Office of the Ombudsman did not gravely abuse its discretion in finding that there was no probable cause to charge private respondents with violation of Sec. 3(e) and (g) of the Anti-Graft and Corrupt Practices Act; this Court will not overturn its findings when they are supported by substantial evidence. (*Id*.)

PHILIPPINE CREDIT CARD INDUSTRY REGULATION LAW (R.A. NO. 10870)

Requirement for issuers — Presently, the governing law is R.A. No. 10870, otherwise known as the Philippine Credit Card Industry Regulation Law; before issuing credit cards, issuers are now mandated to conduct "know-your-client" procedures and to exercise proper diligence in ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments; in the service level agreement between the acquiring banks and their partner merchants, there shall be a provision requiring such merchants to perform due diligence to establish the identity of the cardholders; violations of the provisions of the new law, as well as existing rules and regulations issued by the Monetary Board, are penalized with imprisonment or fine, or both. (BPI *vs*. Sps. Sarda, G.R. No. 239092, June 26, 2019) p. 450

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Application of — In the absence of a CBA between the petitioner and the respondents, it is the POEA SEC as well as relevant labor laws which will govern the petitioner's claim, especially as these are deemed written in the contract of employment between the parties; as provided by Art. 198, formerly Art. 192 of the Labor Code of the Philippines, the following disabilities shall be deemed total and permanent: (1) Temporary total disability lasting

party opinion, the findings of the company-designated physician shall prevail over the assessment made by the seafarer's doctor; without the referral to a third doctor, there is no valid challenge to the findings of the company-designated physician; in the absence thereof, the medical pronouncement of the company-designated physician must be upheld. (De Vera *vs.* United Phil. Lines, Inc., G.R. No. 223246, June 26, 2019) p. 240

Assessment of injury or illness — Referral to a third doctor is a mandatory procedure; failure to comply with this rule, without any explanation, is a breach of contract that is tantamount to failure to uphold the law between the parties; hence, when the seafarer fails to express his or her disagreement by asking for the referral to a third doctor, the findings of the company-designated physician is given more credence and is final and binding on the parties. (Toquero *vs.* Crossworld Marine Services, Inc., G.R. No. 213482, June 26, 2019) p. 106

— The Court cannot consider the company-designated physician's finding of petitioner's fitness to work because it is deficient; between the company-designated physician's assessment and the findings of the petitioner's chosen physician, we give more weight to the latter's assessment of permanent and total disability; as to the applicable Collective Bargaining Agreement and disability rating, we uphold the version submitted by petitioner; respondents contend that a different Collective Bargaining Agreement and a lower disability allowance are applicable to petitioner; doubts shall be resolved in favor of labor in line with the policy enshrined in the Constitution, the Labor Code, and the Civil Code, to provide protection to labor and construe doubts in favor of labor; this Court has consistently held that "if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter"; in accordance with the Collective Bargaining Agreement submitted by petitioner, he is entitled to a total and permanent disability allowance of US$250,000.00. (*Id*.)

— The Court has acknowledged that the company-designated physician's findings tend to be biased in the employer's favor; in instances where the company-designated physician's assessment is not supported by medical records, the courts may give greater weight to the findings of the seafarer's personal physician; disability ratings should be adequately established in a conclusive medical assessment by a company-designated physician; to be conclusive, a medical assessment must be complete and definite to reflect the seafarer's true condition and give the correct corresponding disability benefits; as explained by this Court: A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such; otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered; on the contrary, tardy, doubtful, and incomplete medical assessments, even if issued by a company-designated physician, have been repeatedly set aside by this Court; here, the medical assessment issued by the company-designated physician cannot be regarded as definite and conclusive; a review of the records shows that the company-designated physician failed to conduct all the proper and recommended tests; contrary to her own recommendation, Dr. Bacungan failed to conduct a complete neurologic examination; there were no memory and cognitive assessment to conclusively declare petitioner's disability; there were no explanations from respondents as to why the recommended medical tests were not conducted; hence, we cannot consider the company-designated physician's assessment conclusive. (*Id*.)

— The POEA Standard Employment Contract provides a procedure on the medical assessment of the seafarer's injury or illness; Sec. 20(A)(3) states in part: 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; failure to observe the procedure under this Section means that the assessment of the company-designated physician prevails; *Nonay v. Bahia Shipping Services, Inc.,* cited. (*Id*.)

Benefits for work-related illness — While the 2010 POEA-SEC, same as the 2000 POEA-SEC, does not expressly define the term "work-related death," jurisprudence states that the said term should refer to the "seafarer's death resulting from a work-related injury or illness"; the first requirement for death compensability was complied with, since it was established that Manolo's death – albeit occurring after his repatriation – resulted from a work-related illness; the root cause of his death was his *nasopharyngeal carcinoma*, a non-listed illness under the 2010 POEA SEC which is disputably presumed to be work-related; for their part, SSMI, *et al.* failed to present contrary proof to overturn this presumption of work-relatedness; as case law holds, "it is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits incident thereto; it is enough that the employment had contributed, even in a small measure, to the development of the disease"; it is settled that the issuance of a disability rating by the company-designated physician negates any claim that the non-

defines "work-related injury" as injury "arising out of and in the course of employment"; thus, a seafarer has to prove that his injury was linked to his work and was acquired during the term of employment to support his claim for sickness allowance and disability benefits; unlike the 1996 POEA Standard Employment Contract, in which it was sufficient that the seafarer suffered injury or illness during his employment, the 2000 and 2010 POEA Standard Employment Contracts require that the disability must be the result of a work-related injury or illness. (Toquero *vs.* Crossworld Marine Services, Inc., G.R. No. 213482, June 26, 2019) p. 106

— To be deemed "work-related," there must be a reasonable linkage between the disease or injury suffered by the employee and his work; thus, for a disability to be compensable, it is not required that the seafarer's nature of employment was the singular cause of the disability he or she suffered; it is sufficient that there is a reasonable linkage between the disease or injury suffered by the seafarer and his or her work to conclude that the work may have contributed to establishment or, at least, aggravate any preexisting condition the seafarer might have had; *Jebsens Maritime, Inc. v. Babol*, cited; as a general rule, the principle of work-relation requires that the disease in question must be one of those listed as an occupational disease under Sec. 32-A of the POEA-SEC; nevertheless, should it be not classified as occupational in nature, Sec. 20 (B) par. 4 of the POEA-SEC provides that such diseases are disputably presumed as work-related; here, the two (2) elements of a work-related injury are present. (*Id*.)

Compensability of illness — In *Nonay v. Bahia Shipping Services, Inc., Fred Olsen Lines and Mendoza*, the Court held that: Settled is the rule that for an illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer; it is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude

as impelled by the plight of the bereaved heirs who stand to be deprived of a just and reasonable compensation for the seafarer's death, notwithstanding its evident work-connection"; the doctrine has been further applied by the Court in the succeeding cases of *Racelis v. United Philippine Lines, Inc.* and *C.F. Sharp Crew Management, Inc. v. Legal Heirs of the Late Repiso;* a seafarer's death occurring after the term of his employment shall be compensable under the POEA-SEC provided that such death was caused by a work-related injury or illness that was sustained during the term of his employment; the petition in G.R. No. 238261 should be granted, and amounts should be awarded in favor of the Heirs of Manolo as prayed for under Sec. 20(B)(1) of the 2010 POEA-SEC. (Heirs of the Late Manolo N. Licuanan *vs*. Singa Ship Mgm't., Inc., G.R. No. 238261, June 26, 2019) p. 401

Disability benefits — De Vera's insistence that he should be considered as totally and permanently disabled as he is now unable to earn wages as a seafarer could not also be sustained; jurisprudence holds that a seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor; it cannot be used as a cure-all formula for all maritime compensation cases; additionally, Sec. 20(A)(6) of the 2010 POEA-SEC now expressly provides that the "disability shall be based solely on the disability gradings provided under Sec. 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid"; De Vera is not entitled to total and permanent disability benefits due to lack of cause of action and in view of his failure to refute the company-designated physicians' fit to work assessment; thus, the CA and the NLRC did not commit any error in their respective decisions and resolutions. (De Vera *vs.* United Phil. Lines, Inc., G.R. No. 223246, June 26, 2019) p. 240

that the company-designated physicians were able to issue a medical certificate declaring De Vera fit to work on April 2, 2013, or after 48 days of continuous treatment counted from the date of the initial consultation on February 13, 2013, or after 58 days counted from De Vera's repatriation to the Philippines on February 3, 2013; the fitness for sea duty declaration by the company-designated physicians was made within the 120-day period prescribed under the POEA-SEC; records disclose that De Vera secured a contrary medical opinion from his physician of choice only on July 25, 2013, or 98 days after he filed his complaint; it is very clear that De Vera had no cause of action when he filed the present complaint on April 18, 2013; thus, the NLRC and the CA did not commit any error when they ruled that De Vera is not entitled to total and permanent disability compensation; the Labor Arbiter should have dismissed De Vera's complaint for lack of cause of action at the first instance. (De Vera *vs.* United Phil. Lines, Inc., G.R. No. 223246, June 26, 2019) p. 240

Sickness allowance — Sec. 20 of the POEA Standard Employment Contract provides that seafarers are entitled to receive sickness allowance in the amount equivalent to their basic wage computed from the time they signed off until they are declared fit to work, or once the degree of disability has been assessed by the company-designated physician; this period shall not exceed 120 days; here, petitioner is entitled to sickness allowance equivalent to his basic wage for 55 days, counted from the day he signed off of work on April 24, 2012 until he was declared fit to go back to work on June 18, 2012; the award of attorney's fees is granted under Art. 2208 of the Civil Code, which allows the award in actions for indemnity under workers' compensation and employers' liability laws. (Toquero *vs.* Crossworld Marine Services, Inc., G.R. No. 213482, June 26, 2019) p. 106

Work-related death of the seafarer — Timoteo was not able to finish his four-month contract because he was medically repatriated only two months into the same; there was

PLEADINGS AND PRACTICE

Reliefs — There is merit in petitioner MWI's contention that there is a glaring infirmity in the dispositive portion of RTC, Branch 67's Decision, which ordered the indefinite "closure of the water refilling stations located at Pasay Road Extension, Makati City (AV-Arnaiz) and No. 8788 Dona Aguirre Avenue cor. Daisy Road, Pilar Villas, Las Piñas (AV-Pilar) operated by petitioner MWI" without any qualifications; petitioner was correct in citing the Court's previous ruling in *Philippine Charter Insurance Corp. v. PNCC*, wherein the Court held that "the fundamental rule is that reliefs granted a litigant are limited to those specifically prayed for in the complaint"; therefore, the RTC, Branch 67 was in error when it ordered the indefinite and unqualified closure of the water refilling stations of petitioner, considering that the two-year prohibitive period under Sec. IV-5 of the Franchise Agreements being invoked by respondent had already lapsed in 2003; the first part of the dispositive portion of RTC, Branch 67's Decision must perforce be deleted. (Makati Water, Inc. *vs*. Agua Vida Systems, Inc., G.R. No. 205604, June 26, 2019) p. 87

PRESUMPTIONS

Presumption of regular performance of official duties — The Court has repeatedly held that the fact that a 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 Sec. 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual; as applied in this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Sec. 21 of R.A. No. 9165; the presumption of regularity in the performance of official duty cannot overcome the stronger presumption of innocence in favor of the accused; the right of the accused to be presumed innocent until proven guilty is a constitutionally protected right; thus,

despite the glaring absence of an appropriation for the Asphalt Overlay Project, and notwithstanding the absence of a justification for the application of negotiated procurement, the respondents repeatedly signed off on the resolutions; worse, the respondents participated in circumventing the requirement under Sec. 85 of P.D. No. 1445 that there should be an appropriation before the execution of the contract; the respondents gave unwarranted benefits and advantages to IBC; their actions also show a willful disregard for the established procurement rules; their defense of being mere subordinates is without merit, as their conduct show a blatant and willful violation of the procurement rules; thus, they should be held liable for Grave Misconduct, which carries the penalty of dismissal from the service; Sec. 12 of R.A. No. 9184, cited. (Office of the Ombudsman *vs*. Celiz, G.R. No. 236383, June 26, 2019) p. 380

Misconduct — Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer; the misconduct is considered to be grave if it also involves other elements, such as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. (Dr. Bagaoisan *vs*. Office of the Ombudsman for Mindanao, Davao City, G.R. No. 242005, June 26, 2019) p. 483

Misconduct and grave misconduct –– Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer; grave misconduct, as distinguished from simple misconduct, involves the additional element of corruption, willful intent to violate the law or disregard established rules; mere failure to comply with the law, however, is not sufficient; there should be a showing of deliberateness on the part of the respondents, with the purpose of securing benefits for themselves or for some other person. (Office of the Ombudsman *vs*. Celiz, G.R. No. 236383, June 26, 2019) p. 380

made well-within the 10-year prescriptive period. (Saclolo *vs*. Marquito, G.R. No. 229243, June 26, 2019) p. 319

— In *Spouses Salonga v. Spouses Concepcion*, the Court explained the nature of an equitable mortgage; in case of doubt, a contract purporting to be a sale with right to repurchase shall be considered as an equitable mortgage; in a contract of mortgage, the mortgagor merely subjects the property to a lien, but the ownership and possession thereof are retained by him; for the presumption in Art. 1602 of the New Civil Code to arise, two requirements must concur: (a) that the parties entered into a contract denominated as a contract of sale; and (b) that their intention was to secure an existing debt by way of a mortgage; the existence of any of the circumstances defined in Art. 1602 of the New Civil Code, not the concurrence nor an overwhelming number of such circumstances, is sufficient for a contract of sale to be presumed an equitable mortgage; the nomenclature given by the parties to the contract is not conclusive of the nature and legal effects thereof; the decisive factor in evaluating such deed is the intention of the parties as shown by all the surrounding circumstances, such as the relative situation of the parties at that time, the attitude, acts, conduct, and declarations of the parties before, during and after the execution of said deed, and generally all pertinent facts having a tendency to determine the real nature of their design and understanding; as such, documentary and parol evidence may be adduced by the parties; when in doubt, courts are generally inclined to construe a transaction purporting to be a sale as an equitable mortgage, which involves a lesser transmission of rights and interests over the property in controversy. (*Id*.)

— Respondents, for their part, are not without remedy; they are entitled to collect the outstanding amount of petitioners' loan, plus interest, and to foreclose on the subject property should the latter fail to pay the same; to allow respondents to appropriate the subject lot without prior foreclosure would produce the same effect as a *pactum comissorium;* upon full satisfaction of the debt,

WAIVERS AND QUITCLAIMS

Concept — A quitclaim in which the consideration is scandalously low and inequitable cannot be an obstacle to the pursuit of a worker's legitimate claim; an obviously "lowball" consideration in a quitclaim indicates that the employee did not stand on an equal footing with the employer when he seemingly acceded to the waiver of his rights; under ordinary circumstances, a reasonable man would not allow himself to be shortchanged into waiving all of his claims, unless he fully comprehends the consequences of such act; as case law states, "unless it can be established that the person executing the waiver voluntarily did so, with full understanding of its contents, and with reasonable and credible consideration, the same is not a valid and binding undertaking." (Mirandilla *vs*. Jose Calma Dev't. Corp., G.R. No. 242834, June 26, 2019) p. 498

— The quitclaims signed by Ranil and Edwin do not appear to have been made for a reasonable and credible consideration, considering that these amounts only pertained to their 13th month pay for the year 2015, and as such, do not approximate any reasonable award (such as backwages and separation pay) that would have been awarded to them should they successfully pursue litigation; "the burden to prove that the waiver or quitclaim was voluntarily executed is with the employer," which the latter failed to discharge; the quitclaims were not validly executed, and hence, do not constitute an effective waiver of JCDC's liability arising from its illegal termination of Ranil and Edwin, its regular employees. (*Id*.)

WITNESSES

Credibility of — The fact that the prosecution witnesses here are the wife and son of the victim does not weaken their credibility; on the contrary, their close relationship with the victim makes their testimony more credible for it

support a verdict of guilt for rape. (People *vs*. Dumdum, G.R. No. 221436, June 26, 2019) p. 201

— The trial court keenly noted AAA's positive, straightforward, and categorical narration; a victim of tender age would not have narrated such sordid details had she not experienced them; in a long line of cases, the Court has given full weight and credence to the testimony of child victims; for it is highly improbable that a girl of tender years would impute to any man a crime so serious as rape if what she claims is not true; even standing alone, her credible testimony is sufficient to convict appellant given the intrinsic nature of the crime of rape where only two persons are usually involved. (*Id*.)

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employed in a confidential capacity; (b) teachers; (c) physicians; and (d) members of the Armed Forces of the Philippines. (Dr. Bagaoisan *vs*. Office of the Ombudsman for Mindanao, Davao City, G.R. No. 242005, June 26, 2019) p. 483

— Jurisprudence has it that for the purpose of determining nepotism, there should be no distinction between appointment and designation; otherwise, the prohibition on nepotism would be meaningless and toothless; any appointing authority may circumvent it by merely designating, and not appointing, a relative within the prohibited degree to a vacant position in the career service. (*Id*.)

— The prohibitory norm against nepotism in the public service is set out in Sec. 59, Chapter 8, Title I-A, Book V of E.O. No. 292; "nepotism" is defined therein as follows: (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited; as used in this Section, the word "relative" and members of the family referred to are those related within the third degree either of consanguinity or of affinity; one is guilty of nepotism if an appointment is issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following: (a) appointing authority; (b) recommending authority; (c) chief of the bureau or office; and (d) person exercising immediate supervision over the appointee. (*Id*.)

ADMINISTRATIVE LAW

Conduct prejudicial to the best interest of the service — It is not defined by the Civil Service Law and its rules, but is so inclusive as to put within its ambit any conduct of a public officer that tarnishes the image and integrity of his public office; it is not inconsistent with a finding of

ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (VAWC) (R. A. NO. 9262)

Application of — Criminal liability for violation of Sec. 5(e) of R.A. No. 9262 attaches when the accused deprives the woman of financial support which she is legally entitled to. (Reyes *vs.* People, G.R. No. 232678, July 3, 2019) p. 991

— Elements of violation of Sec. 5(i) of R.A. No. 9262, to wit: (1) The offended party is a woman and/or her child or children; (2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child; as for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode; (3) The offender causes on the woman and/or child mental or emotional anguish; and (4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, *denial of financial support* or custody of minor children or access to the children or similar acts or omissions. (*Id.*)

— Psychological violence is certainly an indispensable element of violation of Sec. 5(i) of R.A. No. 9262; equally essential is the element of the mental or emotional anguish which is personal to the complainant; psychological violence is the means employed by the perpetrator, while mental or emotional suffering is the effect caused to or the damage sustained by the offended party; to establish psychological violence, it is necessary to adduce proof of the commission of any of the acts enumerated in Sec. 5(i) or similar of such acts. (*Id.*)

— R.A. No. 9262 defines and criminalizes violence against women and their children perpetrated by the woman's husband, former husband or any person against whom the woman has or had a sexual or dating relationship with, or with whom the woman has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or likely to result in, *inter alia*, economic abuse or psychological

can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors; the appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law. (People *vs*. Bermejo *y* De Guzman, G.R. No. 199813, June 26, 2019) p. 65

Appeal in labor cases — The LA and NLRC's findings were supported by substantial evidence on record; to put it differently, the NLRC did not err, much less commit grave abuse of its discretion, when it affirmed the findings of the LA that Sio was validly and legally suspended; the Court's own scrutiny of the decisions, pleadings and records of the case show no grave abuse of discretion on the part of the NLRC as its decision was based on substantial evidence and rooted in law; perforce, the Court must grant Heritage's Petition. (The Heritage Hotel Manila *vs.* Sio, G.R. No. 217896, June 26, 2019) p. 156

Factual findings of quasi-judicial agencies — Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality; they are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record; however, it is equally settled that one of the exceptions to this rule is when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary with those of the Court of Appeals, as in the present case. (Pacio *vs*. Dohle-Philman Manning Agency, Inc., G.R. No. 225847, July 3, 2019) p. 909

Factual findings of the lower court — The RTC and CA both held that the subject *Memorandum of Deed of Sale with Right of Repurchase*, while purporting to be a sale with right to repurchase, was, in fact, an equitable mortgage;

multiple fora having concurrent jurisdiction over the case, such as in petitions for *certiorari, mandamus*, and prohibition which are concurrently cognizable either by the Regional Trial Courts, the Court of Appeals, or the Supreme Court; the correctness of the BIR's interpretation of the 1997 NIRC under the assailed RMC is a pure question of law, because the same does not involve an examination of the probative value of the evidence presented by the litigants or any of them; being the only remedy to appeal the RTC's ruling upholding the Circular's validity on a purely legal question, direct resort to this Court, through a Rule 45 petition, was correctly availed by ANPC. (Assoc. of Non-Profit Clubs, Inc. *vs*. BIR, G.R. No. 228539, June 26, 2019) p. 300

Questions of fact — With respect to petitioner MWF's position that the CA erred in affirming with modifications the RTC, Branch 67's award of damages in favor of respondent AVSI, the Court finds the same unmeritorious; jurisprudence has held that "the issues on the award of damages which call for a re-evaluation of the evidence before the trial court, which is obviously a question of fact." (Makati Water, Inc. *vs*. Agua Vida Systems, Inc., G.R. No. 205604, June 26, 2019) p. 87

Rules on — It is a fundamental rule that precludes higher courts from entertaining matters neither alleged in the pleadings nor raised in the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal; indeed, when a party deliberately adopts a certain theory and the case is decided upon that theory in the tribunal below, he or she will not be permitted to change the same on appeal lest it cause unfairness to the adverse party; in other words, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular, but also extrajudicial and invalid; an exception to this rule is viable only when the change in theory will not require the presentation of additional evidence on both sides. (Civil Service Commission *vs*. Catacutan, G.R. No. 224651, July 3, 2019) p. 891

— In petitioner's unlawful warrantless arrest, it necessarily follows that there could have been no valid search incidental to a lawful arrest which had yielded the alleged illegal gambling paraphernalia from petitioners. (*Id*.)

ATTORNEY'S FEES AND COSTS OF LITIGATION

Award of — With respect to the amount of attorney's fees and costs of litigation, which the CA reduced from 25% to 10% of the total amount due, according to Art. 2208 of the Civil Code, attorney's fees and expenses of litigation can be awarded by the court in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered; considering petitioner's stubborn refusal to adhere to the clear and unequivocal dictates of the Franchise Agreements on the two-year prohibition period found under Sec. IV-5 thereof despite the repeated reminders of respondent AVSI, which the RTC, Branch 67 and CA assessed to be wanton and reckless, the award of attorney's fees and costs of litigation is with sufficient basis. (Makati Water, Inc. *vs*. Agua Vida Systems, Inc., G.R. No. 205604, June 26, 2019) p. 87

ATTORNEYS

Acting in their private capacity — Whether in their professional or in their private capacity, lawyers may be disbarred or suspended for misconduct; this penalty is a consequence of acts showing their unworthiness as officers of the courts, as well as their lack of moral character, honesty, probity, and good demeanor; when the misconduct committed outside of their professional dealings is so gross as to show them to be morally unfit for the office and the privileges conferred upon them by their license and the law, they may be suspended or disbarred. (Bautista *vs*. Atty. Ferrer, A.C. No. 9057 [Formerly CBD Case No. 12-3413], July 3, 2019) p. 743

Attorney's fees — Under Rule 16.03 of the Code of Professional Responsibility, a claim for attorney's fees may be asserted either in the very action in which a lawyer rendered his

CERTIFICATE OF NON-FORUM SHOPPING AND VERIFICATION

Rules on — Court recognized the authority of the President of a corporation to sign a verification and certification of non-forum shopping without authority from the board of directors. (Digitel Employees Union *vs.* Digital Telecoms Phils., Inc., G.R. No. 217529, July 3, 2019) p. 836

— Jurisprudential rules governing the submission and contents of the verification and certification of non-forum shopping were summarized in *Altres, et al. v. Empleo, et al.*, *viz.*: 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping; 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective; The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby; 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct; 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."; 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case; under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial. (People *vs.* Kasan *y* Atilano, G.R. No. 238334, July 3, 2019) p. 1021

—— In cases for Illegal Sale and/or Possession of Dangerous Drugs under R.A. No. 9165, as amended by R.A. No. 10640, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal. (Aranas *y* Dimaala *vs.* People, G.R. No. 242315, July 3, 2019) p. 1062

—— 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; 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. (People *vs*. Dagdag, G.R. No. 225503, June 26, 2019) p. 262

crime; the prosecution does not comply with the indispensable requirement of proving the *corpus delicti* either when the dangerous drugs are missing, or when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence ultimately presented in court; that proof of the *corpus delicti* depends on a gapless showing of the chain of custody; the Court agrees with petitioner's assertion that the *corpus delicti* was not proven as the chain of custody was defective; there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence ultimately presented in court. (*Id*.)

— It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Art. 125 of the Revised Penal Code proved futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape; earnest effort to secure the attendance of the necessary witnesses must be proven. (People *vs*. Manansala *y* Cruz, G.R. No. 229509, July 3, 2019) p. 952

— Only an elected official was present at the time of the inventory and taking of photograph; R.A. No. 9165, as amended, requires an elected public official and a

– 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; while the Court has clarified that under varied field conditions, strict compliance with the requirements of Sec. 21 of R.A. No. 9165 may not always be possible; the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 does not *ipso facto* render the seizure and custody over the items void; and this has always been 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; in this case, it is obvious that the police officers did not have a valid excuse for their deviation from Sec. 21 of R.A. No. 9165; the integrity and evidentiary value of the *corpus delicti* have thus been compromised and Buniag must accordingly be acquitted. (People *vs*. Buniag *y* Mercadera, G.R. No. 217661, June 26, 2019) p. 137

— Sec. 21 of the IRR of R.A. No. 9165 provides that "noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items"; for this provision to be effective, however, the prosecution must first (1) recognize any lapses on the part of the police officers and (2) be able to justify the same; in this case, the prosecution neither recognized, much less tried to justify, its deviations from the procedure contained in Sec. 21, R.A. No. 9165; 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 necessarily have been compromised. (People *vs*. Dagdag, G.R. No. 225503, June 26, 2019) p. 262

official within the period required under Art. 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape. (*Id.*)

— The chain of custody over the seized dangerous drugs remained unbroken, and that the integrity and evidentiary value of the *corpus delicti* have been properly preserved. (Aranas *y* Dimaala *vs.* People, G.R. No. 242315, July 3, 2019) p. 1062

— The Court has repeatedly stressed that it is the prosecution's onus to prove every link in the chain of custody – from the time the drug is seized from the accused, until the time it is presented in court as evidence; where the prosecution fails to strictly comply with the procedure under Sec. 21, Art. II of R.A. No. 9165, it must give justifiable ground for its non-compliance; generally there are four links in the chain of custody of the seized illegal drug: (i) its seizure and marking, if practicable, from the accused, by the apprehending officer; (ii) its turnover by the apprehending officer to the investigating officer; (iii) its turnover by the investigating officer to the forensic chemist for examination; and, (iv) its turnover by the forensic chemist to the court; in the present case, the prosecution miserably failed to comply with the chain of custody rule and to proffer any justifiable ground for such non-compliance; it becomes the constitutional duty of this Court to acquit the accused-appellant. (People *vs.* De Leon, G.R. No. 227867, June 26, 2019) p. 288

— The failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 of R.A. No. 9165 does not *ipso facto* render the seizure and custody over the items void; however, the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground

— 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; and only if this is not practicable that the IRR allows the inventory and photographing at 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*. Cañete *y* Fernandez, G.R. No. 242018, July 3, 2019) p. 1043

— The physical inventory and taking of photographs of the seized items must be witnessed by three insulating witnesses (*i.e*. an elected public official, a representative from the media, and a representative from the DOJ); they must also sign the inventory and be given copies of the same. (People *vs*. Rodriguez *y* Bantoto, G.R. No. 233535, July 1, 2019) p. 617

— The police officers failed to take photographs of the seized drugs; moreover, they failed to offer any explanation for its noncompliance; the last paragraph of Sec. 21 (a) contains a saving *proviso* to the effect 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"; but in order for the saving *proviso* to apply, the prosecution must first recognize and explain the lapse or lapses in procedure committed by the arresting lawmen; that did not happen in this case. (People *vs*. Bermejo *y* De Guzman, G.R. No. 199813, June 26, 2019) p. 65

— The prosecution failed to justify its non-compliance with the requirements laid down in Sec. 21, specifically, the presence of the two required witnesses during the actual inventory of the seized items; the unjustified absence of

procedure under Sec. 21 of R.A. No. 9165, they brought the seized items to the police station; *second*, although there was a media representative who signed the inventory report at the police office, such is not enough because the law requires that the mandatory witnesses should already be present during the actual inventory and not merely after the fact; moreover, there was no representative from the Department of Justice or any elected official at the time of arrest of the accused and seizure of the illegal drugs, and inventory and photography of the seized items at the police station. (People *vs.* Buniag *y* Mercadera, G.R. No. 217661, June 26, 2019) p. 137

— To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime; as part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. (Aranas *y* Dimaala *vs.* People, G.R. No. 242315, July 3, 2019) p. 1062

(Limbo *y* Paguio *vs.* People, G.R. No. 238299, July 1, 2019) p. 678

— Under certain conditions, strict compliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 may not always be possible; the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21, Art.. II of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved; for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had, nonetheless, been preserved; there has to be a

be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. (People *vs*. Dagdag, G.R. No. 225503, June 26, 2019) p. 262

— In every prosecution of the crime of Illegal Possession of Dangerous Drugs under Sec. 11, Art. II of R.A. No. 9165, the following elements must be proven beyond reasonable doubt: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (Aranas *y* Dimaala *vs*. People, G.R. No. 242315, July 3, 2019) p. 1062

— It is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal. (Limbo *y* Paguio *vs*. People, G.R. No. 238299, July 1, 2019) p. 678

Illegal sale and illegal possession of dangerous drugs — Appellant was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Secs. 5 and 11, Art. II of R.A. No. 9165; in order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment; on the other hand, when an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug; however, in order to sustain a conviction in both instances, the identity of

needed to sustain a guilty verdict. (People *vs*. Bermejo *y* De Guzman, G.R. No. 199813, June 26, 2019) p. 65

—— The prosecution failed to: (1) prove the *corpus delicti* of the crime; (2) establish an unbroken chain of custody of the seized drugs; and (3) offer any explanation why the provisions of Sec. 21, R.A. No. 9165 were not complied with; consequently, the Court is constrained to acquit Bermejo for failure of the prosecution to prove his guilt beyond reasonable doubt. (*Id*.)

Illegal sale of shabu — Contrary to the protestation of appellant, the evidence on record shows that there had been faithful compliance with the foregoing provision by the apprehending team; process, explained. (People *vs*. Juguilon *y* Ebrada, G.R. No. 229828, June 26, 2019) p. 332

—— Prior surveillance is not a prerequisite for the validity of an entrapment operation, especially when the buy-bust team is accompanied by their informant at the crime scene; similarly, the absence of marked money does not create a hiatus in the evidence for the prosecution provided that the prosecution has adequately proved the sale; also, the use of dusted money is not indispensable to prove the illegal sale of drugs, as held in *People v. Felipe*; neither is it necessary to present the informant as his testimony would merely be corroborative and cumulative. (People *vs*. Bermejo *y* De Guzman, G.R. No. 199813, June 26, 2019) p. 65

—— To secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (1) the identities of the buyer and the seller, the object of the sale and the consideration for the sale; and (2) the delivery of the thing sold and the payment therefor; what is material in the prosecution of an illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation of the *corpus delicti* in court as evidence; the evidence on record showed the presence of all these elements as culled from the testimony of PO2 Villarete, who represented himself

the amount of ₱500,000.00 on appellant since the imposition of the death penalty has been proscribed by R.A. No. 9346. (People *vs*. Juguilon *y* Ebrada, G.R. No. 229828, June 26, 2019) p. 332

Presence of required witnesses — The presence of the required witnesses at the time of the inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose; hence, the CA's assessment that the brazen and wholesale deviations of Sec. 21 of R.A. No. 9165 committed by the police in the instant case are mere "minor lapses" is unquestionably incorrect; such an assessment by the CA is irresponsible and reprehensible; in *People v. Tomawis*, 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*, 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 R.A. No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. (People *vs*. Dagdag, G.R. No. 225503, June 26, 2019) p. 262

Requirement of witnesses — In this case, the reliance of the police operatives on the lone witness, Brgy. Capt. Santiago, who was the very party interested in the arrest, prosecution and conviction of appellant, as it was this *barangay* captain himself who requested the buy-bust operation against appellant, and the police operatives' failure to secure the presence of either a DOJ *or* media representative, without justifiable reasons and without exerting earnest

expiry date; there is no provision in the Franchise Agreements which shows the parties' alleged intent to exclude the expiration of the agreements from the coverage of the word *termination*. (Makati Water, Inc. *vs*. Agua Vida Systems, Inc., G.R. No. 205604, June 26, 2019) p. 87

— Under Art. 1374 of the Civil Code, the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly; the Court has previously held that in construing an instrument with several provisions, a construction must be adopted as will give effect to all; under Art. 1374 of the Civil Code, contracts cannot be construed by parts, but clauses must be interpreted in relation to one another to give effect to the whole; there is no provision under the Franchise Agreements which expressly limits, restricts, or confines the grounds of termination to the three grounds; upon a close reading of Sec. I of the Franchise Agreements, it would reveal that the three grounds enumerated under Secs. IV-1, IV-2, and IV-3 of the Franchise Agreements refer, not to termination *per se*, but to *early termination;* referring to the grounds identified in Section IV of the Franchise Agreements, Sec. 1-1 of the agreements qualifies termination with the adverb earlier; the Court is further convinced that the term *termination* includes the expiration of the period of effectivity of the Franchise Agreements upon reading Sec. I-2 of the Franchise Agreements; the said provision deals with the extension or renewal of the agreements when the Franchise Agreements expire upon the lapse of the agreed term or duration of the agreements; in using the term *termination* in referring to the extension or renewal of the Franchise Agreements upon their expiration, it is made painstakingly clear that it was the intention of the parties to include expiration within the coverage of termination; furthermore, the Civil Code states that the stipulations of a contract shall also be understood "as bearing that import which is most adequate to render it effectual" and that "which is most in keeping with the nature and object of the contract." (*Id*.)

relations between the parties involved and the circumstances of the case; the conduct of Sio did not just violate Heritage's Code of Conduct but was likewise inimical to its business relations with PAGCOR, and thus, prejudicial to the hotel's interest; the penalties of suspension imposed upon Sio were not without valid bases and were reasonably proportionate to the infractions committed; *Areno, Jr. v. Skycable PCC-Baguio*, cited; the improper remarks hurled against valued guests and an employee of a valued client, in the present case, pose a greater threat to the interest of an employer and all the more merits a similar, if not graver, penalty; what should not be overlooked is the prerogative of an employer company to prescribe reasonable rules and regulations necessary for the proper conduct of its business and to provide certain disciplinary measures in order to implement said rules to assure that the same would be complied with; in sum, there is substantial evidence to show that Sio was guilty of the charges against her and was afforded procedural due process; hence, the act of Heritage of imposing upon her the penalties of suspension was a valid exercise of an employer's management prerogative. (The Heritage Hotel Manila *vs.* Sio, G.R. No. 217896, June 26, 2019) p. 156

EMPLOYMENT, KINDS OF

Project employment — Case law states that in order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent them from attaining regular status, employers claiming that their workers are project employees should not only prove that the duration and scope of the employment were specified at the time they were engaged, but also that there was indeed a project; "it is crucial that the employees were informed of their status as project employees at the time of hiring and that the period of their employment must be knowingly and voluntarily agreed upon by the parties, without any force, duress, or improper pressure being brought to bear upon the employees or any other circumstances vitiating their

his Written Explanations did Reyes request for one; thus, without first going into the merits of the administrative complaints against Reyes, and his defenses, the Court finds that Reyes was not denied procedural due process of law; the CA erred in ruling that the NLRC did not act with grave abuse of discretion when it reversed the Decision of the Labor Arbiter. (CMP Federal Security Agency, Inc. *vs*. Reyes, Sr., G.R. No. 223082, June 26, 2019) p. 217

— Reyes bewailed that he was allegedly deprived of the opportunity to be heard because no hearing or conference was conducted by the petitioners regarding the disciplinary charges against him, in violation of Sec. 2(d), Rule I, Book VI of the Omnibus Rules Implementing the Labor Code; the 2017 case of *Maula v. Ximex Delivery Express, Inc.*, citing the *En Banc* ruling in *Perez v. Phil. Telegraph and Telephone Company*, reiterated the hornbook doctrine that actual hearing or conference is not a condition *sine qua non* for procedural due process in labor cases because the provisions of the Labor Code prevail over its implementing rules; Sec. 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed 'substantially,' not strictly; this is a recognition that while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process. (*Id*.)

Negligence — The Court agrees with the NLRC and the CA that Reyes' infractions did not constitute "serious misconduct" as contemplated under the first paragraph of Art. 282 of the Labor Code; the explanations proffered by Reyes showed that he was not animated by any wrongful intent when he committed the infractions complained of; the finding that he was guilty of serious misconduct was incompatible with the charges for negligence which, by definition, requires lack of wrongful intent; the Court cannot also consider negligence as a valid ground for Reyes' dismissal; to be a valid ground for dismissal, the neglect of duty must be both gross and habitual; gross negligence implies want of care in the performance of

ESTOPPEL

Principle of — Estoppel is a principle in equity and pursuant to Art. 1432, Civil Code, it is adopted insofar as it is not in conflict with the provisions of the Civil Code and other laws; estoppel, thus, cannot supplant and contravene the provision of law clearly applicable to a case, and conversely, it cannot give validity to an act that is prohibited by law or one that is against public policy. (DepEd *vs*. Rizal Teachers Kilusang Bayan for Credit, Inc., G.R. No. 202097, July 3, 2019) p. 758

EVIDENCE

Admission of — A published treatise may be admitted as tending to prove the truth of its content if: (1) the court takes judicial notice; or (2) an expert witness testifies that the writer is recognized in his or her profession as an expert in the subject. (Arreza *vs*. Tetsushi Toyo, G.R. No. 213198, July 1, 2019) p. 522

Burden of proof and presumptions — Both the RTC and CA seriously overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent; this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases that it has proven the guilt of the accused beyond reasonable doubt, with each and every element of the crime charged in the information proven to warrant a finding of guilt for that crime or for any other crime necessarily included therein; this burden of proof never shifts; the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. (People *vs*. Dagdag, G.R. No. 225503, June 26, 2019) p. 262

Public or official record of a foreign country — Under Secs. 24 and 25 of Rule 132, a writing or document may be proven as a public or official record of a foreign country by either (1) an official publication or (2) a copy thereof attested by the officer having legal custody of the

provided that the divorce obtained by the foreign spouse enables him or her to remarry; in actions involving the recognition of a foreign divorce judgment, it is indispensable that the petitioner prove not only the foreign judgment granting the divorce, but also the alien spouse's national law. (Arreza *vs*. Tetsushi Toyo, G.R. No. 213198, July 1, 2019) p. 522

GOVERNMENT PROCUREMENT REFORM ACT (R.A. NO. 9184)

Negotiated procurement — Generally, all government procurement must be done through competitive bidding; alternative methods of procurement, however, are available under the conditions provided in R.A. No. 9184; for infrastructure projects in particular, the only alternative mode is negotiated procurement; in negotiated procurement, the procuring entity directly negotiates the contract with a technically, legally and financially capable supplier, contractor or consultant; even if the resort to negotiated procurement is justified, its application does not warrant dispensing with the other requirements under R.A. No. 9184; the respondents and the other concerned officials should still, among other things: (a) conduct a pre-procurement conference; (b) post the procurement opportunity in the Philippine Government Electronic Procurement System, the website of the Procuring Entity and its electronic procurement service provider, if any, and any conspicuous place in the premises of the Procuring Entity; and (c) require the submission of a bid security and a performance security; most important is the pre-procurement conference, which the BAC is mandated to hold for each and every procurement, except for small procurements such as infrastructure projects costing ₱5,000,000.00 and below; while Secs. 85 and 86 of the Government Auditing Code requires an appropriation prior to the execution of the contract, the enactment of R.A. No. 9184 modified this requirement by requiring the availability of funds upon the commencement of the procurement process. (Office of the Ombudsman *vs*. Celiz, G.R. No. 236383, June 26, 2019) p. 380

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 v. Jugueta,* cited. (People *vs.* SPO2 Menil *y* Bongkit, G.R. No. 233205, June 26, 2019) p. 352

INCOME TAXES

Capital and income –– As correctly argued by ANPC, membership fees, assessment dues, and other fees of similar nature only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive members; they represent funds "held in trust" by these clubs to defray their operating and general costs and hence, only constitute infusion of capital; for as long as these membership fees, assessment dues, and the like are treated as collections by recreational clubs from their members as an inherent consequence of their membership, and are, by nature, intended for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, then these fees cannot be classified as "the income of recreational clubs from whatever source" that are "subject to income tax"; instead, they only form part of capital from which no income tax may be collected or imposed. (Assoc. of Non-Profit Clubs, Inc. *vs.* BIR, G.R. No. 228539, June 26, 2019) p. 300

–– By sweepingly including in RMC No. 35-2012 all membership fees and assessment dues in its classification of "income of recreational clubs from whatever source" that are "subject to income tax," the BIR exceeded its rule-making authority; the Court declares the said interpretation to be invalid, and in consequence, sets aside the ruling of the RTC. (*Id.*)

–– The distinction between "capital" and "income" is well-settled in our jurisprudence; as held in the early case of *Madrigal v. Rafferty*, "capital" has been delineated as a "fund" or "wealth," as opposed to "income" being "the flow of services rendered by capital" or the "service of

parties belonging to the same ICC/IP group; when such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the case shall fall under the jurisdiction of the regular courts, instead of the NCIP. (Galang *vs*. Wallis, G.R. No. 223434, July 3, 2019) p. 877

— The Court thus noted that the two conditions cannot be complied with if the parties to a case either: (1) belong to different ICCs/IP groups which are recognized to have their own separate and distinct customary laws; or (2) if one of such parties was a non-ICC/IP member who is neither bound by customary laws or a Council of Elders/ Leaders, for it would be contrary to the principles of fair play and due process for parties who do not belong to the same ICC/IP group to be subjected to its own distinct customary laws and Council of Elders/Leaders; in which case, the Court ruled that the regular courts shall have jurisdiction, and that the NCIP's quasi-judicial jurisdiction is, in effect, limited to cases where the opposing parties belong to the same ICC/IP group. (*Id*.)

— The NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP group because of the qualifying provision under Section 66 of the IPRA that "no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws; the primary purpose of a proviso is to limit or restrict the general language or operation of the statute, and that what determines whether a clause is a proviso is the legislative intent, the Court stated that said qualifying provision requires the presence of two conditions before such claims and disputes may be brought before the NCIP, *i.e.*, exhaustion of all remedies provided under customary laws, and the Certification issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved. (*Id*.)

— The Court has repeatedly held that jurisdiction over the subject matter is determined by examining the material allegations of the complaint and the relief sought. (*Id.*)

LAND REGISTRATION

Buyer in good faith — A person, to be considered a buyer in good faith, should buy the property of another without notice that another person has a right to, or interest in, such property, and should pay a full and fair price for the same at the time of such purchase, or before he has notice of the claim or interest of some other persons in the property; as to registered and titled land, the buyer has no obligation to inquire beyond the four corners of the title; to prove good faith, he must only show that he relied on the face of the title to the property; and such proof of good faith is sufficient; however, the rule applies only when the following conditions concur, namely: *one*, the seller is the registered owner of the land; *two*, the latter is in possession thereof; and, *three*, the buyer was not aware at the time of the sale of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his capacity to convey title to the property; absent any of the foregoing conditions, the buyer has the duty to exercise a higher degree of diligence by scrutinizing the certificate of title and examining all factual circumstances in order to determine the seller's title and capacity to transfer any interest in the property; all the foregoing conditions obtained herein; as such, petitioners had no duty to inquire beyond the four corners of the title. (EEG Dev't. Corp. *vs*. Heirs of Victor C. De Castro (Deceased), G.R. No. 219694, June 26, 2019) p. 172

LAND REGISTRATION ACT

Forged or fraudulent deed — Generally, a forged or fraudulent deed is a nullity that conveys no title; however, this generality is not cast in stone; the exception, to the effect that a fraudulent document may become the root of a valid title, exists where there is nothing in the certificate of title to indicate at the time of the transfer

registered under the Torrens system would be required to inquire in every instance as to whether the title has been regularly or irregularly issued by the court; being innocent purchasers for value, petitioners merited the full protection of the law. (EEG Dev't. Corp. *vs*. Heirs of Victor C. De Castro (Deceased), G.R. No. 219694, June 26, 2019) p. 172

LIBEL

Commission of — Libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to cause dishonor, discredit or contempt of a natural or juridical person, or to blacken the memory of one who is dead; thus, it is an offense of injuring a person's character or reputation through false and malicious statements; in *Manila Bulletin Publishing Corporation v. Domingo*, the Court said that: Despite being included as a crime under the Revised Penal Code (RPC), a civil action for damages may be instituted by the injured party, which shall proceed independently of any criminal action for the libelous article and which shall require only a preponderance of evidence, as what Atty. Canoy did in this case; beyond question, the words imputed to Atty. Canoy as a veritable mental asylum patient, a madman and a lunatic, in its plain and ordinary meaning, are conditions or circumstances tending to dishonor or discredit him; these are defamatory or libelous *per se*. (Nova Communications, Inc. *vs*. Atty. Canoy, G.R. No. 193276, June 26, 2019) p. 12

— Under Art. 354 of the RPC, it is provided that every defamatory imputation is presumed to be with malice, even if the same is true, unless it is shown that it was made with good intention and justifiable motive, except in the following circumstances: 1. A private communication made by any person to another in the performance of any legal, moral or social duty; and 2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings

Privileged communication –– A privileged communication may be classified as either absolutely privileged or qualifiedly privileged; the absolutely privileged communication are not actionable even if the same was made with malice, such as the statements made by members of Congress in the discharge of their duties for any speech or debate during their session or in any committee thereof, official communications made by public officers in the performance of their duties, allegations or statements made by the parties or their counsel in their pleadings or during the hearing, as well as the answers of the witnesses to questions propounded to them; the qualifiedly privileged communications are those which contain defamatory imputations but which are not actionable unless found to have been made without good intention or justifiable motive, and to which "private communications" and "fair and true report without any comments or remarks" belong; the defamatory words imputed to Atty. Canoy cannot be considered as "private communication" made by one person to another in the performance of any legal, moral or social duty; neither is it a fair and true report without any comments or remarks. (Nova Communications, Inc. *vs*. Atty. Canoy, G.R. No. 193276, June 26, 2019) p. 12

–– As alleged by the petitioners, the subject articles were centered in the rebellion of Col. Noble, and Atty. Canoy was merely mentioned incidentally; this allegation does not help the position of the petitioners; rather, it even weakens their cause, as it further established the existence of malice in causing dishonor, discredit or put in contempt the person of Atty. Canoy; it is true that every defamatory remark directed against a public person in his public capacity is not necessarily actionable but if the utterances are false, malicious, or unrelated to a public officer's performance of his duties or irrelevant to matters of public interest involving public figures, the same may be actionable. (*Id*.)

–– In the case of *Borjal v. CA*, fair commentaries on matters of public interest is provided as another exception by

this Court, thus: To reiterate, fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander; the doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable; in order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition; if the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts; in this case, informing the public as to the rebellion of Col. Noble is a matter of public interest; however, calling him as a veritable mental asylum patient, a madman and a lunatic is not in furtherance of the public interest; the defamatory words are irrelevant to his alleged participation in the rebellion staged by Col. Noble. (*Id*.)

LIBEL, SLANDER OR OTHER FORM OF DEFAMATION

Moral and exemplary damages, attorney's fees and expenses of litigation — Under Art. 2219(7) of the Civil Code, moral damages may be recovered in cases of libel, slander or any other form of defamation; further, Art. 2229 of the Civil Code states that exemplary damages are imposed by way of example or correction for the public good; Art. 2208 of the same Code provides, among others, that attorney's fees and expenses of litigation may be recovered in cases when exemplary damages are awarded and where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered; in this case, the award of moral damages of ₱300,000.00, exemplary damages of ₱50,000.00, attorney's fees of ₱100,000.00 and litigation expenses

coming from other people, such as petitioner and his own mother, the report fails to prove that the said difficulties were tantamount to serious psychological disorder that would render him incapable of performing the essential marital obligations; as case law holds, "in determining the existence of psychological incapacity, a clear and understandable causation between the party's condition and the party's inability to perform the essential marital covenants must be shown. (*Id*.)

— Under Art. 36 of the Family Code, as amended, psychological incapacity is a valid ground to nullify a marriage; however, in deference to the State's policy on marriage, psychological incapacity does not merely pertain to any psychological condition; according to case law, psychological incapacity should be confined to the most serious cases of personality disorders that clearly manifest utter insensitivity or inability to give meaning and significance to the marriage; it should refer to no less than a mental – not merely physical – incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage, as provided under Article 68 of the Family Code. (*Id*.)

— While respondent's purported womanizing caused the couple's frequent fights, such was not established to be caused by a psychological illness; in a long line of cases, the Court has held that sexual infidelity, by itself, is not sufficient proof that petitioner is suffering from psychological incapacity; it must be shown that the acts of unfaithfulness are manifestations of a disordered personality which make the spouse completely unable to discharge the essential obligations of marriage; for failing to sufficiently prove the existence of respondent's psychological incapacity within the contemplation of Art. 36 of the Family Code, the petition is granted. (*Id*.)

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042, AS AMENDED)

Application of — Sec. 10 of R.A. No. 8042, as amended by R.A. No. 10022, provides that if the recruitment or placement agency is a juridical being, its corporate officers, directors, and partners, as the case may be, shall be jointly and solidarily liable with the corporation or partnership for the claims and damages against it. (Meco Manning & Crewing Services, Inc. *vs*. Cuyos, G.R. No. 222939, July 3, 2019) p. 855

MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES

Award of — As stated by the NLRC in its Decision, "After the check-up, disability benefits (sic) was not extended to the deceased seaman; this to us (sic) evinced is bad faith on the part of the respondent"; bad faith is not simply bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud"; since petitioners are in bad faith, the award of moral damages amounting to fifty thousand pesos (50,000.00) is proper; as to the award of exemplary damages, the New Civil Code provides that, "exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages"; the award of exemplary damages amounting to fifty thousand pesos (50,000.00) is proper; "the Court also holds that respondent is entitled to attorney's fees in the concept of damages and expenses of litigation; attorney's fees are recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest"; under Art. 2208 of the New Civil Code, attorney's fees may be recovered in actions for indemnity under workmen's compensation and employer's liability laws; hence, the award of attorney's fees ten percent (10%) of the aggregate

order or resolution takes the nature of a final order susceptible to appeal; in leaving out the determination of the amount of damages, a summary judgment is not removed from the category of final judgments. (*Id*.)

MURDER

Elements — Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Art. 248 of the Revised Penal Code; and (4) the killing is not parricide or infanticide. (People *vs*. Corpuz *y* Daguio, G.R. No. 220486, June 26, 2019) p. 187

Penalty — The crime of Murder is penalized under Art. 248 of the RPC, as amended by R.A. No. 7659, with *reclusion perpetua* to death; in the absence of any aggravating circumstance, both the trial court and the Court of Appeals correctly meted the penalty of *reclusion perpetua*. (People *vs*. Corpuz *y* Daguio, G.R. No. 220486, June 26, 2019) p. 187

OMBUDSMAN

Investigative and prosecutorial powers — It is established that this Court generally does not interfere when the Office of the Ombudsman has made its finding on the existence of probable cause; this exercise is an executive function, and is in accordance with its constitutionally-granted investigatory and prosecutorial powers; in *Presidential Ad Hoc Committee on Behest Loans v. Tabasondra*: The Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not; this is basically his prerogative; in recognition of this power, the Court has been consistent not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers; the rationale underlying the Court's ruling has been explained in numerous cases; the rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but

upon practicality as well; for this Court to review the Office of the Ombudsman's exercise of its investigative and prosecutorial powers in criminal cases, there must be a clear showing of grave abuse of discretion; "disagreement with its findings is not enough to constitute grave abuse of discretion"; there must be a showing that it conducted the preliminary investigation "in such a way that amounted to a virtual refusal to perform a duty under the law"; here, petitioner was unable to prove that public respondent Office of the Ombudsman committed grave abuse of discretion in not finding probable cause against the other respondents; it did not even point to any specific act or omission on the part of public respondent Office of the Ombudsman that would show capricious or whimsical exercise of judgment amounting to lack or excess of jurisdiction. (Rep. of the Phils. *vs.* Ombudsman, G.R. No. 198366, June 26, 2019) p. 30

— The expertise of the Committee on Behest Loans should be respected, as it is in the position to determine whether standard banking practices had been followed in loan transactions; in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*: No doubt, the members of the Committee are experts in the field of banking; on account of their special knowledge and expertise, they are in a better position to determine whether standard banking practices are followed in the approval of a loan or what would generally constitute as adequate security for a given loan; absent a substantial showing that their findings were made from an erroneous estimation of the evidence presented, they are conclusive and, in the interest of stability of the governmental structure, should not be disturbed; the records of this case support public respondent Office of the Ombudsman's finding that Development Bank exercised sound business judgment and acted under existing banking regulations in its loans to ALFA Integrated Textile; petitioner failed to show how the risk Development Bank had taken in extending the loans to ALFA Integrated Textile was arbitrary or malicious; likewise, it was unable to prove the element

of undue injury; that is, the losses that would have been unavoidable in the ordinary course of business, as contemplated by *Presidential Commission on Good Government;* public respondent Office of the Ombudsman did not gravely abuse its discretion in finding that there was no probable cause to charge private respondents with violation of Sec. 3(e) and (g) of the Anti-Graft and Corrupt Practices Act; this Court will not overturn its findings when they are supported by substantial evidence. (*Id*.)

PHILIPPINE CREDIT CARD INDUSTRY REGULATION LAW (R.A. NO. 10870)

Requirement for issuers — Presently, the governing law is R.A. No. 10870, otherwise known as the Philippine Credit Card Industry Regulation Law; before issuing credit cards, issuers are now mandated to conduct "know-your-client" procedures and to exercise proper diligence in ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments; in the service level agreement between the acquiring banks and their partner merchants, there shall be a provision requiring such merchants to perform due diligence to establish the identity of the cardholders; violations of the provisions of the new law, as well as existing rules and regulations issued by the Monetary Board, are penalized with imprisonment or fine, or both. (BPI *vs*. Sps. Sarda, G.R. No. 239092, June 26, 2019) p. 450

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Application of — In the absence of a CBA between the petitioner and the respondents, it is the POEA SEC as well as relevant labor laws which will govern the petitioner's claim, especially as these are deemed written in the contract of employment between the parties; as provided by Art. 198, formerly Art. 192 of the Labor Code of the Philippines, the following disabilities shall be deemed total and permanent: (1) Temporary total disability lasting

party opinion, the findings of the company-designated physician shall prevail over the assessment made by the seafarer's doctor; without the referral to a third doctor, there is no valid challenge to the findings of the company-designated physician; in the absence thereof, the medical pronouncement of the company-designated physician must be upheld. (De Vera *vs*. United Phil. Lines, Inc., G.R. No. 223246, June 26, 2019) p. 240

Assessment of injury or illness — Referral to a third doctor is a mandatory procedure; failure to comply with this rule, without any explanation, is a breach of contract that is tantamount to failure to uphold the law between the parties; hence, when the seafarer fails to express his or her disagreement by asking for the referral to a third doctor, the findings of the company-designated physician is given more credence and is final and binding on the parties. (Toquero *vs*. Crossworld Marine Services, Inc., G.R. No. 213482, June 26, 2019) p. 106

— The Court cannot consider the company-designated physician's finding of petitioner's fitness to work because it is deficient; between the company-designated physician's assessment and the findings of the petitioner's chosen physician, we give more weight to the latter's assessment of permanent and total disability; as to the applicable Collective Bargaining Agreement and disability rating, we uphold the version submitted by petitioner; respondents contend that a different Collective Bargaining Agreement and a lower disability allowance are applicable to petitioner; doubts shall be resolved in favor of labor in line with the policy enshrined in the Constitution, the Labor Code, and the Civil Code, to provide protection to labor and construe doubts in favor of labor; this Court has consistently held that "if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter"; in accordance with the Collective Bargaining Agreement submitted by petitioner, he is entitled to a total and permanent disability allowance of US$250,000.00. (*Id*.)

— The Court has acknowledged that the company-designated physician's findings tend to be biased in the employer's favor; in instances where the company-designated physician's assessment is not supported by medical records, the courts may give greater weight to the findings of the seafarer's personal physician; disability ratings should be adequately established in a conclusive medical assessment by a company-designated physician; to be conclusive, a medical assessment must be complete and definite to reflect the seafarer's true condition and give the correct corresponding disability benefits; as explained by this Court: A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such; otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered; on the contrary, tardy, doubtful, and incomplete medical assessments, even if issued by a company-designated physician, have been repeatedly set aside by this Court; here, the medical assessment issued by the company-designated physician cannot be regarded as definite and conclusive; a review of the records shows that the company-designated physician failed to conduct all the proper and recommended tests; contrary to her own recommendation, Dr. Bacungan failed to conduct a complete neurologic examination; there were no memory and cognitive assessment to conclusively declare petitioner's disability; there were no explanations from respondents as to why the recommended medical tests were not conducted; hence, we cannot consider the company-designated physician's assessment conclusive. (*Id.*)

— The POEA Standard Employment Contract provides a procedure on the medical assessment of the seafarer's injury or illness; Sec. 20(A)(3) states in part: 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; failure to observe the procedure under this Section means that the assessment of the company-designated physician prevails; *Nonay v. Bahia Shipping Services, Inc.,* cited. (*Id.*)

Benefits for work-related illness — While the 2010 POEA-SEC, same as the 2000 POEA-SEC, does not expressly define the term "work-related death," jurisprudence states that the said term should refer to the "seafarer's death resulting from a work-related injury or illness"; the first requirement for death compensability was complied with, since it was established that Manolo's death – albeit occurring after his repatriation – resulted from a work-related illness; the root cause of his death was his *nasopharyngeal carcinoma*, a non-listed illness under the 2010 POEA SEC which is disputably presumed to be work-related; for their part, SSMI, *et al.* failed to present contrary proof to overturn this presumption of work-relatedness; as case law holds, "it is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits incident thereto; it is enough that the employment had contributed, even in a small measure, to the development of the disease"; it is settled that the issuance of a disability rating by the company-designated physician negates any claim that the non-

defines "work-related injury" as injury "arising out of and in the course of employment"; thus, a seafarer has to prove that his injury was linked to his work and was acquired during the term of employment to support his claim for sickness allowance and disability benefits; unlike the 1996 POEA Standard Employment Contract, in which it was sufficient that the seafarer suffered injury or illness during his employment, the 2000 and 2010 POEA Standard Employment Contracts require that the disability must be the result of a work-related injury or illness. (Toquero *vs.* Crossworld Marine Services, Inc., G.R. No. 213482, June 26, 2019) p. 106

—— To be deemed "work-related," there must be a reasonable linkage between the disease or injury suffered by the employee and his work; thus, for a disability to be compensable, it is not required that the seafarer's nature of employment was the singular cause of the disability he or she suffered; it is sufficient that there is a reasonable linkage between the disease or injury suffered by the seafarer and his or her work to conclude that the work may have contributed to establishment or, at least, aggravate any preexisting condition the seafarer might have had; *Jebsens Maritime, Inc. v. Babol*, cited; as a general rule, the principle of work-relation requires that the disease in question must be one of those listed as an occupational disease under Sec. 32-A of the POEA-SEC; nevertheless, should it be not classified as occupational in nature, Sec. 20 (B) par. 4 of the POEA-SEC provides that such diseases are disputably presumed as work-related; here, the two (2) elements of a work-related injury are present. (*Id*.)

Compensability of illness —— In *Nonay v. Bahia Shipping Services, Inc., Fred Olsen Lines and Mendoza*, the Court held that: Settled is the rule that for an illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer; it is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude

as impelled by the plight of the bereaved heirs who stand to be deprived of a just and reasonable compensation for the seafarer's death, notwithstanding its evident work-connection"; the doctrine has been further applied by the Court in the succeeding cases of *Racelis v. United Philippine Lines, Inc.* and *C.F. Sharp Crew Management, Inc. v. Legal Heirs of the Late Repiso;* a seafarer's death occurring after the term of his employment shall be compensable under the POEA-SEC provided that such death was caused by a work-related injury or illness that was sustained during the term of his employment; the petition in G.R. No. 238261 should be granted, and amounts should be awarded in favor of the Heirs of Manolo as prayed for under Sec. 20(B)(1) of the 2010 POEA-SEC. (Heirs of the Late Manolo N. Licuanan *vs.* Singa Ship Mgm't., Inc., G.R. No. 238261, June 26, 2019) p. 401

Disability benefits — De Vera's insistence that he should be considered as totally and permanently disabled as he is now unable to earn wages as a seafarer could not also be sustained; jurisprudence holds that a seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor; it cannot be used as a cure-all formula for all maritime compensation cases; additionally, Sec. 20(A)(6) of the 2010 POEA-SEC now expressly provides that the "disability shall be based solely on the disability gradings provided under Sec. 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid"; De Vera is not entitled to total and permanent disability benefits due to lack of cause of action and in view of his failure to refute the company-designated physicians' fit to work assessment; thus, the CA and the NLRC did not commit any error in their respective decisions and resolutions. (De Vera *vs.* United Phil. Lines, Inc., G.R. No. 223246, June 26, 2019) p. 240

that the company-designated physicians were able to issue a medical certificate declaring De Vera fit to work on April 2, 2013, or after 48 days of continuous treatment counted from the date of the initial consultation on February 13, 2013, or after 58 days counted from De Vera's repatriation to the Philippines on February 3, 2013; the fitness for sea duty declaration by the company-designated physicians was made within the 120-day period prescribed under the POEA-SEC; records disclose that De Vera secured a contrary medical opinion from his physician of choice only on July 25, 2013, or 98 days after he filed his complaint; it is very clear that De Vera had no cause of action when he filed the present complaint on April 18, 2013; thus, the NLRC and the CA did not commit any error when they ruled that De Vera is not entitled to total and permanent disability compensation; the Labor Arbiter should have dismissed De Vera's complaint for lack of cause of action at the first instance. (De Vera *vs.* United Phil. Lines, Inc., G.R. No. 223246, June 26, 2019) p. 240

Sickness allowance — Sec. 20 of the POEA Standard Employment Contract provides that seafarers are entitled to receive sickness allowance in the amount equivalent to their basic wage computed from the time they signed off until they are declared fit to work, or once the degree of disability has been assessed by the company-designated physician; this period shall not exceed 120 days; here, petitioner is entitled to sickness allowance equivalent to his basic wage for 55 days, counted from the day he signed off of work on April 24, 2012 until he was declared fit to go back to work on June 18, 2012; the award of attorney's fees is granted under Art. 2208 of the Civil Code, which allows the award in actions for indemnity under workers' compensation and employers' liability laws. (Toquero *vs.* Crossworld Marine Services, Inc., G.R. No. 213482, June 26, 2019) p. 106

Work-related death of the seafarer — Timoteo was not able to finish his four-month contract because he was medically repatriated only two months into the same; there was

PLEADINGS AND PRACTICE

Reliefs — There is merit in petitioner MWI's contention that there is a glaring infirmity in the dispositive portion of RTC, Branch 67's Decision, which ordered the indefinite "closure of the water refilling stations located at Pasay Road Extension, Makati City (AV-Arnaiz) and No. 8788 Dona Aguirre Avenue cor. Daisy Road, Pilar Villas, Las Piñas (AV-Pilar) operated by petitioner MWI" without any qualifications; petitioner was correct in citing the Court's previous ruling in *Philippine Charter Insurance Corp. v. PNCC*, wherein the Court held that "the fundamental rule is that reliefs granted a litigant are limited to those specifically prayed for in the complaint"; therefore, the RTC, Branch 67 was in error when it ordered the indefinite and unqualified closure of the water refilling stations of petitioner, considering that the two-year prohibitive period under Sec. IV-5 of the Franchise Agreements being invoked by respondent had already lapsed in 2003; the first part of the dispositive portion of RTC, Branch 67's Decision must perforce be deleted. (Makati Water, Inc. *vs*. Agua Vida Systems, Inc., G.R. No. 205604, June 26, 2019) p. 87

PRESUMPTIONS

Presumption of regular performance of official duties — The Court has repeatedly held that the fact that a 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 Sec. 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual; as applied in this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Sec. 21 of R.A. No. 9165; the presumption of regularity in the performance of official duty cannot overcome the stronger presumption of innocence in favor of the accused; the right of the accused to be presumed innocent until proven guilty is a constitutionally protected right; thus,

despite the glaring absence of an appropriation for the Asphalt Overlay Project, and notwithstanding the absence of a justification for the application of negotiated procurement, the respondents repeatedly signed off on the resolutions; worse, the respondents participated in circumventing the requirement under Sec. 85 of P.D. No. 1445 that there should be an appropriation before the execution of the contract; the respondents gave unwarranted benefits and advantages to IBC; their actions also show a willful disregard for the established procurement rules; their defense of being mere subordinates is without merit, as their conduct show a blatant and willful violation of the procurement rules; thus, they should be held liable for Grave Misconduct, which carries the penalty of dismissal from the service; Sec. 12 of R.A. No. 9184, cited. (Office of the Ombudsman *vs*. Celiz, G.R. No. 236383, June 26, 2019) p. 380

Misconduct — Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer; the misconduct is considered to be grave if it also involves other elements, such as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. (Dr. Bagaoisan *vs*. Office of the Ombudsman for Mindanao, Davao City, G.R. No. 242005, June 26, 2019) p. 483

Misconduct and grave misconduct — Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer; grave misconduct, as distinguished from simple misconduct, involves the additional element of corruption, willful intent to violate the law or disregard established rules; mere failure to comply with the law, however, is not sufficient; there should be a showing of deliberateness on the part of the respondents, with the purpose of securing benefits for themselves or for some other person. (Office of the Ombudsman *vs*. Celiz, G.R. No. 236383, June 26, 2019) p. 380

made well-within the 10-year prescriptive period. (Saclolo *vs*. Marquito, G.R. No. 229243, June 26, 2019) p. 319

— In *Spouses Salonga v. Spouses Concepcion*, the Court explained the nature of an equitable mortgage; in case of doubt, a contract purporting to be a sale with right to repurchase shall be considered as an equitable mortgage; in a contract of mortgage, the mortgagor merely subjects the property to a lien, but the ownership and possession thereof are retained by him; for the presumption in Art. 1602 of the New Civil Code to arise, two requirements must concur: (a) that the parties entered into a contract denominated as a contract of sale; and (b) that their intention was to secure an existing debt by way of a mortgage; the existence of any of the circumstances defined in Art. 1602 of the New Civil Code, not the concurrence nor an overwhelming number of such circumstances, is sufficient for a contract of sale to be presumed an equitable mortgage; the nomenclature given by the parties to the contract is not conclusive of the nature and legal effects thereof; the decisive factor in evaluating such deed is the intention of the parties as shown by all the surrounding circumstances, such as the relative situation of the parties at that time, the attitude, acts, conduct, and declarations of the parties before, during and after the execution of said deed, and generally all pertinent facts having a tendency to determine the real nature of their design and understanding; as such, documentary and parol evidence may be adduced by the parties; when in doubt, courts are generally inclined to construe a transaction purporting to be a sale as an equitable mortgage, which involves a lesser transmission of rights and interests over the property in controversy. (*Id*.)

— Respondents, for their part, are not without remedy; they are entitled to collect the outstanding amount of petitioners' loan, plus interest, and to foreclose on the subject property should the latter fail to pay the same; to allow respondents to appropriate the subject lot without prior foreclosure would produce the same effect as a *pactum comissorium;* upon full satisfaction of the debt,

WAIVERS AND QUITCLAIMS

WITNESSES

support a verdict of guilt for rape. (People *vs*. Dumdum, G.R. No. 221436, June 26, 2019) p. 201

— The trial court keenly noted AAA's positive, straightforward, and categorical narration; a victim of tender age would not have narrated such sordid details had she not experienced them; in a long line of cases, the Court has given full weight and credence to the testimony of child victims; for it is highly improbable that a girl of tender years would impute to any man a crime so serious as rape if what she claims is not true; even standing alone, her credible testimony is sufficient to convict appellant given the intrinsic nature of the crime of rape where only two persons are usually involved. (*Id*.)

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