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OF THE

PHILIPPINES

FROM JULY 8, 2019 TO JULY 16, 2019

SUPREME COURT
MANILA
2021

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 4178. July 8, 2019]

PEDRO LUKANG, *complainant, vs.* **ATTY. FRANCISCO R. LLAMAS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; ALTHOUGH A LAWYER IS REQUIRED TO SERVE HIS CLIENTS WITH UTMOST DEDICATION, COMPETENCE AND DILIGENCE, HIS ACTS MUST ALWAYS BE WITHIN THE BOUNDS OF LAW; ANY ACT ON HIS PART THAT OBSTRUCTS, IMPEDES AND DEGRADES THE ADMINISTRATION OF JUSTICE CONSTITUTES PROFESSIONAL MISCONDUCT NECESSITATING THE IMPOSITION OF DISCIPLINARY SANCTIONS AGAINST HIM. — A lawyer is first and foremost an officer of the court. As such, although he is required to serve his clients with utmost dedication, competence and diligence, his acts must always be within the bounds of law. Graver responsibility is imposed upon him than any other to uphold the integrity of the courts and show respect to their processes. Hence, any act on his part that obstructs, impedes and degrades the administration of justice constitutes professional misconduct necessitating the imposition of disciplinary sanctions against him. In this case, the respondent did not live up to his duties and responsibilities as an officer of the court.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY AND THE LAWYER'S OATH; THE LAWYER'S ACT OF INSTITUTING INTESTATE PROCEEDINGS INVOLVING THE SAME ESTATE SIMULTANEOUSLY IN TWO COURTS OF CO-EQUAL JURISDICTION IN THE HOPE OF OBTAINING A FAVORABLE RULING CONSTITUTES A DELIBERATE DISREGARD OF COURT PROCESSES THAT SMACKED OF OUTRIGHT FORUM SHOPPING, UNDULY CLOG THE COURTS' DOCKETS, AND VIOLATIVE OF THE LAWYER'S OATH.— [T]he respondent's act of instituting intestate proceedings involving the estate of the late Arsenio Lukang simultaneously in two courts of co-equal jurisdiction in the hope of obtaining a favorable ruling constituted a deliberate disregard of court processes that smacked of outright forum shopping and tended to unduly clog the courts' dockets. Further, he instituted the petition for letters of administration for the same estate despite the existence of a valid and binding extrajudicial settlement executed on August 5, 1976 by the heirs of the decedent. Thereby, the respondent manifestly neglected his solemn vow under his *Lawyer's Oath* to act with all good fidelity to the courts and to maintain only such actions as appeared to him to be consistent with truth and honor.

3. ID.; ID.; ID.; THE LAWYER'S ACT OF TAMPERING WITH THE RECORDS OF THE COURT CONSTITUTES A VIOLATION OF THE LAWYER'S OATH AND CANON 10, RULE 10.01 AND RULE 10.03 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— [T]he respondent ignored his solemn duty under the *Lawyer's Oath* not to do any falsehood nor consent to its doing in court by noting in the records in Civil Case No. 89-87 of the RTC in Lucena City that he had received the order of non-suit only on February 14, 1993, which was contradicted by the certification of the postmaster of the Parañaque Post Office to the effect that he had received it on December 14, 1992. By the aforementioned acts, the respondent also violated Canon 10, Rule 10.01 and Rule 10.03 of the *Code of Professional Responsibility, viz.:* Canon 10 – A lawyer owes candor, fairness and good faith to the court. Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be mislead by any artifice. Rule 10.03 –

A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

4. ID.; ID.; ID.; SUSPENSION FROM THE PRACTICE OF LAW FOR SIX MONTHS IMPOSED AGAINST AN ERRING LAWYER FOR MULTIPLE INFRACTIONS COMMITTED AGAINST THE LAWYER'S OATH AND THE CODE OF PROFESSIONAL RESPONSIBILITY. — We note, however, that this charge was not the first time that the respondent faced an administrative case and been held liable therefor. Earlier, in *Santos, Jr. v. Llamas,* he was suspended from the practice of law for one year for failure to pay his IBP dues and for making misrepresentations in the pleadings he filed in court. Given his multiple infractions committed against the *Lawyer's Oath* and the *Code of Professional Responsibility,* the respondent's suspension from the practice of law for six months is proper and condign.

APPEARANCES OF COUNSEL

German A. Gineta for complainant.

D E C I S I O N

BERSAMIN, *C.J.*:

Complainant Pedro Lukang seeks the disbarment of respondent Atty. Francisco R. Llamas for violation of the *Lawyer's Oath*, Section 20, Rule 138 of the *Rules of Court*, and the *Code of Professional Responsibility*.

The complainant stated in his original petition for disbarment against the respondent dated November 15, 1993[1] and in the series of supplemental petitions dated August 19, 1996,[2] September 11, 1998,[3] and November 3, 1998,[4] that:

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[1] *Rollo* (Vol. I), pp. 2-9.

[2] *Id*. at 67-70.

[3] *Id*. at 104-105.

[4] *Id*. at 118-122.

(1) he was a party in civil cases seeking the annulment of title, annulment of deed of donation, reconveyance of properties, accounting and receivership of lands; and in criminal cases for falsification of public documents, perjury and false testimony filed in the Municipal Trial Courts (MTC) and the Regional Trial Court (RTC) in Lucena City, while the respondent was the opposing counsel;[5]

(2) during the pendency of the civil and criminal cases, the respondent filed a petition for reconstitution[6] of transfer certificates of title involving the lots subject matter of the pending civil cases in the Office of the Register of Deeds in Lucena City;[7]

(3) in said petition for reconstitution, the respondent misleadingly alleged that his clients, Simeon and Rosalina Lukang, the half-siblings of the complainant, and Mercedes Dee, the mother of Simeon and Rosalina, were the true and registered owners of the properties, because he knew fully well that the ownership of the properties was the core issue in the cases then pending before the RTC and MTC;[8]

(4) the respondent further falsely alleged that his clients were in possession of the subject properties, when in fact therein oppositor Leoncia Martinez-Lukang, the mother of the complainant, was in the actual possession thereof;[9]

(5) the respondent, as the attorney-in-fact of Simeon and Rosalina, also falsely claimed that the subject

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[5] *Id*. at 2-4.

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

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

[8] *Id*. at 5.

[9] *Id*.

properties were free from all liens and encumbrances, and deliberately did not indicate in the petition for reconstitution the pending cases assailing the titles over the subject properties;[10]

(6) the respondent tampered the records of Civil Case No. 89- 87 likewise pending before the RTC in Lucena City by making it appear that he had received the order of non-suit on February 14, 1993, a Sunday, when the post office was closed, despite the order having been actually received by Matilde Castillo, his clerk-secretary, on December 14, 1992;[11]

(7) the respondent obstructed the settlement of the cases among the members of the Lukang family, thereby causing further family dissensions;[12]

(8) the respondent was a former judge who had been removed from service due to serious anomalies;[13]

(9) the respondent committed forum-shopping by filing an intestacy case with petition for letters of administration and adjudication vis-a-vis the estate of the deceased Arsenio Lukang in the RTC in Manila, and subsequently, after the case was dismissed for lack of jurisdiction, by filing another intestacy case concerning the estates of deceased Arsenio Lukang and Mercedes Dee in the RTC in Parañaque City that included the same properties;[14]

(10) the respondent was convicted as a co-conspirator in the crime of estafa under paragraph 2, Article 316 of the *Revised Penal Code* entitled *People v. Francisco Llamas,*

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[10] *Id*. at 6.

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

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

[13] *Id*. at 9.

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

et al. and docketed as Criminal Case No. 11787, and such was in violation of his *Lawyer's Oath* and of the duties of an attorney;[15] and

(11) the respondent also obstructed the resolution of the Lukang family controversies by submitting a delayed and one-sided proposal for the settlement of the issues.[16]

The respondent filed his answer on July 13, 1998,[17] countering therein that he filed the questioned petition for reconstitution to protect the rights and interests of his clients who were the absolute, true and registered owners of the properties; that with respect to the alleged tampering of records, he confessed that he had committed an honest mistake in writing February 14 instead of February 15; that when he was engaged as counsel, the first thing he did was to encourage the resolution of the issues among the members of the Lukang family; that he did not obstruct the settlement among the Lukang family members; that although there was a resolution dismissing him as a judge for having "committed errors bordering on ignorance of the law," the resolution was ultimately reversed and set aside, and he was thereafter even promoted to the RTC in Makati City by President Ferdinand Marcos; and that anent the charge of forum-shopping, he filed the intestacy cases in venues that he considered appropriate.

In his supplement to the answer dated August 31, 1999,[18] the respondent denied having been guilty of the crime of *other forms of swindling*, and argued that his conviction by the trial court was still the subject of an appeal in the Court of Appeals.

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[15] *Id*. at 104.

[16] *Id*. at 118-122.

[17] *Id*. at 91-97.

[18] *Id*. at 175-176.

The IBP's Report and Recommendation

After investigation, Commissioner Milagros V. San Juan of the Commission on Bar Discipline of the Integrated Bar of the Philippines (CBP-IBP) recommended the disbarment of the respondent, observing as follows:

> The charge that respondent tampered with the records of the court by making it appear that he received the copy of the order of non-suit dated 3 December 1992 on 14 February 1993 which is Valentine's Day and a Sunday when the post office was closed, is supported by the confirmation of the Parañaque Central Post Office attached to the Complaint as Annex 'D'.
>
> The charge that respondent committed Forum-Shopping is supported by the Decision rendered by Judge Agnes Reyes-Carpio of Paranaque Regional Trial Court Br. 257 dated 17 June 1996. Considering that the Decision convicting the respondent of the crime of Estafa in Criminal Case No. 11787 is still pending resolution before the Supreme Court, the Commission shall not discuss said case in resolving the complaint.
>
> In view of all the foregoing, it is respectfully recommended that ATTY. FRANCISCO R. LLAMAS be **Disbarred**.[19]

On September 8, 2006, the IBP Board of Governors issued Resolution No. XVII-2006-443[20] adopting and approving the report of CBP-IBP Commissioner San Juan, but modifying the penalty to suspension from the practice of law for one year.

The respondent moved for reconsideration, but the IBP Board of Governors denied the motion through Resolution No. XX-2013-693[21] dated June 20, 2013. However, for humanitarian reasons considering that the respondent was then already 82 years old at the time of resolution, the IBP Board of Governors lowered the penalty to suspension from the practice

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[19] *Rollo* (Vol. II), pp. 400-401.

[20] *Id*. at 452.

[21] *Id*. at 451.

of law for six months.

Ruling of the Court

We agree with and uphold the findings and recommendation of the IBP Board of Governors.

A lawyer is first and foremost an officer of the court. As such, although he is required to serve his clients with utmost dedication, competence and diligence, his acts must always be within the bounds of law. Graver responsibility is imposed upon him than any other to uphold the integrity of the courts and show respect to their processes.[22] Hence, any act on his part that obstructs, impedes and degrades the administration of justice constitutes professional misconduct necessitating the imposition of disciplinary sanctions against him.[23]

In this case, the respondent did not live up to his duties and responsibilities as an officer of the court. We explain why.

Firstly, the respondent exhibited dishonesty and deceit in alleging in the petition for reconstitution that his clients had been the true and absolute owners of the property involved therein, and that such property had been free from all liens and encumbrances despite his knowledge that the ownership of the same was controversial and still the subject of several cases pending in the MTC and RTC in Lucena City.

Secondly, the respondent's act of instituting intestate proceedings involving the estate of the late Arsenio Lukang simultaneously in two courts of co-equal jurisdiction in the hope of obtaining a favorable ruling constituted a deliberate disregard of court processes that smacked of outright forum shopping and tended to unduly clog the courts' dockets. Further, he instituted the petition for letters of administration for the same estate despite the existence of a valid and binding extrajudicial settlement executed on August 5, 1976 by the heirs

[22] *Bantolo v. Castillon, Jr.,* Adm. Case. No. 6589, December 19, 2005, 478 SCRA 443, 449.

[23] *Id*.

[24] *Rollo* (Vol. I), pp. 281-284.

of the decedent.[24] Thereby, the respondent manifestly neglected his solemn vow under his *Lawyer's Oath* to act with all good fidelity to the courts and to maintain only such actions as appeared to him to be consistent with truth and honor.

Lastly, the respondent ignored his solemn duty under the *Lawyer's Oath* not to do any falsehood nor consent to its doing in court by noting in the records in Civil Case No. 89-87 of the RTC in Lucena City that he had received the order of non-suit only on February 14, 1993, which was contradicted by the certification of the postmaster of the Parañaque Post Office to the effect that he had received it on December 14, 1992.[25]

By the aforementioned acts, the respondent also violated Canon 10, Rule 10.01 and Rule 10.03 of the *Code of Professional Responsibility, viz.*:

Canon 10 – A lawyer owes candor, fairness and good faith to the court.

Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be mislead by any artifice.

Rule 10.03 – A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Anent the respondent's conviction for the crime of *other forms of swindling* as defined and punished under Article 316, paragraph 2, of the *Revised Penal Code*, the Court, through the resolution dated August 16, 2010,[26] set aside its decision promulgated on September 29, 2009 in G.R. No. 149588 entitled *Francisco R. Llamas and Carmelita C. Llamas v. Court of Appeals*,[27] thereby acquitting him of the crime charged for failure of the Prosecution to prove his guilt beyond reasonable doubt.

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[25] *Id*. at 229.

[26] *Llamas v. Court of Appeals*, G.R. No. 149588, August 16, 2010, 628 SCRA 302.

[27] 601 SCRA 228.

The consequence of the reversal of the conviction and his resulting acquittal, according to *Interadent Zahntechnik, Phil., Inc. v. Francisco-Simbillo*,[28] prevented the disbarment complaint based on the respondent attorney's moral turpitude from prospering.

We note, however, that this charge was not the first time that the respondent faced an administrative case and been held liable therefor. Earlier, in *Santos, Jr. v. Llamas*,[29] he was suspended from the practice of law for one year for failure to pay his IBP dues and for making misrepresentations in the pleadings he filed in court.

Given his multiple infractions committed against the *Lawyer's Oath* and the *Code of Professional Responsibility*, the respondent's suspension from the practice of law for six months is proper and condign.

WHEREFORE, the Court **SUSPENDS** respondent Atty. Francisco R. Llamas from the practice of law for six months effective upon receipt of this decision, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Let copies of this decision be furnished to the Office of the Bar Confidant; the Integrated Bar of the Philippines; and the Office of the Court Administrator for dissemination to all courts throughout the country.

SO ORDERED.

Del Castillo, Jardeleza, Gesmundo, and *Carandang, JJ.*, concur.

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[28] A.C. No. 9464, August 24, 2016.

[29] A.C. No. 4749, January 20, 2000, 322 SCRA 529.

SECOND DIVISION

[A.C. No. 8911. July 8, 2019]

IN RE: ATTY. ROMULO P. ATENCIA: REFERRAL BY THE COURT OF APPEALS OF A LAWYER'S UNETHICAL CONDUCT AS INDICATED IN ITS DECISION DATED JANUARY 31, 2011 IN CA-G.R. CR-HC NO. 03322 (PEOPLE OF THE PHILIPPINES *VS*. AURORA TATAC, *ET AL*.).

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); RULE 6.03 PROVIDES THAT A LAWYER SHALL NOT, AFTER LEAVING GOVERNMENT SERVICE, ACCEPT ENGAGEMENT OR EMPLOYMENT IN CONNECTION WITH ANY MATTER IN WHICH HE HAD INTERVENED WHILE IN THE SAID SERVICE. — In *Olazo v. Tinga*, the Court held that Rule 6.03 contemplates of a situation where a lawyer, formerly in the government service, accepted engagement or employment in a matter which, by virtue of his public office, had previously exercised power to influence the outcome of the proceedings. The rationale for the prohibition under Rule 6.03 is this: private lawyers who, during their tenure in government service, had possessed the power to influence the outcome of the proceedings, are bound to enjoy an undue advantage over other private lawyers because of their substantial access to confidential information on the matter (including the submissions of a counter-party), as well as to the government's resources dedicated to process/resolve the same (including contacts in the institution where the matter is pending). Thus, to obviate the temptation of these government lawyers to exploit the information, contacts, and influence garnered while in the service when they leave for private practice, the prohibition under Rule 6.03 was formulated.

2. ID.; ID.; ID.; THE WORD "INTERVENED," ELUCIDATED. — According to the *Presidential Commission on Good*

Government v. Sandiganbayan (PCGG) [case], Rule 6.03 of CPR retained the general structure of paragraph 2, Canon 36 of the Canons of Professional Ethics *but replaced the expansive phrase "investigated and passed upon" with the word "intervened."* Notably, the word "intervened" was held to only include "an act of a person who has the power to influence the subject proceedings." The intervention cannot be insubstantial and insignificant. It does not "includ[e] participation in a proceeding even if the intervention is irrelevant or has no effect or little influence." x x x [Here] respondent's acts fall within the ambit of the prohibition under Rule 6.03. [H]e should not have accepted the engagement to be the private counsel of the accused in the same criminal cases in which he had previously intervened while in the government service.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE COMPLAINT DISMISSED DUE TO RESPONDENT'S SUPERVENING DEATH. — [D]ue to respondent's supervening death, the Court finds it apt to dismiss the instant administrative complaint. The general rule is that "the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent's case; jurisdiction once acquired, continues to exist until the final resolution of the case." x x x [However,] in *Limliman v. Judge Ulat-Marrero*, the Court ruled that the death of the respondent necessitates the dismissal of the administrative case upon a consideration of any of the following factors: first, the observance of respondent's right to due process; ***second, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons***; and ***third, it may also depend on the kind of penalty imposed.*** Here, the Court would have merely reprimanded respondent for his ethical violation. However, since this penalty cannot anymore be implemented because respondent had already passed away, and further taking into account equitable and humanitarian considerations, the Court finds it proper to dismiss the administrative complaint against him.

APPEARANCES OF COUNSEL

Atencia Law Office collaborating counsel for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is an administrative complaint[1] filed against respondent former Judge Romulo P. Atencia (respondent) for violation of Rule 6.03 of the Code of Professional Responsibility (CPR).

The Facts

On December 16, 2003, respondent, then Presiding Judge of the Regional Trial Court of Virac, Catanduanes, Branch 43 (RTC), presided over the arraignment of accused Aurora Tatac (Tatac), Maria Gaela (Gaela), and Maritess Cunanan (Cunanan; collectively, accused) in Criminal Case Nos. 3265, 3266, and 3267 for transporting dangerous drugs, and thereafter, ordered a joint trial of the cases upon his determination that the cases involved a commonality of evidence.[2]

On February 11, 2004, respondent tendered his resignation as Presiding Judge of the RTC due to health reasons, which took effect on April 30, 2004.[3]

On April 21, 2006, or almost two (2) years after he resigned, respondent entered his appearance in the same criminal cases as substitute counsel for accused Tatac, Gaela, and Cunanan.

After trial, the RTC convicted the accused, prompting Tatac and Gaela to appeal to the CA with respondent as counsel.[4]

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[1] In the Court's Resolution dated April 11, 2011 (*rollo*, p. 41), the Court considered the statements made by the Court of Appeals (CA) in the CA Decision dated January 31, 2011 in CA-G.R. CR-HC No. 03322 entitled, "*People of the Philippines v. Aurora Tatac y Dela Viña and Maria Gaela y Tatac*" (see *id*. at 5-20) as an Administrative Complaint against herein respondent.

[2] See *id*. at 82.

[3] *Id*. at 83.

[4] *Id*.

On appeal, the CA acquitted the accused[5] but noted that respondent committed an ethical infraction because of his acceptance of the cause of the accused, who had earlier appeared before him when he was still a judge, *viz.*:

> First, a word on the perceived unethical conduct of former Judge Romulo Atencia who, after presiding over the initial stages of the case, including the arraignment of the accused, was later engaged as counsel for the same accused.
>
> x x x x x x x x x
>
> x x x **[H]is acceptance of the cause of the accused-appellants, who had earlier appeared before him when he was still a judge, seriously taints his stature as a lawyer.** It cannot be helped that his acceptance of the same case which he presided over may not have been made with the most pristine of intentions. While a lawyer should not reject, except for valid reasons, the cause of the defenseless or the oppressed, it is also true that he should avoid conflict of interest. Moreover, former Judge Romulo Atencia's tenure as judge of the same court may have been a significant factor for the accused-appellants' decision to engage his services. A lawyer should never allow himself to be perceived as able to influence any public official, tribunal or legislative body.
>
> x x x x x x x x x

In this regard, the CA observed that the matter should be referred[6] to the Integrated Bar of the Philippines (IBP) for further investigation pursuant to Section 1 of Rule 139-B of the Rules of Court (Rules).[7]

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[5] *Id*. at 37.

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

[7] x x x "[T]he IBP Board of Governors may, *motu proprio* or upon referral by the Supreme Court or by a Chapter Board of Officers, or at the instance of any person, initiate and prosecute proper charges against any erring attorneys including those in the government service x x x."

Subsequently, the Commission on Bar Discipline of the IBP referred the matter to the Office of the Bar Confidant (OBC) for appropriate action.[8]

In a Memorandum[9] dated March 11, 2011, the OBC recommended: (1) the docketing of the complaint; and (2) that respondent be required to comment.[10] Pursuant to the OBC's recommendation, the Court issued a Resolution[11] dated April 11, 2011, approving the formal docketing of the complaint against respondent and requiring him to comment on his alleged unethical conduct.[12]

In his Comment,[13] respondent refuted the charges against him, claiming that there is no prohibition against a former judge to accept as his client somebody who was an accused in his sala when he was still judge.[14] Respondent also argued that his participation was limited to the arraignment of the accused and to the issuance of the order directing the joint trial of the cases due to commonality of evidence.[15]

In a Resolution[16] dated November 28, 2011, the Court referred the case to the IBP for investigation, report, and recommendation.[17]

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[8] See Indorsement dated February 14, 2011 signed by Director for Bar Discipline Alicia A. Risos-Vidal; *id*. at 2.

[9] *Id*. at 1. Signed by Deputy Clerk of Court and Bar Confidant Ma. Cristina B. Layusa.

[10] *Id*.

[11] *Id*. at 41. Signed by Assistant Clerk of Court Wilfredo V. Lapitan.

[12] *Id*.

[13] Dated July 7, 2011; *id*. at 43-52.

[14] *Id*. at 46.

[15] *Id*. at 47.

[16] *Id*. at 55. Signed by Deputy Division Clerk of Court Wilfredo V. Lapitan.

[17] *Id*.

The IBP's Report and Recommendation

In a Report and Recommendation[18] dated June 10, 2013, the IBP Investigating Commissioner found respondent administratively liable for violating Rule 6.03 of the CPR, and accordingly, recommended that he be meted the penalty of suspension from the practice of law for one (1) year.

The Investigating Commissioner noted that as a former judge of the court where the cases were then pending, respondent is considered to have "intervened" when he accepted to be the counsel for the accused. Indeed, as a judge, respondent had the power to influence the proceedings, regardless of his limited participation in the case as aforementioned. Thus, he is prohibited from accepting any engagement from the accused involving the same matter.[19]

In a Resolution[20] dated August 9, 2014, the IBP Board of Governors adopted the aforesaid report and recommendation.[21]

However, during the pendency of this case, or on July 6, 2017, respondent unfortunately passed away.[22]

The Issue Before the Court

The issue for the Court's resolution is whether or not respondent should be held administratively liable for violation of Rule 6.03 of the CPR.

The Court's Ruling

Rule 6.03 of the CPR states:

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[18] *Id*. at 82-86. Penned by Commissioner Michael G. Fabunan.

[19] See *id*. at 86.

[20] *Id*. at 108-109. Signed by National Secretary Nasser A. Marohomsalic.

[21] *Id*.

[22] See Notice of Death dated December 14, 2017 with attached Certificate of Death; *id*. at 115-117, including dorsal portion.

Rule 6.03 – A lawyer shall not, after leaving government service, accept engagement or employment in connection with any matter in which he had intervened while in said service.

In *Olazo v. Tinga*,[23] the Court held that Rule 6.03 contemplates of a situation where a lawyer, formerly in the government service, accepted engagement or employment in a matter which, by virtue of his public office, had previously exercised power to influence the outcome of the proceedings.[24]

The rationale for the prohibition under Rule 6.03 is this: private lawyers who, during their tenure in government service, had possessed the power to influence the outcome of the proceedings, are bound to enjoy an undue advantage over other private lawyers because of their substantial access to confidential information on the matter (including the submissions of a counter-party), as well as to the government's resources dedicated to process/resolve the same (including contacts in the institution where the matter is pending). Thus, to obviate the temptation of these government lawyers to exploit the information, contacts, and influence garnered while in the service when they leave for private practice, the prohibition under Rule 6.03 was formulated.

In *Presidential Commission on Good Government v. Sandiganbayan (PCGG)*,[25] the Court took pains to trace the roots of Rule 6.03 and discussed the so-called "revolving door" concern, which was the original impetus behind the prohibition under Rule 6.03:

In 1917, the Philippine Bar found that the oath and duties of a lawyer were insufficient to attain the full measure of public respect to which the legal profession was entitled. In that year, the Philippine Bar Association adopted as its own, Canons 1 to 32 of the ABA Canons of Professional Ethics.

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[23] 651 Phil. 290 (2010).

[24] *Id*. at 305, citing *Presidential Commission on Good Government v. Sandiganbayan*, 495 Phil. 485, 520-521 (2005).

[25] 495 Phil. 485 (2005).

As early as 1924, some ABA members have questioned the form and function of the canons. ***Among their concerns was the "revolving door" or "the process by which lawyers and others temporarily enter government service from private life and then leave it for large fees in private practice, where they can exploit information, contacts, and influence garnered in government service***." These concerns were classified as "**adverse-interest conflicts**" and **"congruent-interest conflicts." "Adverse-interest conflicts"** exist where the matter in which the former government lawyer represents a client in private practice is substantially related to a matter that the lawyer dealt with while employed by the government and the interests of the current and former are adverse. On the other hand, "**congruent-interest representation conflicts**" are unique to government lawyers and apply primarily to former government lawyers, x x x To deal with problems peculiar to former government lawyers, **Canon 36** was minted which disqualified them both for "adverse-interest conflicts" and "congruent-interest representation conflicts." **The rationale for disqualification is rooted in a concern that the government lawyer's largely discretionary actions would be influenced by the temptation to take action on behalf of the government client that later could be to the advantage of parties who might later become private practice clients**. Canon 36 provides, *viz*.:

> 36. Retirement from judicial position or public employment
>
> A lawyer should not accept employment as an advocate in any matter upon the merits of which he has previously acted in a judicial capacity.
>
> **A lawyer, having once held public office or having been in the public employ should not, after his retirement, accept employment in connection with any matter he has investigated or passed upon while in such office or employ**.[26]
>
> (Emphases and underscoring supplied)

According to the *PCGG* case, Rule 6.03 of CPR retained the general structure of paragraph 2, Canon 36 of the Canons of Professional Ethics *but replaced the expansive phrase*

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[26] *Id*. at 520-521.

"*investigated and passed upon*" *with the word* "*intervened*."[27] Notably, the word "intervened" was held to only include "an act of a person who has the power to influence the subject proceedings." The intervention cannot be insubstantial and insignificant. It does not "includ[e] participation in a proceeding even if the intervention is irrelevant or has no effect or little influence."[28]

In this case, it is undisputed that respondent not only presided over the arraignment proceedings involving the accused but also ordered the joint trial of Criminal Case Nos. 3265, 3266, and 3267 upon his determination that the cases involved a commonality of evidence. Accordingly, he performed acts that influenced the outcome of the proceedings. To be sure, the arraignment[29] is an essential stage of criminal prosecution where discretionary matters (such as plea bargaining or a motion to suspend arraignment[30]) may be raised, and without which the criminal cases cannot proceed. Furthermore, by conducting the arraignment of the accused, respondent had necessarily examined the records forwarded by the prosecutor and consequently, determined the existence of probable cause; otherwise, the case would have already been dismissed.[31]

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[27] *Id.* at 513-514.

[28] See *id.* at 520-521.

[29] Arraignment is the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him. The purpose of arraignment is, thus, to apprise the accused of the possible loss of freedom, even of his life, depending on the nature of the crime imputed to him, or at the very least to inform him of why the prosecuting arm of the State is mobilized against him. Notably, an entire rule, *i.e.*, Rule 116 of the Rules on Criminal Procedure, is dedicated to arraignment proceedings.

[30] See Sections 2 and 11, Rule 116 of the Rules.

[31] Section 5(a), Rule 112 of the Revised Rules of Criminal Procedure states that "[w]ithin ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. x x x."

Meanwhile, in ordering the joint trial, respondent had to examine the records of these cases in order to determine the commonality of evidence. Case law states that joint trial is permissible where the actions arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party an undue advantage or prejudice the substantial rights of any of the parties.[32] Given respondent's directive for joint trial, the presentation of evidence must now cover all the charges against and the defenses for all the accused, unlike before when they were to be taken individually.

Thus, given the significance of these acts to the outcome of the proceedings, respondent's acts fall within the ambit of the prohibition under Rule 6.03. Hence, he should not have accepted the engagement to be the private counsel of the accused in the same criminal cases in which he had previously intervened while in the government service.

However, due to respondent's supervening death, the Court finds it apt to dismiss the instant administrative complaint. The general rule is that "the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent's case;[33] jurisdiction once acquired, continues to exist until the final resolution of the case." In *Loyao, Jr. v. Caube*,[34] it was explained that:

> This jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declare him

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[32] See *Caños v. Peralta*, 201 Phil. 422, 426 (1982).

[33] *Re: Audit Report on Attendance of Court Personnel of RTC, Branch 32, Manila*, 532 Phil. 51, 62-63 (2006).

[34] 450 Phil. 38 (2003).

guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications... If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.[35]

The above rule, however, is not without exceptions. In *Limliman v. Judge Ulat-Marrero*,[36] the Court ruled that the death of the respondent necessitates the dismissal of the administrative case upon a consideration of any of the following factors: first, the observance of respondent's right to due process; ***second, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons***; and ***third, it may also depend on the kind of penalty imposed.***[37]

Here, the Court would have merely reprimanded respondent for his ethical violation. However, since this penalty cannot anymore be implemented because respondent had already passed away, and further taking into account equitable and humanitarian considerations, the Court finds it proper to dismiss the administrative complaint against him.

WHEREFORE, the administrative complaint against respondent former Judge Romulo P. Atencia is hereby **DISMISSED**.

SO ORDERED.

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

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

[36] 443 Phil. 732 (2003).

[37] See *id.* at 735-736.

FIRST DIVISION

[G.R. No. 196455. July 8, 2019]

CENTENNIAL TRANSMARINE INC., EDUARDO R. JABLA, CENTENNIAL MARITIME SERVICES & M/T ACUSHNET, *petitioners, vs.* **EMERITO E. SALES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; SEAFARERS; DISABILITY BENEFITS; THE DISABILITY 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; THE DISABILITY GRADINGS AS PROVIDED IN THE POEA-SEC MUST PREVAIL.— This Court, however, agrees with CTI that non-observance of the 120/240-day rule will not automatically entitle a seafarer to permanent and total disability benefits. It has been settled that the application of the 120/240 day rule shall depend on the circumstances of the case, including compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA, if one exists. While Sales remained unfit for sea duty for more than 120 days, records show that he was still under observation and medical treatment with the company-designated physician. Thus, to require CTI to immediately issue a final disability assessment, while still undergoing treatment, would be premature. Further, although the disability gradings of the company designated physician and Sales' physician varied, both medical assessments show that Sales only suffered from partial disability. The remarks of both physicians on Sales' conditions were consistent requiring him to continue physical therapy and to have surgery. As discussed and following the provisions of the POEA-SEC, the disability 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. The disability gradings as provided in the POEA-SEC must prevail.

2. ID.; ID.; ID.; ID.; THE COMPANY-DESIGNATED PHYSICIAN'S DISABILITY GRADING WHICH WAS NOT ARRIVED AT ARBITRARILY SHALL BE UPHELD ABSENT AN ASSESSMENT OF A THIRD PHYSICIAN.— As to which disability assessments to uphold, this Court finds for CTI. Upon review of the disability assessments, We find that the company-designated physician is more knowledgeable of the conditions of Sales, having monitored and treated the latter from his repatriation in May 2006 to the issuance of the disability assessment in September 2006. Sales' 8-day evaluation by his physician pales in comparison to the 5-month treatment he had with the company-designated physician. In fact and to reiterate, the observations in the assessment issued by Sales' physician and the company-designated physician were consistent. The company-designated physician's disability grading was not arrived at arbitrarily. In addition, facts do not show that the parties agreed for an assessment of a third physician to settle the disability grading of Sales. Agreeing to a third physician for a final assessment would have been prudent, more so for Sales, who was contesting the company-designated physician's assessment. Thus, for lack of an assessment of a third physician coupled with the foregoing facts, this Court upholds the Grade 11 rating of the company-designated physician.

3. ID.; ID.; ID.; ID.; THE SEAFARER WILL ALWAYS HAVE THE MINIMUM RIGHTS AS PER THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC), BUT TO THE EXTENT A COLLECTIVE BARGAINING AGREEMENT (CBA) GIVES BETTER BENEFITS, THESE TERMS WILL OVERRIDE THE POEA-SEC TERMS BECAUSE A CONTRACT OF LABOR IS SO IMPRESSED WITH PUBLIC INTEREST THAT THE MORE BENEFICIAL CONDITIONS MUST BE ENDEAVORED IN FAVOR OF THE LABORER.— This Court cannot subscribe to CTI's position that only permanent disabilities resulting from an accident will be covered by the CBA. The special clauses on CBAs must prevail over the standard terms and benefits formulated by the POEA-SEC. The seafarer will always have the minimum rights as per the POEA-SEC, but to the extent a CBA gives better benefits, these terms will override the POEA-SEC terms. This is so because a contract of labor is

so impressed with public interest that the more beneficial conditions must be endeavored in favor of the laborer. This is in consonance with the avowed policy of the State to give maximum aid and full protection to labor as enshrined in Article XIII of the 1987 Constitution. In any case, this Court finds that the fall of Sales while transferring the portable pump constitutes an accident. This Court in *NFD International Manning Agents, Inc. v. Illescas,* cited the Philippine Law Dictionary defining the word "accident" as "[t]hat which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen." To Our mind, Sales slipping and hitting the floor falls within the above-quoted definition. Thus, the schedule of impediment grading and appropriate money award provided in Section 20.1.4.4 must be followed. Sales is awarded $11,757.00.

4. ID.; ID.; ID.; ID.; RESPONDENT IS ENTITLED TO AN AWARD OF PARTIAL DISABILITY BENEFITS; AWARD OF MORAL AND EXEMPLARY DAMAGES DENIED FOR LACK OF FACTUAL AND LEGAL BASIS.— This Court, however, agrees with CTI that the conditions for the award of permanent and total disability benefits provided in Section 20.1.5 of the CBA are not present. In this case, the medical assessment of the company-designated physician only shows partial disability grading of Sales. There were no categorical remarks that he was unfit for further sea service. Although Sales was recommended to continue physical therapy, he was also required to have surgery as a "more definitive treatment." To this Court's mind, the condition of Sales is not considered by the company-designated physician as permanent. With respect to Sales' money claims for moral and exemplary damages, We do not find any cause to grant the same for lack of factual and legal basis. Likewise, We do not find any evidence to show bad faith on the part of CTI for paying compensation according to the grading issued by the company-designated physician.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Offices for petitioners.
Carrera & Associates Law Office for respondent.

D E C I S I O N

CARANDANG, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated January 21, 2011 of the Court of Appeals (CA) Special Fifth Division awarding the payment of total permanent disability benefits to respondent Emerito E. Sales (Sales).

The Facts of the Case

Sales was hired by Centennial Transmarine, Inc. (CTI), a local manning agency acting for and in behalf of its principal Centennial Maritime Services, to work as Pumpman on board M/V Acushnet for nine (9) months.[3]

Sales claims that sometime in April 2006, while transferring the portable pump to the main deck, he slipped and hit the floor. Although in pain from the fall, Sales ignored it and continued with his work, which included carrying heavy objects. However, the pain on his lower back persisted. On May 5, 2006, Sales reported that he was suffering from lower back pain.[4] He was initially given an ointment for relief but this did not treat his back pain. Sales sought for medical assistance and was then referred to a physician in Antwerp, Belgium. Upon examination, Sales was initially diagnosed to be suffering from "acute traumatic lumbago with ischialgia right leg,"[5] and was recommended for medical repatriation to the Philippines for further evaluation and medical treatment.

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[1] *Rollo*, pp. 84-104.

[2] Penned by Associate Justice Amy C. Lazaro-Javier (now a Member of the Court), with Associate Justices Sesinando E. Villon and Stephen C. Cruz, concurring; *id*. at 13-34.

[3] *Id*. at 185-186.

[4] *Id*. at 186.

[5] *Id*. at 197.

On May 12, 2006 or two (2) days after his repatriation, Sales was referred to CTI's company-designated physician. He underwent a magnetic resonance imaging test (MRI). Sales' MRI results showed that he was suffering from "degenerative changes of the lumbar spine including disc protrusions at L5-S1 and probably L4-L5."[6] Sales was recommended by the physician to undergo surgery, but he refused. In a Letter[7] dated July 10, 2006, the company-designated physician advised that Sales see a rehabilitation doctor for evaluation whether he can be treated conservatively thru physical therapy. On July 20, 2006, Sales began his "conservative" treatment with the company-designated physician.

During his treatment with the company-designated physician, Sales sought for a second opinion of his medical condition at the same hospital he was treated. In a Medical Certification[8] dated September 20, 2006, Sales was assessed with disability grading "8", describing it as "partial permanent disability." Sales' physician advised that "[h]e requires constant physical therapy/ rehabilitation and may require surgery in the future if his pain symptoms [worsen]. He is totally UNFIT TO WORK as a Seaman."

The following day, on September 21, 2006, the company-designated physician issued a Medical Certification[9] advising Sales to continue physical therapy sessions. He was also advised to undergo surgery, which is a more "definitive treatment", but Sales, again, refused. In a Letter[10] dated September 22, 2006, the company-designated medical director reported that Sales had undergone 10 physical therapy sessions. The report further stated that "(t)here is no visible problem with ambulation. At this point, patient is advised against lifting heavy objects which

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[6] *Id*. at 198.

[7] *Id*. at 252.

[8] *Id*. at 228.

[9] *Id*. at 253.

[10] *Id*. at 254.

gives him 1/3 loss of lifting power x x x." The company-designated physician issued Sales' disability assessment with "GRADE 11."[11]

On October 4, 2006, Sales filed a complaint with the National Labor Relations Commission (NLRC) claiming entitlement to permanent and total disability benefits, attorney's fees, and moral and exemplary damages. Sales argues that he remained unfit for sea duty for more than 120 days. He lost his capacity to obtain employment as seaman; that he was not able to get any employment due to his conditions. Sales also claims that he should be compensated for disability benefits under the provisions of the Collective Bargaining Agreement (CBA) because he sustained his injuries from an accident on board the vessel.

On September 28, 2007, the NLRC, though Labor Arbiter (LA) Ligerio Ancheta, ruled in favor of Sales. The LA held that Sales should be paid permanent and total disability benefits in accordance with the CBA. He was able to prove having sustained an injury onboard the vessel which eventually caused his disability. The LA was unconvinced of the allegations of CTI that no accident took place onboard M/V Acushnet. Had there been no accident during Sales' employment with the company, CTI would not have repatriated Sales to the Philippines nor covered for his medical expenses thereafter. The LA sustained the assessment of Sales' physician in finding Sales "TOTALLY UNFIT TO WORK AS A SEAMAN."

CTI appealed the LA's decision with the NLRC arguing that the assessment of Sales' physician should not be upheld because he is not the company-designated physician. CTI emphasized that, despite recommendation of the company doctor, Sales refused to undergo surgery, which amounted to a breach of duty.

On April 2, 2009, the NLRC reversed and set aside the decision of the LA. Contrary to the findings of the LA, the NLRC held that there was no evidence of Sales' accident and that the latter

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[11] *Id*.

failed to elaborate the incidents of the accident that caused his medical injury. Hence, there was no basis to apply the provisions of the CBA for purposes of payment of disability benefits. The NLRC also held that the initial medical assessment of Sales abroad and the MRI readings of the company-designated physician gave the impression that his conditions of "degenerative change of the lumbar spine" was internal to his body and not caused by an external incident, such as the accident that Sales alleged. Finally, the NLRC held that while Sales' physician assessed him to be unfit to work, the same did not show if Sales' unfitness was due to the accident that he alleged.

On reconsideration, the NLRC awarded Sales disability benefits in accordance with the Grade 11 assessment issued by the company-designated physician.

Sales appealed the NLRC decision and resolution with the CA on *certiorari*. On January 21, 2011, the CA, Special Fifth Division, ruled in favor of Sales. The CA found that Sales had been employed with CTI years prior to his accident in 2006. The lower back pain manifested during his last tour of duty. Sales' job as pumpman entailed tedious manual tasks that aggravated the work related pressure on his lower-back. The physicians who examined him found his injury to be work-oriented, as it could have developed over the years he was working as seaman for CTI. Hence, his injury is compensable.

Anent payment of disability benefits, the CA held that Sales is entitled to permanent and total disability benefits. While the disability grading of the company-designated physician and Sales' physician varied, the CA held that both physicians assessed Sales to have suffered from excruciating back pain. CTI is precluded from questioning the assessment of Sales' physician because the company allowed Sales to seek the opinion of a second physician. The CA held that Sales' disability went beyond 120 days since his repatriation. The CA emphasized that permanent total disability means disablement of an employee to earn wages in the same kind of work or work of a similar nature that one was trained for or accustomed to perform. In this case, Sales was awarded permanent and total disability

benefits amounting to US$78,750 because he could neither return to work as pumpman nor as a seaman in any other capacity. He was also awarded ₱25,000.00 moral damages, ₱25,000.00 exemplary damages and 10% attorney's fees.

CTI moved to reconsider the CA decision but the same was denied in the Resolution[12] dated April 12, 2011. Hence, the instant petition.

Based on the facts, this Court holds that Sales' injury is compensable. It is undisputed that Sales has been in the employ of CTI since February 2000.[13] Over six years later or in May 2006, Sales reported his back pain to the company for which he was medically repatriated. Upon his return to the Philippines, Sales was further examined by the company-designated physician and was assessed to have degenerative changes of his lumbar spine. From the foregoing, this Court agrees with the CA that Sales' condition could have developed over the years he was working as seaman for CTI. Sales' job as pumpman entailed manual labor, and his lower back pain could have manifested only during his tour of duty in May 2006. While there may be no records on Sales' accident, facts concerning the nature of his work, the longevity of his service with CTI and his persistent back pains on board the vessel and subsequent repatriation due to such back pain, sufficiently establish that his condition is attributable to his work and, as such, entitles him to compensation. The company-designated physician also found Sales' condition to be work-related.[14] In this wise, CTI's emphasis on Section 20(D) of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) finds no application in the instant case. Said provision reads:

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[12] *Id*. at 36.

[13] *Id*. at 14, CA decision dated January 21, 2011.

[14] *Id*. at 253.

Section 20. COMPENSATION AND BENEFITS

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

CTI argues that Sales is not entitled to compensation because of his refusal to undergo surgery. As discussed, facts sufficiently show that the back injury of Sales is work-related and compensable. Sales' back pains occurred during the term of his employment while he was onboard the vessel. This Court also cannot agree with the bare allegations of CTI that Sales must have figured into an accident after his tour of duty. We emphasize that Sales was medically repatriated due to his complaints of back pain during his term of employment and initial findings of his back injury. The theory of CTI is improbable.

Further, if, as CTI argues, Sales' refusal for surgery was a breach of duty, then CTI should have immediately stopped the medical treatment of Sales. From the facts, Sales refused to undergo surgery as early as July 2006. Yet, CTI continued observing and treating Sales conservatively through physical rehabilitation. CTI had several opportunities to notify Sales, during his treatment and physical therapy sessions, that not resorting to surgery is a breach and would forfeit his disability benefits. Further, if Sales had indeed abandoned treatment, CTI would not have issued a disability assessment in September 2006 because Sales had not completed his treatment. The foregoing factual incidents do not convince this Court that CTI considered Sales to have breached his duty.

This Court, however, agrees with CTI that non-observance of the 120/240-day rule will not automatically entitle a seafarer to permanent and total disability benefits. It has been settled that the application of the 120/240 day rule shall depend on

the circumstances of the case, including compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA, if one exists.[15]

While Sales remained unfit for sea duty for more than 120 days, records show that he was still under observation and medical treatment with the company-designated physician. Thus, to require CTI to immediately issue a final disability assessment, while still undergoing treatment, would be premature. Further, although the disability gradings of the company-designated physician and Sales' physician varied, both medical assessments show that Sales only suffered from partial disability. The remarks of both physicians on Sales' conditions were consistent requiring him to continue physical therapy and to have surgery.[16] As discussed and following the provisions of the POEA-SEC,[17] the disability 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. The disability gradings as provided in the POEA-SEC must prevail. As to which disability assessments to uphold, this Court finds for CTI. Upon review of the disability assessments, We find that the company-designated physician is more knowledgeable of the conditions of Sales, having monitored and treated the latter from his repatriation in May 2006 to the issuance of the disability assessment in September 2006. Sales' 8-day evaluation by his physician pales in comparison to the 5-month treatment he had with the company-designated physician. In fact and to reiterate, the observations in the assessment issued by Sales' physician and the company-designated physician were consistent. The company-designated physician's disability grading was not arrived at arbitrarily. In addition, facts do not show that the parties agreed for an assessment of a third physician to settle the disability grading of Sales. Agreeing to a third physician for a final assessment would have been prudent, more

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[15] See *Splash Philippines, Inc. v. Ruizo*, 730 Phil. 162, 175 (2014).

[16] *Rollo*, pp. 228 and 253.

[17] Section 20 A, par. 6, Memorandum Circular No. 10 (Series of 2010).

so for Sales, who was contesting the company-designated physician's assessment. Thus, for lack of an assessment of a third physician coupled with the foregoing facts, this Court upholds the Grade 11 rating of the company-designated physician.

Anent the issue of applying the provisions of the CBA, this Court finds it to be proper. Section 20.1.4.1 of the CBA provides:

> 20.1.4 COMPENSATION FOR DISABILITY
>
> 20.1.4.1 **A seafarer who suffers permanent disability** as a result of work related illness or from an injury as a result of an accident regardless of fault by excluding injuries caused by a seafarer's willful act, **whilst serving on board including accidents and work related illness occurring whilst travelling to or from the ship, and whose ability to work is reduced as a result thereof**, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement. In determining work-related illness, reference shall be made to the Philippine Overseas Employees Compensation Law and/or Social Security Law. (Emphasis ours)

Clear from the foregoing facts, Sales' 1/3rd loss of motion or lifting power of the trunk was rooted from a work-related injury. Hence, the provisions of the CBA will apply. This Court cannot subscribe to CTI's position that only permanent disabilities resulting from an accident will be covered by the CBA. The special clauses on CBAs must prevail over the standard terms and benefits formulated by the POEA-SEC.[18] The seafarer will always have the minimum rights as per the POEA-SEC, but to the extent a CBA gives better benefits, these terms will override the POEA-SEC terms. This is so because a contract of labor is so impressed with public interest that the more beneficial conditions must be endeavored in favor of the laborer. This is in consonance with the avowed policy of the State to give maximum aid and full protection to labor as enshrined in Article XIII of the 1987 Constitution.[19] In any case, this Court

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[18] See *Legal Heirs of the Late Edwin B. Deauna v. Fil-Star Maritime Corp., et al.*, 688 Phil. 582, 601 (2012).

[19] *Id*.

finds that the fall of Sales while transferring the portable pump constitutes an accident. This Court in *NFD International Manning Agents, Inc. v. Illescas*,[20] cited the Philippine Law Dictionary defining the word "accident" as "[t]hat which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen."[21] To Our mind, Sales slipping and hitting the floor falls within the above-quoted definition. Thus, the schedule of impediment grading and appropriate money award provided in Section 20.1.4.4 must be followed. Sales is awarded $11,757.00.

This Court, however, agrees with CTI that the conditions for the award of permanent and total disability benefits provided in Section 20.1.5 of the CBA[22] are not present. Said provision states that:

> 20.1.5 Permanent Medical Unfitness
>
> A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph as permanently unfit for further sea service in any capacity and entitled to 100% compensation, i.e. US$131250.00 for senior officers, US$110,000.00 for junior officers and US$ 82,500 for ratings (effective January 1, 2007). **Furthermore, any seafarer assessed at less than 50% disability under the contract but certified as permanently unfit for further sea service in any capacity by the company doctor, shall also be entitled to 100% compensation.** (Emphasis ours)

In this case, the medical assessment of the company-designated physician only shows partial disability grading of Sales.[23] There were no categorical remarks that he was unfit for further sea service. Although Sales was recommended to continue physical therapy, he was also required to have surgery as a "more definitive

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[20] 646 Phil. 244 (2010).

[21] *Id*. at 260.

[22] *Rollo*, p. 215.

[23] *Id*. at 254.

treatment." To this Court's mind, the condition of Sales is not considered by the company-designated physician as permanent.

With respect to Sales' money claims for moral and exemplary damages, We do not find any cause to grant the same for lack of factual and legal basis. Likewise, We do not find any evidence to show bad faith on the part of CTI for paying compensation according to the grading issued by the company-designated physician.

WHEREFORE, the Decision dated January 21, 2011 of the Court of Appeals, Special Fifth Division is **MODIFIED**. Petitioner company Centennial Transmarine, Inc. is **ORDERED** to **PAY $11,757.00** as disability compensation to Emerito E. Sales, plus ten percent (10%) attorney's fees and all amounts shall earn six percent (6%) interest *per annum* from the date of filing of claim on October 4, 2006 until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 221366. July 8, 2019]

CITY OF MANILA, *petitioner, vs.* **ALEJANDRO ROCES PRIETO, BENITO ROCES PRIETO, MERCEDES PRIETO DELGADO, MONICA LOPEZ PRIETO, MARTIN LOPEZ PRIETO, BEATRIZ PRIETO DE LEON, RAFAEL ROCES PRIETO, BENITO LEGARDA, INC., ALEGAR CORPORATION, BENITO LEGARDA, JR., PECHATEN CORPORATION, ESTATE OF ROSARIO M. LLORA, and all persons claiming interests against them,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT; EMINENT DOMAIN; THE EXERCISE OF THE POWER OF EMINENT DOMAIN DRASTICALLY AFFECTS A LANDOWNER'S RIGHT TO PRIVATE PROPERTY, WHICH IS AS MUCH A CONSTITUTIONALLY-PROTECTED RIGHT NECESSARY FOR THE PRESERVATION AND ENHANCEMENT OF PERSONAL DIGNITY AND INTIMATELY CONNECTED WITH THE RIGHTS TO LIFE AND LIBERTY; THUS, THE EXERCISE OF SUCH POWER MUST UNDERGO PAINSTAKING SCRUTINY ESPECIALLY WHEN EMINENT DOMAIN IS EXERCISED BY A LOCAL GOVERNMENT CONSIDERING THAT IT MERELY HAS A DELEGATED POWER OF EMINENT DOMAIN.— In resolving expropriation cases, this Court has always been reminded that the exercise of the power of eminent domain necessarily involves a derogation of fundamental right. "The exercise of the power of eminent domain drastically affects a landowner's right to private property, which is as much a constitutionally-protected right necessary for the preservation and enhancement of personal dignity and intimately connected with the rights to life and liberty." Therefore, the exercise of such power must undergo painstaking scrutiny. Such scrutiny is especially necessary when eminent domain is exercised by a local government considering that it merely has a delegated power of eminent domain. A local government unit has no inherent power of eminent domain. Such power is essentially lodged in the legislature although it may be validly delegated to local government units, other public entities and public utilities. Thus, inasmuch as the principal's exercise of the power of eminent domain is subject to certain conditions, with more reason that the exercise of a delegated power is not absolute. In fact, strictly speaking, the power of eminent domain delegated to the local government unit is, in reality, not eminent but inferior since it must conform to the limits imposed by the principal.

2. ID.; ID.; ID.; ID.; LOCAL GOVERNMENT UNITS' EXERCISE OF THE POWER OF EMINENT DOMAIN, REQUISITES.— [S]everal requisites must concur before a

local government unit can exercise the power of eminent domain, to wit: (1) an ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property; (2) the power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless; (3) there is payment of just compensation, as required under Section 9, Article III of the Constitution, and other pertinent laws; and (4) a valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.

3. ID.; ID.; ID.; ID.; ID.; SECTION 19 OF THE LOCAL GOVERNMENT CODE AND SECTIONS 9 AND 10 OF URBAN DEVELOPMENT HOUSING ACT OF 1992 (R.A. NO. 7279) ARE STRICT LIMITATIONS ON THE EXERCISE OF THE POWER OF EMINENT DOMAIN BY LOCAL GOVERNMENT UNITS WITH RESPECT TO THE ORDER OF PRIORITY IN ACQUIRING LAND FOR SOCIALIZED HOUSING, AND THE RESORT TO EXPROPRIATION PROCEEDINGS AS A MEANS OF ACQUIRING IT; THUS, COMPLIANCE THEREOF IS MANDATORY.— [Section 19 of the LGC] also states that the exercise of such delegated power should be pursuant to the Constitution and pertinent laws. R.A. No. 7279 is such pertinent law in this case as it governs the local expropriation of properties for purposes of urban land reform and housing. Thus, the rules and limitations set forth therein cannot be disregarded. Sections 9 and 10 of the said Act provide: SEC 9. *Priorities in the Acquisition of Land.* – **Lands for socialized housing shall be acquired in the following order:** (a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations and their subsidiaries; (b) Alienable lands of the public domain; (c) Unregistered or abandoned and idle lands; (d) Those within the declared Areas or Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired; (e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and (f) **Privately-owned lands.** Where [on-site] development is found more practicable

and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. x x x. SEC. 10. *Modes of Land Acquisition.* – x x x . . . **expropriation shall be resorted to only when other modes of acquisition have been exhausted:** Provided, further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act: x x x. It bears stressing that courts have a duty to judiciously scrutinize and determine whether the local government's exercise of the delegated power of eminent domain is in accordance with the delegating law. As correctly ruled by the CA, bare allegations and unsupported generalizations do not suffice, considering the drastic effect of the exercise of such power to constitutionally-protected rights. In the case of *Estate or Heirs of the Late Ex-Justice Jose B.L. Reyes v. City of Manila*, we emphatically ruled that the above-quoted provisions are **strict limitations** on the exercise of the power of eminent domain by local government units, especially with respect to: (1) the order of priority in acquiring land for socialized housing; and (2) the resort to expropriation proceedings as a means of acquiring it. Compliance with these conditions is **mandatory** because these are the only safeguards of oftentimes helpless owners of private property against what may be a tyrannical violation of due process when their property is forcibly taken from them allegedly for public use. As correctly found by the CA, we find nothing in the records indicating that petitioner complied with Section 19 of the LGC and Sections 9 and 10 of R.A. No. 7279.

4. **ID.; ID.; ID.; ID.; CONDEMNATION OF PRIVATE LANDS IN AN IRRATIONAL OR PIECEMEAL FASHION OR THE RANDOM EXPROPRIATION OF SMALL LOTS TO ACCOMMODATE NO MORE THAN A FEW TENANTS OR SQUATTERS IS NOT THE CONDEMNATION FOR PUBLIC USE CONTEMPLATED BY THE CONSTITUTION, AS SUCH ACT WOULD CLEARLY DEPRIVE A CITIZEN OF HIS OR HER PROPERTY FOR THE CONVENIENCE OF A FEW WITHOUT PERCEPTIBLE BENEFIT TO THE PUBLIC.—** The CA also correctly observed that there was likewise no evidence presented to show that the prospective beneficiaries of the expropriation are the "underprivileged and homeless" contemplated under Section 8 of R.A. No. 7279. Again, it could have been simple for petitioner to present surveys or studies

conducted by competent authorities to prove that the prospective beneficiaries are the proper subjects of its socialized housing program. However, on the contrary, records show that the prospective beneficiaries are not such "underprivileged and homeless." As testified to by a witness, these prospective beneficiaries have the ability to buy the properties that petitioner is seeking to expropriate to give to them. In fact, said purported "underprivileged and homeless" beneficiaries were able to put up a substantial amount to complete the additional deposit ordered by the court for the petitioner to satisfy. To be sure, this Court is not unaware of the contemporary concept of "public use" as explained in prevailing jurisprudence. It remains true, however, that condemnation of private lands in an irrational or piecemeal fashion or the random expropriation of small lots to accommodate no more than a few tenants or squatters is certainly not the condemnation for public use contemplated by the Constitution. Such act would clearly deprive a citizen of his or her property for the convenience of a few without perceptible benefit to the public.

5. **ID.; ID.; ID.; ID.; IN CASES OF LAND ACQUISITIONS BY THE GOVERNMENT, WHEN THE PROPERTY OWNER REJECTS THE OFFER BUT HINTS FOR A BETTER PRICE, THE GOVERNMENT SHOULD RENEGOTIATE BY CALLING THE PROPERTY OWNER TO A CONFERENCE, AS THE GOVERNMENT MUST EXHAUST ALL REASONABLE EFFORTS TO OBTAIN BY AGREEMENT THE LAND IT DESIRES; ITS FAILURE TO COMPLY WILL WARRANT THE DISMISSAL OF THE EXPROPRIATION COMPLAINT.—** [P]etitioner failed to establish that the other modes of acquisition under Section 10 of R.A. No. 7279 were first exhausted. Said provision prefers the acquisition of private property by negotiated sale over the filing of an expropriation suit. This rule is not without basis. The government should lead in avoiding litigations and overburdening the courts as litigations are costly and protracted. Thus, this Court has held, time and again, that in cases of land acquisitions by the government, when the property owner rejects the offer but hints for a better price, the government should renegotiate by calling the property owner to a conference. "The government must exhaust all reasonable efforts to obtain by agreement the land it desires. Its failure to comply will warrant

the dismissal of the complaint." This finds further legal basis in Article 35 of the Rules and Regulations Implementing the Local Government Code. x x x. Here, it is undisputed that after respondents rejected petitioner's offer of ₱2,000.00 per square meter to purchase their lots for being too low compared to the fair market value of their properties, petitioner readily instituted the present expropriation suit without bothering to renegotiate its offer. Relevantly, thus, there is no valid and definite offer made by petitioner before it filed the expropriation complaint. The intent of the law is for the State or the local government to make a reasonable offer in good faith, not merely a *pro forma* offer to acquire the property.

6. **ID.; ID.; ID.; ID.; LOCAL GOVERNMENT UNITS DO NOT HAVE AN UNBRIDLED AUTHORITY TO EXERCISE THE POWER TO EXPROPRIATE IN SEEKING SOLUTIONS TO HOUSING PROBLEMS, AS THE CONDITIONS AND RESTRICTIONS SET FORTH IN THE CONSTITUTION AND PERTINENT LAWS MUST BE STRICTLY COMPLIED WITH TO ASSURE THAT EVERY RIGHT IS PROTECTED AND EVERY MANDATE IS PROPERLY DISCHARGED.—** [W]hile we recognize petitioner's power to expropriate and the fact that housing is one of the most serious social problems that it needs to address, it is equally important to acknowledge that local government units do not have an unbridled authority to exercise such formidable power in seeking solutions to such problem. Again, such formidable power greatly affects a citizen's fundamental right to property, hence, there is a need to strictly comply with the conditions and restrictions set forth in the Constitution and pertinent laws to assure that every right is protected and every mandate is properly discharged. It is well to mention that this decision is not meant to disparage the local government units' delegated power to expropriate. It merely calls for compliance with all the legal requirements, as well as the presentation of proof of such compliance.

APPEARANCES OF COUNSEL

Cruz & Capule Law Offices for respondent Alegar Corp., *et al*.

Jose C. Leynes for respondents A. Prieto, *et al.*

D E C I S I O N

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

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated June 30, 2015 and the Resolution[3] dated November 9, 2015, of the Court of Appeals (CA) in CA-G.R. CV No. 101440, which reversed and set aside the Order[4] dated June 23, 2011, of the Regional Trial Court (RTC) of Manila, Branch 52, in Civil Case No. 04-110823.

The Facts

On January 19, 2004, the City Council of Manila enacted Ordinance No. 8070 that authorized the City Mayor to acquire certain parcels of land belonging to respondents Alejandro Roces Prieto, Benito Roces Prieto, Mercedes Delgado Prieto, Monica Lopez Prieto, Martin Lopez Prieto, Beatriz Prieto De Leon, Rafael Roces Prieto, Benito Legarda, Inc., Alegar Corporation, Benito Legarda, Jr., Pechaten Corporation, and Rosario M. Llora (collectively, respondents) to be used for the City of Manila's (petitioner) Land-For-The-Landless Program.[5]

Initially, petitioner attempted to acquire the subject lots by negotiated sale, offering the amount of ₱2,000.00 per square meter, which respondents refused to accept on the ground that their respective properties are worth more than that.[6]

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

[2] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela, concurring; *id*. at 61-85.

[3] *Id*. at 108-109.

[4] *Id*. at 52-57.

[5] *Id*. at 14.

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

Thus, petitioner filed a Complaint dated September 3, 2004, before the RTC, asserting its authority to expropriate the subject lots for its project.[7]

Invoking Section 2, Rule 67 of the Rules of Court, petitioner sought the issuance of a writ of possession for it to be able to immediately take possession of the subject properties. Petitioner manifested that it had already deposited the sum of ₱4,812,920.00 in the bank, representing more than one hundred percent (100%) of the assessed value of the properties as shown in the declarations of real property.[8]

On February 2, 2005, the RTC issued an Order denying the issuance of a writ of possession pending the deposit of the additional amount of ₱852,519.00. Instead of the general provisions on expropriation under Rule 67 of the Rules of Court, the RTC applied the provisions of the Local Government Code (LGC), mandating the deposit of 15% of the fair market value of the properties subject of expropriation, for petitioner's immediate possession thereof.[9]

Upon compliance, petitioner manifested that the additional amount of ₱852,519.00 has already been satisfied. Petitioner deposited the amount of ₱425,519.00, while the prospective beneficiaries of the project deposited ₱443,621.00 to complete the additional amount.[10]

On October 6, 2006, the RTC issued a Writ of Possession.[11]

The Ruling of the RTC

In granting petitioner's complaint for expropriation, the RTC concluded that all the requisites for the local government's

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[7] *Id*. at 16.

[8] *Id*. at 66.

[9] *Id*. at 69-70.

[10] *Id*. at 70.

[11] *Id*. at 49-51.

exercise of the power of eminent domain have been met by the petitioner.[12]

The RTC found that there was an ordinance passed by the City Council of Manila to expropriate the subject lots for public purpose. The requirement that it should be for public use was, according to the RTC, satisfied by the fact that the properties were sought to be expropriated pursuant to the petitioner's "Land for the Landless and Onsite Development Programs."[13]

The RTC also noted that before the filing of the complaint in court, petitioner made "definite and formal offers" to respondents to purchase the subject lots, which the latter rejected.[14]

Further, despite "privately-owned lands" being last in the list of priorities in land acquisition under Section 9 of Republic Act (R.A.) No. 7279 or the Urban Development Housing Act of 1992, the RTC dispensed with said list, subscribing to petitioner's allegation that an on-site development is more practicable and advantageous to the beneficiaries.[15]

The RTC made the following disposition, thus:

> ***WHEREFORE***, in view of the foregoing, the court finds that the complaint in the instant case is a proper case of eminent domain.
>
> Accordingly, an order of expropriation is hereby issued declaring that the [petitioner] has a lawful right to take the subject parcels of land, for the public use or purpose as described in the complaint upon payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint whichever came first.
>
> Furnish the parties through their respective counsels with a copy each of the order.

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[12] *Id.* at 55.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 56.

SO ORDERED.[16]

Respondents' respective motions for reconsideration were denied by the RTC on January 22, 2013.[17]

Appeals were then filed with the CA.

The Ruling of the CA

In its assailed Decision, the CA emphasized the drastic effect of the exercise of the power of eminent domain to a landowner's right to private property. Hence, compliance with the rules and limitations provided under the Constitution and pertinent laws should be strictly observed. If not, according to the CA, it behooves petitioner to justify its non-compliance with the rules and limitations.[18] This, according to the CA, petitioner failed to do.

The CA found the records lacking of any evidence to support petitioner's claim that an on-site development program is the most practicable and advantageous for the beneficiaries, to justify the non-applicability of the list of priorities in land acquisition under Section 9 of R.A. No. 7279. According to the CA, petitioner failed to take into consideration the legal definition of an on-site development under R.A. No. 7279, *i.e.*, "the process of upgrading and rehabilitation of blighted and slum urban areas, with a view of minimizing displacement of dwellers in said areas and with provisions for basic services as provided for in Section 21"[19]

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[16] *Id*. at 57.

[17] *Id*. at 74.

[18] *Id*. at 84.

[19] Sec. 21. Basic Services. — Socialized housing or resettlement areas shall be provided by the local government unit or the National Housing Authority in cooperation with the private developers and concerned agencies with the following basic services and facilities:

(a) Potable water;
(b) Power and electricity and an adequate power distribution system;
(c) Sewerage facilities and an efficient and adequate solid waste disposal system; and
(d) Access to primary roads and transportation facilities.

of the same Act.[20] "Blighted lands" was further defined under Section 3(c) thereof as referring to the "areas where the structures are dilapidated, obsolete and unsanitary, tending to depreciate the value of the land and prevent normal development and use of the area." The CA ruled that bare and unsupported assertions that the lots sought to be expropriated are blighted lands to be the proper subject of an on-site development program, and that on-site development is the most practical, advantageous, and beneficial to the beneficiaries, should not suffice to justify the mandatory provisions of R.A. No. 7279.[21]

The CA further found petitioner to have failed to exhaust other modes of acquisition before it resorted to expropriation in violation of Section 10 of R.A. No. 7279. The appellate court pointed out petitioner's failure to renegotiate the offer to purchase the property before filing the expropriation case. Such failure, the CA ruled, warrants the dismissal of the complaint for expropriation.[22]

Lastly, the CA found that the intended beneficiaries of petitioner's socialized housing program are not "underprivileged and homeless," in violation of Section 8[23] of R.A. No. 7279.

The provisions of other basic services and facilities such as health, education, communications, security, recreation, relief and welfare shall be planned and shall be given priority for implementation by the local government unit and concerned agencies in cooperation with the private sector and the beneficiaries themselves.

The local government unit, in coordination with the concerned national agencies, shall ensure that these basic services are provided at the most cost-efficient rates, and shall set as mechanism to coordinate operationally the thrusts, objectives and activities of other government agencies concerned with providing basic services to housing projects.

[20] Section 3(1) R.A. No. 7279.

[21] *Rollo*, pp. 80-81.

[22] *Id.* at 81.

[23] Sec. 8. Identification of Sites for Socialized Housing. — After the inventory the local government units, in coordination with the National Housing Authority, the Housing and Land Use Regulatory Board, the National Mapping Resource Information Authority, and the Land Management Bureau,

The CA took into consideration the testimony of witness Emma Morales (Morales), President of the neighborhood association of the beneficiaries, stating that its members have money to buy the properties they are currently occupying. As can be gleaned from the transcript of stenographic notes during the hearing, Morales even admitted that there are professionals among them such as teachers, nurses, a doctor, and a dentist, who may hardly be considered as "underprivileged and homeless."[24]

In all, the CA ruled that petitioner has failed to discharge its burden to prove that the requirements for the proper exercise of the local government's power of eminent domain were complied with or otherwise, are not applicable to its case. It disposed, thus:

WHEREFORE, the appeal is **GRANTED**. The assailed *Order* dated June 23, 2011 rendered by the Regional Trial Court of Manila in Civil Case No. 04-110823 is **REVERSED** and **SET ASIDE**.

SO ORDERED.[25]

Petitioner's motion for reconsideration was denied by the CA in its assailed Resolution, which reads:

This Court, finding that the matters raised by [petitioner] in its July 22, 2015 *Motion for Reconsideration* have been sufficiently

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shall identify lands for socialized housing and resettlement areas for the immediate and future needs of the underprivileged and homeless in the urban areas, taking into consideration and degree of availability of basic services and facilities, their accessibility and proximity of jobs sites and other economic opportunities, and the actual number of registered beneficiaries. Government-owned lands under paragraph (b) of the preceding section which have not been used for the purpose for which they have been reserved or set aside for the past ten (10) years from the effectivity of this Act and identified as suitable for socialized housing, shall immediately be transferred to the National Housing Authority subject to the approval of the President of the Philippines or by the local government unit concerned, as the case may be, for proper disposition in accordance with this Act.

[24] *Rollo*, pp. 83-84.

[25] *Id*. at 84.

passed upon in the June 30, 2015 *Decision*, and further finding that there is no cogent reason to modify, much less, reverse the same, hereby **DENIES** the instant motion.

SO ORDERED.[26]

Hence, this petition.

The Issue

Petitioner's arguments are centered upon the assertion of its power to expropriate and its claim that it had complied with the provisions of the Constitution and pertinent laws in the exercise thereof. Hence, stripped to the essentials, the issue before us is: whether or not the CA erred in finding that petitioner failed to prove that it complied with pertinent laws in the exercise of its power of eminent domain.

The Court's Ruling

The petition is bereft of merit.

In resolving expropriation cases, this Court has always been reminded that the exercise of the power of eminent domain necessarily involves a derogation of fundamental right.[27] "The exercise of the power of eminent domain drastically affects a landowner's right to private property, which is as much a constitutionally-protected right necessary for the preservation and enhancement of personal dignity and intimately connected with the rights to life and liberty."[28] Therefore, the exercise of such power must undergo painstaking scrutiny.[29]

Such scrutiny is especially necessary when eminent domain is exercised by a local government considering that it merely has a delegated power of eminent domain. A local government unit has no inherent power of eminent domain. Such power is

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[26] *Id*. at 108.

[27] *Beluso v. The Municipality of Panay (Capiz)*, 529 Phil. 773, 781 (2006).

[28] *Lagcao v. Judge Labra*, 483 Phil. 303, 311 (2004).

[29] *Supra* note 27, at 782.

essentially lodged in the legislature although it may be validly delegated to local government units, other public entities and public utilities. Thus, inasmuch as the principal's exercise of the power of eminent domain is subject to certain conditions, with more reason that the exercise of a delegated power is not absolute. In fact, strictly speaking, the power of eminent domain delegated to the local government unit is, in reality, not eminent but inferior since it must conform to the limits imposed by the principal.[30]

Through the LGC, the national legislature delegated the power of eminent domain to the local government units. Section 19 thereof provides:

> SEC. 19. *Eminent Domain.* – A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose[,] or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That, the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.

From the foregoing, several requisites must concur before a local government unit can exercise the power of eminent domain, to wit: (1) an ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property; (2) the power of eminent domain is exercised for public

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[30] *Id*. at 781.

use, purpose or welfare, or for the benefit of the poor and the landless; (3) there is payment of just compensation, as required under Section 9, Article III of the Constitution, and other pertinent laws; and (4) a valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.[31]

Further, the above-cited provision also states that the exercise of such delegated power should be pursuant to the Constitution and pertinent laws. R.A. No. 7279 is such pertinent law in this case as it governs the local expropriation of properties for purposes of urban land reform and housing. Thus, the rules and limitations set forth therein cannot be disregarded. Sections 9 and 10 of the said Act provide:

SEC 9. *Priorities in the Acquisition of Land*. – **Lands for socialized housing shall be acquired in the following order:**

(a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations and their subsidiaries;

(b) Alienable lands of the public domain;

(c) Unregistered or abandoned and idle lands;

(d) Those within the declared Areas or Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;

(e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and

(f) **Privately-owned lands.**

Where [on-site] development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give budgetary priority to on-site development of government lands.

SEC. 10. *Modes of Land Acquisition*. – The modes of acquiring lands for purposes of this Act shall include, among others, community

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[31] *Id*. at 782-783.

mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint-venture agreement, negotiated purchase, and expropriation: Provided, however, **That expropriation shall be resorted to only when other modes of acquisition have been exhausted:** Provided, further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act: x x x. (Emphases supplied)

It could be readily seen from the RTC's Order that in granting petitioner's complaint for expropriation, it took a facile approach in its resolution of the expropriation suit. It sweepingly concluded that petitioner had met all the aforecited requisites. It concluded that the expropriation was for a public purpose merely because it is pursuant to the city's land-for-the-landless and on-site development programs. The RTC also took hook, line, and sinker, petitioner's assertion that an on-site development is the most practicable and advantageous to the beneficiaries, allowing the resort to the acquisition of private lands despite the same being last in the list of priorities under Section 9 of R.A. No. 7279. As can be gleaned from its Order, the RTC subscribed to the assertion that an on-site development is more practicable and advantageous to the beneficiaries merely on the basis of its unsupported generalization that "it would be absurd for other priorities to be applied considering that the tenants have been there for more than fifty (50) years being assisted by the government in terms of social services and having their houses demolished and then relocate them somewhere is anathema to the essence and aim of [on-site] development."[32]

It bears stressing that courts have a duty to judiciously scrutinize and determine whether the local government's exercise of the delegated power of eminent domain is in accordance with the delegating law.[33] As correctly ruled by the CA, bare allegations and unsupported generalizations do not suffice, considering the drastic effect of the exercise of such power to

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[32] *Rollo*, p. 56.

[33] *Beluso v. The Municipality of Panay (Capiz)*, *supra* note 27, at 782.

constitutionally-protected rights. In the case of *Estate or Heirs of the Late Ex-Justice Jose B.L. Reyes v. City of Manila*,[34] we emphatically ruled that the above-quoted provisions are **strict limitations** on the exercise of the power of eminent domain by local government units, especially with respect to: (1) the order of priority in acquiring land for socialized housing; and (2) the resort to expropriation proceedings as a means of acquiring it.[35] Compliance with these conditions is **mandatory** because these are the only safeguards of oftentimes helpless owners of private property against what may be a tyrannical violation of due process when their property is forcibly taken from them allegedly for public use.

As correctly found by the CA, we find nothing in the records indicating that petitioner complied with Section 19 of the LGC and Sections 9 and 10 of R.A. No. 7279.

Petitioner persistently alleges that it conducted a study and observed the order of priority in land acquisition for expropriation under Section 9 of R.A. No. 7279 and found that on-site development is the most practicable and advantageous to the prospective beneficiaries. Aside from such bare allegations and unsupported generalizations of the Officer-in-Charge of its Urban Settlements Office, however, no evidence was presented to prove such claim. There was no showing that any attempt was made to first acquire the lands listed in Section 9(a) to (e) before proceeding to expropriate respondents' private lands. There was also no document or any evidence presented to prove a study allegedly conducted showing comparisons and considerations to support petitioner's conclusion that on-site development was its best choice.

What is more, there was no evidence presented showing that the subject properties were those contemplated under R.A. 7279 to be proper subjects of on-site development. The CA correctly

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[34] 467 Phil. 165 (2004).

[35] *Id*. at 187, citing *Filstream v. Court of Appeals*, G.R. Nos. 125218 & 128097, January 23, 1998, 284 SCRA 716, 731.

pointed out that R.A. No. 7279 provides for a detailed description of specific areas which are the proper subjects of on-site development, *i.e.*, those "areas where the structures are dilapidated, obsolete, and unsanitary, tending to depreciate the value of the land and prevent normal development and use of the area" as defined under Section 3(1), in relation to Section 3(c) of R.A. No. 7279. It is, thus, incumbent upon petitioner to show that the areas they sought to expropriate for socialized housing and urban development are those contemplated under the law. Again, unsupported allegations and generalizations will not suffice.

The CA also correctly observed that there was likewise no evidence presented to show that the prospective beneficiaries of the expropriation are the "underprivileged and homeless" contemplated under Section 8 of R.A. No. 7279. Again, it could have been simple for petitioner to present surveys or studies conducted by competent authorities to prove that the prospective beneficiaries are the proper subjects of its socialized housing program. However, on the contrary, records show that the prospective beneficiaries are not such "underprivileged and homeless." As testified to by a witness, these prospective beneficiaries have the ability to buy the properties that petitioner is seeking to expropriate to give to them. In fact, said purported "underprivileged and homeless" beneficiaries were able to put up a substantial amount to complete the additional deposit ordered by the court for the petitioner to satisfy.

To be sure, this Court is not unaware of the contemporary concept of "public use" as explained in prevailing jurisprudence. It remains true, however, that condemnation of private lands in an irrational or piecemeal fashion or the random expropriation of small lots to accommodate no more than a few tenants or squatters is certainly not the condemnation for public use contemplated by the Constitution. Such act would clearly deprive a citizen of his or her property for the convenience of a few without perceptible benefit to the public.[36]

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[36] *Lagcao v. Judge Labra*, *supra* note 28, at 312.

Finally, petitioner failed to establish that the other modes of acquisition under Section 10 of R.A. No. 7279 were first exhausted. Said provision prefers the acquisition of private property by negotiated sale over the filing of an expropriation suit. This rule is not without basis. The government should lead in avoiding litigations and overburdening the courts as litigations are costly and protracted.[37] Thus, this Court has held, time and again, that in cases of land acquisitions by the government, when the property owner rejects the offer but hints for a better price, the government should renegotiate by calling the property owner to a conference.[38] "The government must exhaust all reasonable efforts to obtain by agreement the land it desires. Its failure to comply will warrant the dismissal of the complaint."[39] This finds further legal basis in Article 35 of the Rules and Regulations Implementing the Local Government Code, which reads:

> ART. 35. *Offer to Buy and Contract of Sale*, (a) The offer to buy private property for public use or purpose shall be in writing. It shall specify the property sought to be acquired, the reasons for its acquisition, and the price offered.
>
> x x x x x x x x x
>
> (c) If the owner or owners are willing to sell their property but at a price higher than that offered to them, the local chief executive shall call them to a conference for the purpose of reaching an agreement on the selling price. The chairman of the appropriation or finance committee of the *sanggunian*, or in his absence, any member of the *sanggunian* duly chosen as its representative, shall participate in the conference. When an agreement is reached by the parties, a contract of sale shall be drawn and executed.

Here, it is undisputed that after respondents rejected petitioner's offer of ₱2,000.00 per square meter to purchase

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[37] *City of Manila v. Alegar Corporation*, 689 Phil. 31, 40 (2012).

[38] *Jesus is Lord Christian School Foundation, Inc. v. Municipality (now City) of Pasig, Metro Manila*, 503 Phil. 845, 864 (2005).

[39] *City of Manila v. Alegar Corporation*, *supra* note 37, at 40.

their lots for being too low compared to the fair market value of their properties, petitioner readily instituted the present expropriation suit without bothering to renegotiate its offer. Relevantly, thus, there is no valid and definite offer made by petitioner before it filed the expropriation complaint. The intent of the law is for the State or the local government to make a reasonable offer in good faith, not merely a *pro forma* offer to acquire the property.[40]

In all, while we recognize petitioner's power to expropriate and the fact that housing is one of the most serious social problems that it needs to address, it is equally important to acknowledge that local government units do not have an unbridled authority to exercise such formidable power in seeking solutions to such problem. Again, such formidable power greatly affects a citizen's fundamental right to property, hence, there is a need to strictly comply with the conditions and restrictions set forth in the Constitution and pertinent laws to assure that every right is protected and every mandate is properly discharged.

It is well to mention that this decision is not meant to disparage the local government units' delegated power to expropriate. It merely calls for compliance with all the legal requirements, as well as the presentation of proof of such compliance.

WHEREFORE, premises considered, the petition is **DENIED**. Accordingly, the Decision dated June 30, 2015, and Resolution dated November 9, 2015, of the Court of Appeals in CA-G.R. CV No. 101440 are **AFFIRMED**.

SO ORDERED.

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

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[40] *Id.* at 41.

SECOND DIVISION

[G.R. No. 222870. July 8, 2019]

JESSIE TAGASTASON, ROGELIO TAGASTASON, JR., ANNIE BACALA-TAGASTASON, and JERSON TAGASTASON, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES, OFFICE OF THE SPECIAL PROSECUTOR OF BUTUAN CITY, SUSANO BACALA, and BELINDA BACALA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; THE ISSUANCE OF A WARRANT OF ARREST IS WITHIN THE DISCRETION OF THE ISSUING JUDGE UPON DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE; EXECUTIVE AND JUDICIAL DETERMINATION OF PROBABLE CAUSE, DISTINGUISHED.— Petitioners assail the issuance of the warrants of arrest against them by Judge Maclang. However, the issuance of a warrant of arrest is within the discretion of the issuing judge upon determination of the existence of probable cause. In *Mendoza v. People*, the Court distinguished between the two kinds of determination of probable cause. Citing *People v. Castillo and Mejia*, the Court stated: There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon. The judicial determination of probable

cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant. The difference is clear: The executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued. x x x. The Court further stated: While it is within the trial court's discretion to make an independent assessment of the evidence on hand, it is only for the purpose of determining whether a warrant of arrest should be issued. The judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor's determination of probable cause; rather, the judge makes a determination of probable cause independent of the prosecutor's finding.

2. ID.; ID.; ID.; ID.; THE FUNCTION OF THE JUDGE TO ISSUE A WARRANT OF ARREST UPON THE DETERMINATION OF PROBABLE CAUSE IS EXCLUSIVE AND CANNOT BE DEFERRED PENDING THE RESOLUTION OF A PETITION FOR REVIEW BY THE SECRETARY OF JUSTICE AS TO THE FINDING OF PROBABLE CAUSE, FOR TO DEFER THE IMPLEMENTATION OF THE WARRANT OF ARREST WOULD BE AN ENCROACHMENT ON THE EXCLUSIVE PREROGATIVE OF THE JUDGE TO ISSUE A WARRANT OF ARREST. — We stress that the function of the judge to issue a warrant of arrest upon the determination of probable cause is exclusive and cannot be deferred pending the resolution of a petition for review by the Secretary of Justice as to the finding of probable cause, which is a function that is executive in nature. To defer the implementation of the warrant of arrest would be an encroachment on the exclusive prerogative of the judge to issue a warrant of arrest. Further, as correctly argued by the Office of the Solicitor General (OSG), an appeal before the DOJ Secretary does not hold in abeyance the proceeding before the trial court pursuant to the 2000 NPS Rule on Appeal x x x. In this case, no motion to defer proceedings has been filed in the trial court.

APPEARANCES OF COUNSEL

Poculan and Associates Law Office for petitioners.
Wilfred D. Asis for respondents Bacala.
The Solicitor General for public respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on certiorari[1] assailing the 22 January 2015 Decision[2] and the 6 November 2015 Resolution[3] of the Court of Appeals Cagayan de Oro City in CA-G.R. SP No. 04924-MIN. The Court of Appeals denied the petition assailing the Order of the Regional Trial Court of Butuan City, Branch 3, which denied petitioners' Motion to Hold in Abeyance the Issuance of Warrants of Arrest.

The Antecedent Facts

In March 2012, Susano Bacala and Emalyn Bacala, together with their witnesses, filed a Complaint-Affidavit for Murder and Frustrated Murder against Jessie Tagastason, Rogelio Tagastason, Jr., Marlon Tagastason, Jerson Tagastason, Elias Tagastason,[4] Annie Bacala-Tagastason, Gil Ugacho,[5] and Merlyn Bacala-Ugacho[6] (collectively referred to as the accused). The

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[1] Under Rule 45 of the Revised Rules of Civil Procedure. Denominated as petition for *certiorari* under Rule 45.

[2] *Rollo*, pp. 102-114. Penned by Associate Justice Henri Jean Paul B. Inting (now a member of this Court), with Associate Justices Edgardo A. Camello and Pablito A. Perez concurring.

[3] *Id*. at 123-126.

[4] Also referred to in the records as Elias Tagastason, Jr.

[5] Also referred to in the records as Gil Ugatso and Gil Ogacho.

[6] Also referred to in the records as Merlyn Bacala-Ugatso and Merlyn Bacala-Ogacho.

accused, through their counsel, filed a Motion for Extension of Time to File their Counter-Affidavits. The City Prosecutor partially granted the motion by giving the accused an extension until 4 April 2012 instead of 10 April 2012, which was the date prayed for by the accused. On 4 April 2012, the City Prosecutor issued an Omnibus Motion finding probable cause for Murder and Frustrated Murder. Accordingly, the City Prosecutor filed the Informations on the same date. On 10 April 2012, the cases were raffled to the *sala* of Executive Judge Francisco F. Maclang (Judge Maclang) who was also the same judge handling all the other cases pending between the parties. On the same day, Judge Maclang issued the Warrants of Arrest against the accused.

The accused learned about the partial grant of their motion for extension to file their counter-affidavits, the City Prosecutor's Omnibus Motion, the filing of the Informations, and the issuance of the warrants of arrest only on 10 April 2012. The accused then filed the following: (1) Petition for Review before the Department of Justice (DOJ); (2) Administrative Complaint against the City Prosecutor; and (3) Motion for Inhibition and Holding in Abeyance the Issuance of Warrants of Arrest before the trial court.

Judge Maclang denied the Motion to Hold in Abeyance the Issuance of Warrants of Arrest but set the Motion for Inhibition for hearing. The accused filed a motion for reconsideration of the denial of their Motion to Hold in Abeyance the Issuance of Warrants of Arrest. During the pendency of their motion for reconsideration, the accused filed a Petition for *Certiorari* and Prohibition before the Court of Appeals, citing extreme urgency as a ground because the cases involved the deprivation of their liberty.

The Decision of the Court of Appeals

In its 22 January 2015 Decision, the Court of Appeals denied the petition.

The Court of Appeals noted that the City Prosecutor issued an Order dated 23 March 2012, giving the accused until 4 April

2012 to file their counter-affidavits. However, the mailing envelope of the Order was stamped "registered 4/4/12" which was the deadline for the filing of the counter-affidavits. The Court of Appeals also noted that the Informations were filed on 4 April 2012 at 12:00 noon, before the end of the deadline at the end of office hours on even date. Nevertheless, the Court of Appeals ruled that there was no denial of due process because lawyers should not assume that their motions for extension would be granted as a matter of course. The Court of Appeals ruled that the grant or denial of the motion for reconsideration rests with the sound discretion of the City Prosecutor and that the accused's lawyer should have followed-up their motion.

As regards the allegation that the accused were denied due process and that there was no preliminary investigation, the Court of Appeals ruled that the accused may still file their motion for reconsideration or an appeal, and noted that the accused actually filed an appeal before the DOJ Secretary.

The Court of Appeals ruled that there was no prohibition for Judge Maclang from issuing the warrants of arrest on the day the cases were raffled to him. The Court of Appeals stated that the resolution of the City Prosecutor pertains only to the positive identification of the accused as the perpetrators of the crime. The Court of Appeals further ruled that the motion for inhibition of Judge Maclang was set for hearing and has not yet been resolved when the accused filed the petition for *certiorari* and prohibition. Yet, the accused wanted the Court of Appeals to rule on the motion for inhibition whose resolution is anchored upon the sound discretion of Judge Maclang. According to the Court of Appeals, the accused alleged partiality against Judge Maclang without presenting evidence to support their allegation.

The accused filed a motion for reconsideration. In its 6 November 2015 Resolution, the Court of Appeals denied the motion.

Jessie Tagastason, Rogelio Tagastason, Jr., Annie Bacala-Tagastason and Jerson Tagastason (petitioners) assailed the Court of Appeals' decision *via* a petition for review filed before this Court.

The Issues

The following issues are now before this Court:

(1) Whether the Court of Appeals committed a reversible error in sustaining the warrants of arrest issued by Judge Maclang; and

(2) Whether the Court of Appeals committed a reversible error in ruling that petitioners were not deprived of due process.

The Ruling of this Court

The petition has no merit.

Petitioners assail the issuance of the warrants of arrest against them by Judge Maclang. However, the issuance of a warrant of arrest is within the discretion of the issuing judge upon determination of the existence of probable cause.

In *Mendoza v. People*,[7] the Court distinguished between the two kinds of determination of probable cause. Citing *People v. Castillo and Mejia*,[8] the Court stated:

> There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.

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[7] 733 Phil. 603 (2014).

[8] 607 Phil. 754 (2009).

The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.

The difference is clear: The executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued. x x x.[9]

The Court further stated:

While it is within the trial court's discretion to make an independent assessment of the evidence on hand, it is only for the purpose of determining whether a warrant of arrest should be issued. The judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor's determination of probable cause; rather, the judge makes a determination of probable cause independent of the prosecutor's finding.[10]

We stress that the function of the judge to issue a warrant of arrest upon the determination of probable cause is exclusive and cannot be deferred pending the resolution of a petition for review by the Secretary of Justice as to the finding of probable cause, which is a function that is executive in nature.[11] To defer the implementation of the warrant of arrest would be an encroachment on the exclusive prerogative of the judge to issue a warrant of arrest.[12]

Further, as correctly argued by the Office of the Solicitor General (OSG), an appeal before the DOJ Secretary does not

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[9] *Supra* note 7, at 610.

[10] *Supra* note 7, at 611.

[11] *Viudez II v. Court of Appeals*, 606 Phil. 337 (2009).

[12] *Id*.

hold in abeyance the proceeding before the trial court pursuant to the 2000 NPS Rule on Appeal[13] which provides:

> SECTION 5. Contents of petition. – The petition shall contain or state: (a) the names and addresses of the parties; (b) the Investigation Slip number (I.S. No.) and criminal case number, if any, and title of the case, including the offense charged in the complaint; (c) the venue of the preliminary investigation; (d) the specific material dates showing that it was filed on time; (e) a clear and concise statement of the facts, the assignment of errors, and the reasons or arguments relied upon for the allowance of the appeal; and (f) proof of service of a copy of the petition to the adverse party and the Prosecution Office concerned.
>
> The petition shall be accompanied by legible duplicate original or certified true copy of the resolution appealed from together with legible true copies of the complaint, affidavits/sworn statements and other evidence submitted by the parties during the preliminary investigation/ reinvestigation.
>
> If an information has been filed in court pursuant to the appealed resolution, a copy of the motion to defer proceedings filed in court must also accompany the petition. The investigating/reviewing/ approving prosecutor shall not be impleaded as party respondent in the petition. The party taking the appeal shall be referred to in the petition as either "Complainant-Appellant" or "Respondent-Appellant."

In this case, no motion to defer proceedings has been filed in the trial court.

On the denial of due process, which is anchored on the validity of the filing of the Informations, we note that the petition for review is still pending before the DOJ Secretary. It is premature for this Court to preempt the DOJ Secretary in resolving the issue. We also agree with the Court of Appeals that while petitioners filed a motion for extension of time to file their counter-affidavits, they should not assume that their motion would be granted. The 2008 Revised Manual for Prosecutors also provides that extensions of time to submit a counter-affidavit for any reason should not exceed ten days. In this case, the

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[13] Department Circular No. 70 dated 3 July 2000.

OSG pointed out that the petitioners asked for an extension of 15 days and the City Prosecutor acted accordingly in granting them an extension of only ten days.

As regards the motion for inhibition filed by petitioners, we agree with the Court of Appeals that its resolution is within the discretion of Judge Maclang. In addition, the accused, who included herein petitioners, filed the petition for *certiorari* and prohibition before the Court of Appeals without waiting for Judge Maclang, who set the motion for inhibition for hearing, to resolve it. Finally, petitioners did not present sufficient evidence to support the alleged prejudice committed by Judge Maclang against them.

WHEREFORE, we **DENY** the petition.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 229675. July 8, 2019]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOHN ORCULLO *y* SUSA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165, AS AMENDED (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; BEFORE THE AMENDMENT OF SECTION 21 OF RA 9165, THE CONDUCT OF INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEMS IN DRUG CASES MUST BE IN THE PRESENCE OF AT LEAST

THREE (3) WITNESSES; VIOLATION IN CASE AT BAR.—The factual circumstances of the case tell us that the alleged crime was committed on 29 October 2010. At the time, the effective law enumerating the requirements of the *chain of custody rule* was Section 21 of RA 9165 as well as its Implementing Rules. Contrary to the rulings of the RTC and the CA, the prosecution clearly failed to comply with the requirements of the *chain of custody rule*. x x x On 15 July 2014, RA 10640 amended Section 21 of RA 9165. RA 10640 now requires only two other witnesses to be present during the conduct of the physical inventory and taking of photograph of the seized items. x x x It is clear that as of 29 October 2010, when the alleged crime was committed, the conduct of physical inventory and taking of photograph of the seized items in drugs cases must be in the presence of at least three (3) witnesses, particularly: **(1) the accused or the persons from whom such items were confiscated and seized or his/her representative or counsel, (2) any elected public official, and (3) a representative from the media and the Department of Justice. The three witnesses, thereafter, should sign copies of the inventory and be given a copy thereof.** In this case, there were only the accused and the barangay kagawad, who witnessed the conduct of the inventory. x x x It is quite alarming how the necessity of the number and identity of the witnesses enumerated in the law can be glossed over and excused. The present case is a clear-cut example of the cavalier attitude towards adherence to procedure and protection of the rights of the accused. This is contrary to what is expected from our public servants and protectors. Not only was there non-observance of the three-witness rule, there was also no justifiable reason offered for its non-observance.

2. ID.; ID.; ID.; ID.; THE COURT ENUMERATED WHAT CONSTITUTES JUSTIFIABLE REASONS FOR THE ABSENCE OF ANY OF THE THREE WITNESSES.— *People v. Sipin* ruled what constitutes *justifiable reasons* for the absence of any of the three witnesses: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official[s] themselves were involved in the

punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

3. ID.; ID.; ID.; THE COURT ENUMERATED THE MANDATORY POLICY TO PROVE CHAIN OF CUSTODY UNDER SECTION 21 OF RA 9165.— *People v. Lim* enumerated this Court's **mandatory policy** to prove *chain of custody* under Section 21 of RA 9165, as amended: 1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of RA 9165, as amended, and its IRR. 2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items. 3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause. 4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.

4. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; THE PRESUMPTION OF REGULARITY IN THE CONDUCT OF POLICE DUTY CANNOT OVERTHROW THE PRESUMPTION OF INNOCENCE OF THE ACCUSED IN THE ABSENCE OF PROOF BEYOND REASONABLE DOUBT.— It cannot be stressed enough that the burden of proving the guilt of the appellant lies on the strength of the evidence of the prosecution. Even if we presume that our law enforcers performed their assigned duties beyond reproach, we cannot allow the presumption of

regularity in the conduct of police duty to overthrow the presumption of innocence of the accused in the absence of proof beyond reasonable doubt.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 229675 is an appeal assailing the Decision[1] dated 9 February 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07174. The CA affirmed the Decision[2] dated 2 October 2014 of the Regional Trial Court of Quezon City, Branch 82 (RTC), in Criminal Case No. Q-10-167303, convicting John Orcullo *y* Susa (appellant) of violating Section 5, Article II of Republic Act No. 9165 (RA 9165).

The Facts

The RTC summarized the facts as follows:

The accused John Susa Orcullo is charged with violation of Section 5, Article II of R.A. 9165. The Information reads in part:

> That on or about the 29th day of October 2010 in Quezon City, accused, without lawful authority did then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport,

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[1] *Rollo*, pp. 2-17. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rodil V. Zalameda and Pedro B. Corales concurring.

[2] CA *rollo*, pp. 47-53. Penned by Acting Presiding Judge Lily Ann M. Padaen.

or act as broker in the said transaction, a dangerous drug, to wit: five (5) plastic sachet [sic] of white crystalline substance weighing 4.5402 grams; 4.4722 grams; 4.4134 grams; 4.4243 grams; and 4.3959 grams respectively containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.

On 09 November 2010, the accused thru counsel filed a Petition for Bail. In an Order dated 27 February 2012, the Court denied the Petition for Bail.

Upon arraignment on 01 December 2010, the accused John Susa Orcullo who was duly assisted by counsel entered a plea of not guilty. The case was then set for pre-trial conference and eventually for trial.

The Evidence for the Prosecution

The Testimony of IO1 Jake Million

IO1 Jake Edwin Million testified that on 29 October 2010 at around 7:00 in the morning, he was at the office when a regular confidential informant of Intelligence Agent 1 Liwanag Sandaan arrived at the office and reported the alleged drug trade activities of alias "Jen" in Quezon Avenue near the Lung Center. After receiving the report, IA1 Sandaan assisted the confidential informant to IO1 Betorin so that they would call alias "Jen". Alias "Jen" and IO1 Betorin talked over the cellphone and set a deal for 25 grams of *shabu* worth One Hundred Twenty-Five Thousand Pesos (₱125,000.00) to take place on October 29 at 9:00 am.

IA1 Sandaan designated IO1 Betorin as the *poseur-buyer*. IO1 Betorin withdrew the buy-bust money which consisted of two (2) genuine ₱500.00 bills and the rest of the amount was boodle money. They then prepared a Pre-Operation Report and authority to operate. Their team leader signed the Pre-Operation Report and they coordinated with the local police in Camp Karingal. The buy-bust team then proceeded to the area.

Upon arrival at the area at around 1:00 p.m., IO1 Million and the rest of the team positioned themselves strategically along Quezon Avenue while aboard three vehicles. At around 2:00 [p.m.], a man wearing a *sando* later identified as the accused John Susa Orcullo arrived. Accused Orcullo approached the *poseur-buyer* IO1 Betorin.

Thereafter, IO1 Betorin made a call to IO1 Million to signify that the transaction was already consummated. IO1 Million and the other agents rushed to the scene and effected the arrest of accused Orcullo. IO1 Million recovered the buy-bust money from the accused and identified them in Court. The team noticed that there were people going around them so the team leader decided to leave the place and proceed to the office.

Upon arrival at PDEA, photographs were taken by IO1 Betorin and the inventory was conducted. [S]he executed an affidavit in connection with this case. [S]he also identified the accused in open court.

On cross-examination, IO1 Million testified that the female regular informant who came to their office was known only to IA1 Liwanag Sandaan. At first, it was the confidential informant who negotiated with the accused then it was IO1 Betorin. It was the confidential informant who made the agreement regarding the purchase of ₱125,000.00 worth of *shabu*. He did not have any participation regarding the agreement. They parked the vehicle along Quezon Avenue near Wild Life. They did not prepare the inventory at the place of arrest. There were no representatives from the DOJ and the media during the conduct of the inventory.

On re-direct, he testified that the reason why they did not conduct the inventory at the crime scene was because there were many people going around them which prompted their team leader to tell them to proceed to the office, otherwise somebody might get hurt.

The Testimony of IO1 Joanna Marie Betorin

IO1 Joanna Marie Betorin testified that on 29 October 2010 at around 9:00 in the morning, she was at the PDEA Office attending a briefing conducted by their team leader IA1 Liwanag Sandaan. The briefing was about the information given by the regular confidential informant regarding the illegal drug activity of alias "Jen" along Quezon Avenue near the Lung Center. IO1 Betorin was designated as the *poseur-buyer*.

After the briefing, IO1 Nazarion Bongkinki coordinated with the Quezon City Police in Camp Karingal using the Pre-Operation Report and the Coordination Form. After the coordination, IO1 Betorin and the informant went to the agreed place in front of Lung Center along Quezon Avenue.

Upon arrival at the agreed place at 2:00 [p.m.], they positioned themselves strategically and waited for alias "Jen." They used two (2) vehicles for the operation. After fifteen (15) to thirty (30) minutes, a man wearing *sando* and shorts strapped with a blue towel on his shoulder arrived and the informant told IO1 Betorin that the man was the delivery man of alias "Jen." The man delivered the *shabu* to IO1 Betorin. They agreed to buy 25 grams of *shabu* worth ₱125,000.00. When the man later identified as the accused John Susa Orcullo gave the *shabu*, IO1 Betorin handed the buy-bust money consisting of two (2) genuine ₱500.00 bills and the boodle money.

After handing the buy-bust money to accused John Susa Orcullo, IO1 Betorin executed the pre-arranged signal by making a missed call to IO1 Million who rushed to their place to arrest accused Orcullo. IO1 Million arrested accused Orcullo and informed the latter of his Constitutional rights. IO1 Betorin identified in Court the sachets she bought from accused Orcullo through the markings "JMB 10-29-10" which she placed on the said sachets. IO1 Betorin affixed the markings in the office and not at the crime scene because there were many people at the crime scene and their team leader ordered them to proceed to the office for their safety and security.

Upon arrival at the office, their photographer Charlie Magno took photographs while IO1 Betorin prepared the inventory. Kagawad Jose Ruiz Jr. of Barangay Pinyahan was present to witness the taking of photographs and to sign the inventory. There were no representatives from the media and the Department of Justice during the inventory. IO1 Betorin then brought the specimens to the crime laboratory for examination. The result was positive for *shabu*. She executed an affidavit in connection with this case. She identified the accused in open court.

On cross-examination, IO1 Betorin testified that it was IO1 Bongkinki who coordinated with the police by submitting an authority to operate at around 10:30 [a.m.]. Accused John Susa Orcullo was not the subject of their operation. IO1 Betorin did not place the initials of the person from whom she recovered the plastic sachets because she was familiar with her initials. IO1 Betorin did not mix the plastic sachets with those recovered from other people because those were secured in the laboratory. IO1 Betorin could not recall why there were no representatives from the Department of Justice and the media.

Sheila Esguerra

On 27 April 2011, upon stipulation between the prosecution and the defense it was admitted that Sheila Esguerra is a Forensic Chemist of the Philippine Drug Enforcement Agency and that her office received a Request for Laboratory Examination. Together with the said request a brown envelope which contained five (5) heat-sealed transparent plastic sachets with white crystalline substance inside [them] was submitted to her office. She conducted the requested laboratory examination and submitted a Chemistry Report. She found the specimen positive for Methylamphetamine Hydrochloride. Sheila Esguerra turned over the specimen to the evidence custodian and retrieved the same and brought it to Court.

The Evidence for the Defense

The Testimony of John Susa Orcullo

Accused John Susa Orcullo testified that on 29 October 2010 at around 2:00 in the afternoon, he was at home at No. 254 Ilang-Ilang Street making a dove cage. While in his house, he noticed people running outside the fence. He looked at them and went back to his work. After three (3) minutes, more or less three (3) persons entered the house. He asked them what he could do for them. They asked him if he saw a man wearing white shirt, maong pants and with red cap. He told them that he saw a man who ran inside the alley. They ran after the man while he stayed inside his house.

After a few minutes, the men went back to [his] house. They were inviting him to their office for an investigation. He told them that he could not go with them because he was alone in the house. They poked a gun at him and told him to go with them so he would not get hurt. He went with them and they walked along Quezon Avenue. He was boarded on a red vehicle and brought to the office of PDEA. He was brought inside a room and they showed him three (3) pictures of men. They asked him if he knew the persons. When he told them that he did not know the men, they covered his head with a plastic and forced him to admit that he knew the persons in the pictures. One man placed three bullets in between his fingers. He pleaded with them to stop. He was then brought inside a room and told to sit down beside a long table. A person sat in front of him and got his personal circumstances. A lady later identified as Joanna Marie Betorin then arrived and sat in front of him and placed a plastic sachet on top of the table. She talked to her companions to take photographs.

He was then brought to the comfort room and told to pee in a plastic sachet. He was brought for inquest on October 30 at around 9:00 am. He was not brought in front of the Fiscal and was just left outside the room. He denied the allegations of Betorin that she was able to buy *shabu* from him. He did not file any charges against the PDEA personnel who arrested him.

On cross-examination, accused John Susa Orcullo testified that when the three men entered his house, it did not occur to him to lock the door. When he was brought to the PDEA that was the first time he saw Betorin and Million. Prior to his arrest, he did not have any misunderstanding with any neighbor or law enforcers.[3]

The Ruling of the RTC

In a Decision dated 2 October 2014, the RTC convicted appellant of violating Section 5, Article II of RA 9165. The RTC was convinced that the prosecution was able to establish with moral certainty the elements of the crime in the present case, as well as the integrity of the *corpus delicti* and the unbroken chain of custody of the seized drug. Although the RTC recognized that the prosecution was not able to strictly comply with Section 21 of RA 9165, it declared that the non-compliance was not fatal to the case of the prosecution.

The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused John Susa Orcullo Guilty of Violation of Section 5, Article II of R.A. No. 9165.

Accordingly, this Court sentences accused John Susa Orcullo to suffer the penalty of Life Imprisonment and to pay a Fine in the amount of Five [H]undred Thousand (Php500,000.00) Pesos without eligibility for parole in accordance with R.A. 9346.

The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency the dangerous drug subject of this case for proper disposition and final disposal.

SO ORDERED.[4]

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

[4] *Id*. at 53.

The CA's Ruling

The CA affirmed the ruling of the RTC.

The CA found that the prosecution duly established the elements of the crime of illegal sale of drugs. There was identification of the buyer (IO1 Betorin) and seller (appellant); there was identification of the object of the sale (the sachets of *shabu*) and the consideration (₱125,000); and there was delivery of the thing sold upon payment as appellant was arrested *in flagrante delicto* of selling *shabu*.

The CA also declared that the failure of the police officers to mark the items seized from an accused in illegal drugs cases immediately upon their confiscation at the place of arrest does not automatically impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence. The CA justified the prosecution's failure to immediately conduct an inventory in this manner:

> Furthermore, the conduct of the inventory of the items seized from appellant at the scene of the crime would not be practical and was dangerous to the numbers [sic] of the buy-bust team as commotion already ensued after the arrest of appellant. Nonetheless, the integrity of the said items was not compromised as the marking and inventory were done in the presence of appellant and Barangay Kagawad Jose Y. Ruiz, Jr. The absence of a representative from the media and [the] Department of Justice is not fatal. Thus, the foregoing circumstances clearly indicate that there was substantial compliance with the mandates of RA N[o]. 9165 and its Implementing Rules. Too the prosecution was able to show that the plastic sachets of *shabu* confiscated from appellant were the very same items that were examined by the Crime Laboratory.[5]

The CA summarized:

> In sum, appellant failed to prove any improper motive on the part of the prosecution witnesses to falsely incriminate him. In the absence of evidence of such ill motive, none is presumed to exist.

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[5] *Rollo*, p. 13.

A buy-bust operation is a form of entrapment that is validly resorted to for trapping and capturing felons in the execution of their criminal plan. The operation is sanctioned by law and has consistently been proved to be an effective method of apprehending drug peddlers. Unless there is a clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, the testimonies of [the] police officers on the operation deserve full faith and credit.

It is well settled that there is no rigid or textbook method of conducting buy-bust operations. It is of judicial notice that drug pushers sell their wares to any prospective customer, stranger or not, in both public or private place, with no regard for time. They have become increasingly daring and blatantly defiant of the law. Thus, the police must be flexible in their operations to keep up with the drug pushers.

In the case at bar, the prosecution had indubitably proven all the elements of the offenses charged to support a judgment of conviction. The trial court had the unique opportunity of observing the witnesses firsthand as they testified, and it was, therefore, in the best position to assess whether they were telling the truth or not. The substance of their testimonies, as well as the other physical evidence on record[,] sufficiently support the trial court's findings. The defense evidence, on the other hand, failed to prove facts and circumstances of weight as would cast doubt on the trial court's evaluation of the credibility of the prosecution witnesses.[6]

The dispositive portion of the CA's Decision, promulgated on 9 February 2016, reads as follows:

WHEREFORE, the appeal is hereby DENIED. ACCORDINGLY, the Decision dated October 2, 2014 of the Regional Trial Court (RTC) of Quezon City, Branch 82, is hereby AFFIRMED *in toto*.

SO ORDERED.[7]

The Public Attorney's Office (PAO) manifested appellant's intent to appeal in a Notice of Appeal[8] dated 3 March 2016.

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[6] *Id*. at 15-16.

[7] *Id*. at 16.

[8] CA *rollo*, pp. 143-145.

The Office of the Solicitor General (OSG) filed a Manifestation and Motion (In Lieu of Supplemental Brief) on 6 June 2017[9] which stated that the appellee's brief filed before the CA adequately discussed its arguments on the merits of the case. The Special and Appealed Cases Service of the PAO also filed a Manifestation (In Lieu of Supplemental Brief) on behalf of appellant on 22 June 2017.[10] The PAO stated that it is adopting the Appellant's Brief that it submitted before the CA as it exhaustively discussed the assigned errors.

The Issues

The PAO assigned two errors in the brief for appellant it filed with the CA:

I. THE COURT *A QUO* GRAVELY ERRED IN NOT RULING THAT THE BUY-BUST OPERATION WAS NOT VALID.

II. THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF VIOLATION OF SECTION 5, ARTICLE II OF REPUBLIC ACT NO. 9165 DESPITE THE PROSECUTION'S FAILURE TO PRESERVE THE CHAIN OF CUSTODY OF THE SUBJECT DANGEROUS DRUG.[11]

The Court's Ruling

We focus on the identity and integrity of the alleged seized *shabu* and acquit appellant based on reasonable doubt. The Decisions of the RTC and CA should be set aside.

In its brief for appellant filed before the CA, the PAO pointed out the following irregularities, thus:

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[9] *Rollo*, pp. 25-29. Submitted under the name of Solicitor General Jose C. Calida, and signed by Assistant Solicitor General Anna Esperanza R. Solomon and Senior State Solicitor Arleen T. Reyes.

[10] *Id*. at 30-34. Submitted under the name of Public Attorney IV Mariel D. Baja, Public Attorney IV Flordeliza G. Merelos, Public Attorney III Meizelle G. Antonio, and signed by Public Attorney II Amelia A. Calangi.

[11] CA *rollo*, p. 26.

34. In the instant case, the links in the chain are the following: (1) Seizure of the shabu from the accused-appellant by IO1 Betorin; (2) Receipt by the forensic chemist of the specimen, conduct of the examination, and preparation of the Chemistry Report; (3) Delivery of the specimen to the custodian of the crime laboratory after the conduct of examination; and (4) presentation of the specimen during trial.

35. In the instant case, there are significant breaks in the chain of custody.

36. First, the Request for Laboratory Examination was delivered by IO1 Betorin to PCI Sheila Esguerra at 7:00 o'clock in the evening despite the fact that the confiscation was made at 2:00 o'clock in the afternoon. No explanation was given as to why the said request and the accompanying specimen [were] not immediately submitted.

37. Second, the evidence custodian, to whom the item was allegedly endorsed after laboratory examination, was not identified nor presented to complete the chain of custody. There was even no Chain of Custody of Evidence Form to facilitate the establishment of the links.

38. Third, Forensic Chemist Sheila Esguerra who examined the said sachets for chemical analysis was not presented in court to establish the circumstances under which she handled the subject items. The prosecution and the defense merely stipulated that she is the Forensic Chemist of the PDEA; that her office received a request for Laboratory Examination; and that the specimen submitted were found positive for Methamphetamine Hydrochloride. There was no testimony or stipulation as to the manner by which items subject of examination were preserved and safeguarded. Thus, the chain of custody was not preserved from this end.

39. Fourth, the person who supposedly turned over the specimen from the crime laboratory to the trial court was likewise not identified so as to complete the custodial link. Even if the seized item was identified by the prosecution witnesses, the chain of custody from the time the trial court received the same was not established.

40. Evidently, there is doubt as to whether the substance seized from the accused-appellant was the same one subjected to laboratory examination and presented in court.

x x x x x x x x x

44. In the instant case, the physical inventory and the photograph were not made at the place of the arrest, but at the PDEA office. Moreover, there were no representatives from the DOJ and the media during the conduct of the inventory. Clearly, the buy-bust team deviated from the standard and normal procedure in the seizure and custody of drugs.

45. Moreover, the trial court erred when it applied the case of *People v. Bis* in the instant case, where it was held that non-compliance with Section 21 of RA 9165 is not fatal to the case of the prosecution as long as the integrity of the confiscated items [was] preserved. The said ruling is not applicable to the instant case since the chain of custody was not established, thus, there is doubt as to whether the integrity of the confiscated items [was] preserved.

46. In the case of *People v. Sanchez*, the Honorable Supreme Court held that non-compliance with Section 21 of RA 9165 must bewith [sic] justifiable grounds. In addition, the integrity and evidentiary value of the evidence seized must be shown to have been preserved.

47. In the instant case, the justification given by IO1 Betorin and IO1 Million for non-compliance with the prescribed procedure is not a justifiable ground. The people going around them were unarmed; they were merely curiosity seekers. Thus, the buy-bust team's fear that somebody might get hurt is unfounded and without basis. Clearly, there was no imminent threat that would exempt them from complying with Sec. 21 of RA 9165.

48. Moreover, no justification was given why there were no representatives from the media and DOJ.[12]

The factual circumstances of the case tell us that the alleged crime was committed on 29 October 2010. At the time, the effective law enumerating the requirements of the *chain of custody rule* was Section 21 of RA 9165 as well as its Implementing Rules. Contrary to the rulings of the RTC and the CA, the prosecution clearly failed to comply with the requirements of the *chain of custody rule*. Before its amendment by Republic Act No. 10640 (RA 10640) on 15 July 2014, Section 21 of RA 9165 reads:

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[12] *Id*. at 40-41, 43.

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;

x x x x x x x x x

(Emphasis supplied)

The implementing rule for Section 21(1) of RA 9165 states:

x x x x x x x x x

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

x x x x x x x x x

On 15 July 2014, RA 10640 amended Section 21 of RA 9165. RA 10640 now requires only two other witnesses to be present during the conduct of the physical inventory and taking of photograph of the seized items. The amended Section 21 now states:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the **same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, 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 and custody over said items.
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> x x x x x x x x x
>
> (Emphasis supplied)

It is clear that as of 29 October 2010, when the alleged crime was committed, the conduct of physical inventory and taking of photograph of the seized items in drugs cases must be in the presence of at least three (3) witnesses, particularly: **(1) the accused or the persons from whom such items were confiscated and seized or his/her representative or counsel, (2) any elected public official, and (3) a representative from the media and the Department of Justice. The three witnesses, thereafter, should sign copies of the inventory and be given a copy thereof.** In this case, there were only the accused and the barangay kagawad, who witnessed the conduct of the inventory.

People v. Lim[13] enumerated this Court's **mandatory policy** to prove *chain of custody* under Section 21 of RA 9165, as amended:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of RA 9165, as amended, and its IRR.
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.

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[13] G.R. No. 231989, 4 September 2018.

People v. Sipin[14] ruled what constitutes *justifiable reasons* for the absence of any of the three witnesses:

> (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official[s] themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

It is quite alarming how the necessity of the number and identity of the witnesses enumerated in the law can be glossed over and excused. The present case is a clear-cut example of the cavalier attitude towards adherence to procedure and protection of the rights of the accused. This is contrary to what is expected from our public servants and protectors. Not only was there non-observance of the three-witness rule, there was also no justifiable reason offered for its non-observance.

Apart from the non-observance of the three-witness rule, there is doubt as to whether the *shabu* allegedly seized from the appellant is the same *shabu* subjected to laboratory examination and presented in the RTC.

As we review the submissions of both the prosecution and the defense, we find that among the three people who came into direct contact with the alleged seized *shabu*, only IO1 Betorin actually testified to identify it. The testimony of the PDEA's forensic chemist was merely stipulated upon by the prosecution and defense. The prosecution did not present the evidence

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[14] G.R. No. 224290, 11 June 2018.

custodian, or the person to whom the alleged seized *shabu* was delivered after the laboratory examination. The evidence custodian could have testified on the circumstances under which he or she received the items, what he or she did with them during the time that the items were in his or her custody, or what happened during the time that the items were transferred to the trial court. The absence of the testimony of the evidence custodian likewise presents a break in the links in the chain of custody of the evidence.

> The failure to immediately mark the seized items, taken together with the absence of a representative from the media to witness the inventory, without any justifiable explanation, casts doubt on whether the chain of custody is truly unbroken. Serious uncertainty is created on the identity of the *corpus delicti* in view of the broken linkages in the chain of custody. The prosecution has the burden of proving each link in the chain of custody – from the initial contact between buyer and seller, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug. The prosecution must prove with certainty each link in this chain of custody and each link must be the subject of strict scrutiny by the courts to ensure that law-abiding citizens are not unlawfully induced to commit an offense.[15]

It cannot be stressed enough that the burden of proving the guilt of the appellant lies on the strength of the evidence of the prosecution. Even if we presume that our law enforcers performed their assigned duties beyond reproach, we cannot allow the presumption of regularity in the conduct of police duty to overthrow the presumption of innocence of the accused in the absence of proof beyond reasonable doubt.

WHEREFORE, we **GRANT** the appeal. The 9 February 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07174, which affirmed the 2 October 2014 Decision of the Regional Trial Court of Quezon City, Branch 82 in Criminal Case No. Q-10-167303 finding appellant John Orcullo *y* Susa guilty of violating Section 5, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly,

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[15] *People v. Bartolini*, 791 Phil. 626, 638 (2016). Citations omitted.

appellant John Orcullo *y* Susa 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 Superintendent of the New Bilibid Prison, Bureau of Corrections in Muntinlupa City for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.,* concur.

SECOND DIVISION

[G.R. No. 230923. July 8, 2019]

BDO UNIBANK, INC., *petitioner, vs.* **FRANCISCO PUA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; FUNCTION OF THE OFFICE OF THE SOLICITOR GENERAL (OSG); THE COURT HAS CONSISTENTLY RULED THAT ONLY THE OFFICE OF THE SOLICITOR GENERAL (OSG) MAY BRING OR DEFEND ACTIONS IN BEHALF OF THE REPUBLIC OF THE PHILIPPINES, OR REPRESENT THE PEOPLE OR STATE IN CRIMINAL PROCEEDINGS BEFORE THE SUPREME COURT AND THE COURT OF APPEALS; TWO EXCEPTIONS TO THE RULE, EXPLAINED.—Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987 states that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation,

proceeding, investigation, or matter requiring the services of lawyers. Moreover, the OSG shall represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings. x x x In a plethora of cases, the Court has consistently ruled that only the OSG may bring or defend actions in behalf of the Republic of the Philippines, or represent the People or State in criminal proceedings before the Supreme Court and the Court of Appeals. The aforesaid is subject to two exceptions where a private complainant or offended party in a criminal case may file a petition directly with this Court, to wit: (1) when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party; and (2) when the private offended party questions the civil aspect of a decision of a lower court.The first exception contemplates a situation where the State and the offended party are deprived of due process, because the prosecution is remiss in its duty to protect the interest of the State and the offended party. This Court recognizes the right of the offended party to appeal an order of the trial court which denied him or her and the State of due process of law. On the other hand, under the second exception, it is assumed that a decision on the merits had already been rendered by the lower court and it is the civil aspect of the case which the offended party is appealing. The offended party, not being satisfied with the outcome of the case, may question the amount of the grant or denial of damages made by the court below even without the participation of the OSG.

2. ID.; ID.; PROSECUTION OF CIVIL ACTION; WHEN THE PRIVATE OFFENDED PARTY QUESTIONS THE CIVIL ASPECT OF A DECISION OF A LOWER COURT, THERE IS NO NEED FOR THE OSG TO REPRESENT THE PEOPLE OR STATE IN CRIMINAL PROCEEDINGS BEFORE THE SUPREME COURT; CASE AT BAR.— [S]ection 1, Rule 111 of the Revised Rules of Criminal Procedure notably provides that when a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action, unless the offended party waives the civil action, reserves the right to institute it separately, or institutes the civil action prior to the criminal action. An examination of the records of the case reveals that petitioner did not waive the civil action, and neither did it reserve the right to institute such separately

> nor institute the civil action prior to the criminal action. Hence, it is only with respect to the criminal aspect that the petition must necessarily fail. As previously mentioned, when the private offended party questions the civil aspect of a decision of a lower court, there is no need for the OSG to represent the People or State in criminal proceedings before this Court. Consequently, the civil aspect of the case at hand may proceed. x x x In the instant case, petitioner paid the Original Funders for the benefit of respondent, with the knowledge of the latter. Accordingly, petitioner under the law possesses the rights of reimbursement and subrogation, *i.e.*, to recover what it has paid and to acquire all the rights of the Original Funders. Article 1303 of the Civil Code particularly provides that the effect of legal subrogation is to transfer to the new creditor the credit and all the rights and actions that could have been exercised by the former creditor either against the debtor or against third persons. Thus, petitioner has every right to proceed civilly against respondent.

APPEARANCES OF COUNSEL

BDO Legal Services Group for petitioner.
Poblador Bautista & Reyes for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

For resolution is a petition for review on certiorari[1] dated 18 May 2017 filed by BDO Unibank, Inc.[2] (petitioner) assailing the Decision[3] dated 26 September 2016 and the Resolution[4]

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[1] Under Rule 45 of the Rules of Court.

[2] Formerly Equitable Banking Corporation-Trust Department. See *rollo*, p. 30.

[3] *Id*. at 7-20. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes, concurring.

[4] *Id*. at 22-23.

dated 5 April 2017 of the Court of Appeals in CA-G.R. CR No. 36696.

The Facts

Petitioner is a domestic expanded commercial bank duly organized and authorized to perform trust or agency functions and services as an investment manager through its Trust Department. On the other hand, Francisco Pua (respondent) is a client of petitioner and is engaged in business under the trade name and style of "Trends & Innovation Marketing."[5]

On 20 January 1993, petitioner entered into an Investment Management Agreement (IMA) with Ernesto Ang (Ernesto). In the IMA, petitioner is tasked to act as the agent and investment manager for the money of Ernesto Petitioner likewise executed an IMA with Edgard Ang (Edgard)[6] on 31 August 1993, Trilogy Properties Corporation (TPC) on 12 December 1996, and Lucia and/or Sharlene Po (Lucia and Sharlene, respectively) on 28 February 1997 for the same purpose.[7]

Thereafter, respondent, through petitioner, borrowed the sum of ₱41,500,000.00 from the funds invested by Ernesto, Edgard, TPC, Lucia, and Sharlene (collectively, Original Funders). Pursuant to the specific directive and authority to lend and invest signed by the Original Funders authorizing the release of the loan in favor of respondent, petitioner released the amount of ₱41,500,000.00 to respondent.[8]

On 7 May 1997, respondent informed petitioner of his intention to change the Original Funders of the loan. Two days thereafter, on 9 May 1997, respondent delivered two checks in the aggregate sum of ₱41,500,000.00. The aforesaid checks were drawn against the account name 7-21450065-1, Metrobank General Santos-

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

[6] Also referred to in the records as "Edgardo Ang."

[7] *Rollo*, p. 8.

[8] *Id*.

Santiago Blvd. Branch and payable to the order of petitioner. On the same date, respondent informed petitioner that Efrain de Mayo[9] was the new funder under the account name for IMA placement. Thereafter, respondent renamed Efrain de Mayo to R. Makmur as the new funder.[10]

Unfortunately, the checks given by respondent to petitioner were dishonored when they were presented for payment, on account of the fact that they were drawn against a closed account. Hence, petitioner demanded payment from respondent. However, despite repeated demands, no payment was made by respondent. Thus, petitioner filed a complaint-affidavit for estafa by means of deceit against respondent.[11]

For his part, as stated in his counter-affidavit, respondent admitted that he had an obligation under the contract of loan, which he executed with petitioner. However, he argued that, while he represented to the officers of petitioner that R. Makmur was interested in replacing the investments of the Original Funders, he did not deceive nor convince petitioner to release the Original Funders, prior to the clearing of the personal checks of R. Makmur. According to respondent, petitioner had the sole discretion to replace and accept a funder. He further contended that he was not a party to the IMA between petitioner and its prospective funders.[12]

Respondent pointed out that he had nothing to gain from the change of funder and lamented that the situation was more disadvantageous to him, since there was no funder anymore to the loan that he had made.[13]

After conducting the required preliminary investigation, in its Resolution dated 22 May 1998, the Office of the City

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[9] Also referred to in the records as "Efraim de Mayo."

[10] *Rollo*, pp. 8-9.

[11] *Id*. at 9.

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

[13] *Id*. at 10.

Prosecutor of Manila (OCP-Manila) held that no probable cause existed and dismissed the case against respondent, to wit:

> WHEREFORE, premises considered, it is respectfully recommended that the instant case be dropped for lack of merit.
>
> SO ORDERED.[14]

Petitioner appealed to the Department of Justice (DOJ). In its Resolution dated 10 April 2012, the DOJ reversed the Resolution of the OCP-Manila dated 22 May 1998 and ordered the OCP-Manila to file an information for estafa by means of deceit against respondent, to wit:

> WHEREFORE, the assailed resolution is hereby REVERSED and SET ASIDE. The City Prosecutor of Manila is directed to file [an] information for estafa under Article 315, par. 2(a), of the Revised Penal Code against respondent Francisco Pua, and report the action taken thereon within ten (10) days from receipt thereof.
>
> SO ORDERED.[15]

Accordingly, an Information for estafa by means of deceit dated 31 July 2013 was filed against respondent before the Regional Trial Court (RTC), Branch 30, Manila, docketed as Criminal Case No. 13-299943. The aforesaid Information reads as follows:

> That on or about May 9, 1997, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously defraud EQUITABLE BANKING CORPORATION, a domestic expanded bank duly organized and existing under the Philippines Law, with office address at EBC Building, 262 Juan Luna St., Binondo, Manila, this City, represented by its Vice President, Trust Department, Lydia N. Cruz, in the following manner, to wit: Equitable Banking Corporation (EBC) is legally authorized to perform trust or agency services as investment manager through its Trust Department (EBC-Trust), which offers, among others, portfolio management services for individuals, corporations and institutions;

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[14] *Id*.

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

the arrangement, with complainant acting as the investment manager and the principal or funder, is reflected in the document called "Investment Management Agreement" (IMA); the IMA is an agency agreement where the principal retains legal title to the funds/cash that are delivered to it or after the time of the execution of the IMA, and in turn, complainant invests or lends the amount to a particular borrower-client under the principal's written specific directive or authority to lend/invest for the latter's own account and risk; the accused, following the IMA scheme, under his trade name Trends and Innovation Marketing, was granted a loan of ₱41,500,000.00 by EBC using funds invested by Mssrs. Ernesto Ang and Edgardo Ang, Messes. Sharlene Po and Lucia Po and Trilogy Properties Corporation, known as principals and who respectively, executed specific directive or authority for EBC to loan their investments to accused and in turn, accused executed corresponding promissory notes; accused Francisco Pua, by means of false manifestations and fraudulent representations which he made to complainant-EBC prior to and even simultaneously with the commission of the fraud, by delivering to complainant Metro Bank Check No. 2402001754 in the amount of ₱20,000,000.00 and Metro Bank Check No. 2402001755 in the amount of ₱21,500,000.00, both dated May 9, 1997 in [the] total amount of ₱41,500,000.00 payable to EBC, induced complainant to change or substitute his original funders/principals, Mssrs. Ernesto Ang and Edgardo Ang, Messes. Sharlene Po and Lucia Po and Trilogy Properties Corporation to Efraim de Mayo, but which, however, again induced complainant to change the funder's name from Efraim de Mayo to R. Makmur, as the latest funder – R. Makmur was the issuer of the said Metro Bank Checks, and assured the complainant that the checks were funded and shall be honored, and by means of similar import, induced and succeeded in inducing complainant to change the funder's name to R. Makmur and to give and deliver, as in fact, it gave and delivered to said accused the amount of ₱41,500,000.00, said accused well knowing that all his manifestation and representations were false and untrue and were made only to obtain from said complainant the amount of ₱41,500,000.00; but when said checks were presented for payment, the same were dishonored for the reason "Account Closed" and which amount once in his possession and with intent to defraud, he misappropriated, misapplied and converted the said amount of ₱41,500,000.00 to his own personal use and benefit, to the damage and prejudice of said Equitable Banking Corporation in the aforesaid sum of ₱41,500,000.00, Philippine Currency.

Contrary to law.[16]

On 26 September 2013, respondent filed an urgent omnibus motion. Respondent prayed that the case against him be dismissed outright for lack of probable cause and for being prosecuted in violation of his constitutional rights to due process and to the speedy disposition of his case. He likewise prayed that the issuance of a warrant of arrest and other proceedings be suspended. Thereafter, petitioner filed its comment/opposition.[17]

The Ruling of the RTC

In its Order dated 13 February 2014, the RTC disposed of the case as follows:

WHEREFORE, finding no probable cause to support and justify the case under consideration, the same is hereby DISMISSED.

SO ORDERED.[18]

Aggrieved, petitioner moved for reconsideration, which was denied by the RTC in an Order dated 30 May 2014.[19] Hence, petitioner appealed to the Court of Appeals.

The Ruling of the Court of Appeals

In its Decision dated 26 September 2016, the Court of Appeals dismissed the appeal and affirmed the Order of the RTC dated 13 February 2014.[20]

Petitioner argued in its appeal that the RTC erred in dismissing the criminal case for lack of probable cause. It alleged that the complaint-affidavit describes in detail the specific actions taken by respondent constituting a *prima facie* case for estafa by means

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

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

[18] *Id*. at 13.

[19] *Id*.

[20] *Id*. at 19.

of deceit under paragraph 2(a) of Article 315 of the Revised Penal Code.[21] According to petitioner, the complaint-affidavit indicates that respondent induced it and its officers to release the Original Funders of his loan on the assurance that he has a new funder in the name of R. Makmur and to accept the latter's spurious checks. Petitioner further contended that the release of the money to the Original Funders was the direct result of the deception employed by respondent. It likewise claimed that the RTC, in dismissing the criminal case, failed to consider that a finding of probable cause does not require an inquiry on whether or not there is sufficient evidence to secure a conviction.[22]

On the other hand, respondent maintained that the RTC rightly ruled in dismissing the criminal case for lack of probable cause. In reversing the Resolution of the OCP-Manila dated 22 May 1998, the DOJ merely relied upon speculations and conjectures in finding that he employed misrepresentation and deceit when he requested petitioner to replace the Original Funders of his loan with R. Makmur. Respondent argued that his act of informing petitioner about R. Makmur being interested in replacing the Original Funders does not amount to fraud. He pointed out that fraud is never presumed and must be proven by clear and convincing evidence. He contended that there was nothing in his representation indicating that he gave false assurances to petitioner and that he guaranteed that the checks issued by R. Makmur were sufficiently funded. In fact, according to respondent, he was not in a position to guarantee that the subject checks were sufficiently funded, considering that they were personal checks of R. Makmur. Respondent further averred that the law requires such a high degree of diligence from banks relative to the handling of its affairs, as opposed to those of ordinary business enterprises. Because petitioner failed to observe the diligence required of banks, by waiting first for the checks to be cleared before releasing the Original Funders of

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

[22] *Id*. at 14.

respondent's loan, respondent could not be held liable for petitioner's negligence.[23]

The Court of Appeals agreed with the RTC in dismissing the criminal case for lack of probable cause. It ruled that the evidence adduced by petitioner did not support a finding of probable cause for the crime of estafa by means of deceit. It held that respondent's mere act of informing petitioner about R. Makmur's interest in replacing the Original Funders does not constitute false pretense and misrepresentation, as contemplated in the crime of estafa by means of deceit, that warrants the filing of the criminal case against respondent. It held that there is nothing in the conduct of respondent in informing petitioner that R. Makmur is the new funder and delivering to petitioner the checks issued by R. Makmur that indicates respondent's intention to deceive petitioner.[24]

Petitioner moved for reconsideration, which the Court of Appeals denied in its Resolution dated 5 April 2017.[25] Hence, the instant petition before this Court.

The Issue

The issue in the present case is whether or not the Court of Appeals erred in upholding the Order of the RTC dated 13 February 2014 dismissing the criminal case of estafa by means of deceit against respondent for lack of probable cause.

The Court's Ruling

The Court finds the instant petition bereft of merit.

Authority to Represent the State in Appeals of Criminal Cases Before the Court of Appeals and the Court

At the onset, the Court notes that the present petition was filed by petitioner without the required authority from or

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

[24] *Id*. at 16.

[25] *Id*. at 22-23.

conformity of the Office of the Solicitor General (OSG). The Court points out that the Manifestation of the OSG dated 26 January 2016 that was furnished to this Court by petitioner refers to the conformity of the OSG to the appeal filed by petitioner before the Court of Appeals and not the present petition before this Court.[26]

Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987 states that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers. Moreover, the OSG shall represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings. The aforesaid provision states the following:

> Section 35. *Powers and Functions*. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:
>
> **(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.
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> x x x x x x x x x
> (Emphasis supplied)

In a plethora of cases, the Court has consistently ruled that only the OSG may bring or defend actions in behalf of the Republic of the Philippines, or represent the People or State in

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[26] *Id*. at 151-152.

criminal proceedings before the Supreme Court and the Court of Appeals. The aforesaid is subject to two exceptions where a private complainant or offended party in a criminal case may file a petition directly with this Court, to wit: (1) when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party; and (2) when the private offended party questions the civil aspect of a decision of a lower court.[27]

The first exception contemplates a situation where the State and the offended party are deprived of due process, because the prosecution is remiss in its duty to protect the interest of the State and the offended party. This Court recognizes the right of the offended party to appeal an order of the trial court which denied him or her and the State of due process of law. On the other hand, under the second exception, it is assumed that a decision on the merits had already been rendered by the lower court and it is the civil aspect of the case which the offended party is appealing. The offended party, not being satisfied with the outcome of the case, may question the amount of the grant or denial of damages made by the court below even without the participation of the OSG.[28]

With respect to the first exception, petitioner did not allege that it and the State were deprived of due process of law. On the other hand, in relation to the second exception, a perusal of the present petition reveals that petitioner did not file such in order to preserve its interest in the civil aspect of the criminal case. In the case under consideration, petitioner not only sought for the reversal and the setting aside of the Decision dated 26 September 2016 and the Resolution dated 5 April 2017 of the Court of Appeals in CA-G.R. CR No. 36696 but also the reinstatement of Criminal Case No. 13-299943 and the issuance of a warrant of arrest against respondent for estafa by means

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[27] *Heirs of Delgado v. Gonzales*, 612 Phil. 817, 843-844 (2009).

[28] *Id*. at 844, 846.

of deceit. The latter relief being prayed for by petitioner clearly involves the criminal aspect of the criminal case. Nevertheless, Section 1, Rule 111 of the Revised Rules of Criminal Procedure notably provides that when a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action, unless the offended party waives the civil action, reserves the right to institute it separately, or institutes the civil action prior to the criminal action. An examination of the records of the case reveals that petitioner did not waive the civil action, and neither did it reserve the right to institute such separately nor institute the civil action prior to the criminal action. Hence, it is only with respect to the criminal aspect that the petition must necessarily fail. As previously mentioned, when the private offended party questions the civil aspect of a decision of a lower court, there is no need for the OSG to represent the People or State in criminal proceedings before this Court. Consequently, the civil aspect of the case at hand may proceed.

It bears stressing and it is not disputed that, in the present case, the Original Funders are the creditors and respondent is the debtor. The Original Funders were paid by petitioner which advanced the payment to the Original Funders of their investments, prior to the clearing of the new funder's checks. This is a case of payment by a third party, petitioner, to the creditor, Original Funders, for the benefit of respondent, who is the debtor. Hence, the Original Funders assigned their credit to petitioner, when the latter paid the former.

Article 1236 of the Civil Code provides the following:

> Article 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.
>
> Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

In the instant case, petitioner paid the Original Funders for the benefit of respondent, with the knowledge of the latter.

Accordingly, petitioner under the law possesses the rights of reimbursement and subrogation, *i.e.*, to recover what it has paid and to acquire all the rights of the Original Funders. Article 1303 of the Civil Code particularly provides that the effect of legal subrogation is to transfer to the new creditor the credit and all the rights and actions that could have been exercised by the former creditor either against the debtor or against third persons. Thus, petitioner has every right to proceed civilly against respondent.

WHEREFORE, the case is **REMANDED** to the Regional Trial Court, Branch 30, Manila, for the reception of evidence relating to the civil aspect of the case. The petition for review filed by BDO Unibank, Inc. is **DISMISSED** with respect to the criminal aspect of the case.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.,* concur.

FIRST DIVISION

[G.R. No. 231358. July 8, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERNESTO AVELINO, JR. *y* GRACILLIAN,**[*] *accused-appellant.*

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[*] Referred to as Gracillan in some parts of the records.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FINDINGS ON CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES ARE ENTITLED TO GREAT WEIGHT AND RESPECT AND THE SAME SHOULD NOT BE OVERTURNED ON APPEAL IN THE ABSENCE OF ANY CLEAR SHOWING THAT SOME FACTS OR CIRCUMSTANCES WHICH WOULD HAVE AFFECTED THE CASE WERE OVERLOOKED, MISUNDERSTOOD, OR MISAPPLIED.—**It is settled that the RTC's findings on the credibility of witnesses and their testimonies are entitled great weight and respect and the same should not be overturned on appeal in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances which would have affected the case. Questions on the credibility of witnesses are best addressed to the trial court due to its unique position to observe the witnesses' deportment on the stand while testifying. In this case, both the RTC and the CA held that AAA was credible and her testimony categorically identified appellant as the person who, with the use of a knife, intimidated her and raped her. The Court finds no reason to doubt the findings of both the RTC and CA, especially since no evidence was adduced showing that AAA had ill motive to falsely charge appellant with the crime of rape.

2. **ID.; ID.; DEFENSE OF DENIAL; DENIAL CANNOT PREVAIL OVER THE POSITIVE AND CATEGORICAL TESTIMONY OF THE VICTIM IDENTIFYING THE ACCUSED AS THE PERPETRATOR OF THE CRIME OF RAPE.—** Faced with such serious accusation, appellant raised the defense of denial and argued that he did not commit the same and that he did not know why he was being charged with rape in the first place. His defense, however, is untenable.As held by the CA, denial cannot prevail over the positive and categorical testimony of the victim identifying him as the perpetrator of the crime of rape. As against appellant's bare denial, the Court upholds the CA's ruling that the positive and categorical testimony of AAA identifying appellant as her rapist should prevail.

3. CRIMINAL LAW; REVISED PENAL CODE; RAPE; WHEN THE CRIME COMMITTED IS OF SIMPLE RAPE; IMPOSABLE PENALTY.—Both the RTC and the CA correctly found appellant guilty of simple rape. Although it was alleged in the Information that AAA was suffering from mental retardation, no evidence was shown to prove such mental condition.Moreover, it was not also proved that appellant knew of AAA's mental disability at the time of the commission of the crime.Nor is there merit in appellant's contention that the proper imposable penalty in this case is that provided by Section 5 of RA 7610. RA 7610 is inapplicable in the present case because the said law governs criminal cases where the victims are children exploited in prostitution or other sexual abuse. In this case, AAA was not an exploited child who indulged in sexual intercourse or lascivious conduct for money or profit or any other consideration; neither was she coerced or influenced by an adult, syndicate, or group to indulge in the said conduct. Given the fact that AAA was not a child exploited in prostitution, the penalty provided for under RA 7610 does not apply. Hence, the RTC correctly imposed the penalty of *reclusion perpetua* provided for under Article 266-B of the Revised Penal Code for the crime of simple rape.

4. ID.; ID.; ID.; AMOUNTS OF CIVIL INDEMNITY AND DAMAGES ARE MODIFIED IN LINE WITH RECENT JURISPRUDENCE IN RAPE CASES WHERE THE PENALTY IMPOSED IS *RECLUSION PERPETUA*.—It is necessary, however, to modify the amounts of civil indemnity and damages imposed by the RTC as modified by the CA. In line with recent jurisprudence, in rape where the penalty imposed is *reclusion perpetua*, this Court has upgraded the amounts of civil indemnity from ₱50,000.00 to ₱75,000.00; moral damages from ₱50,000.00 to ₱75,000.00; and exemplary damages from ₱30,000.00 to ₱75,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

The appellant Ernesto Avelino, Jr. *y* Gracillian assails the August 31, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 07543 which affirmed with modification the May 28, 2015 Decision[2] of the Regional Trial Court (RTC) of Caloocan City, Branch 131, finding him guilty beyond reasonable doubt of rape.

Factual Antecedents

Appellant was criminally charge rape in relation to Republic Act (RA) No. 7610, in an Information which states:

That sometime in May 2006 in Caloocan City, M.M.[,] and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threats[,] and intimidation, did then and there willfully, unlawfully[,] and feloniously lie and have carnal knowledge of one AAA,[3] a mental retardate, a minor and 15 years of age, against her will and without her consent.

CONTRARY TO LAW.[4]

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[1] CA *rollo*, pp. 94-106; penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Fernanda Lampas Peralta and Zenaida T. Galapate-Laguilles.

[2] Records, pp. 444-450; penned by Presiding Judge Ma. Teresa E. De Guzman-Alvarez.

[3] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes; Republic Act No. 9262, An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004." *People v. Dumadag*, 667 Phil. 664, 669 (2011).

[4] Records, p 2.

Appellant pleaded not guilty to the charge of rape during his arraignment held on September 5, 2007.[5]

At the pre-trial, the prosecution and the defense stipulated: (1) the jurisdiction of the trial court to try the case; (2) the identity of the appellant as charged in the Information; (3) that the victim was a minor, subject to presentation of the birth certificate; and (4) the existence of the medico-legal certificate.[6]

Version of the Prosecution

The prosecution presented the testimonies of AAA and Police Chief Inspector Jesille Cui Baluyot (PCI Baluyot) of the Philippine National Police (PNP) Crime Laboratory at Camp Crame, Quezon City. The prosecution's version of the rape incident is, as follows:

AAA narrated that she and her family had been renting a house from appellant's father since May 2006, which house was adjacent to the house where appellant and his family were staying.[7] Sometime in May 2006, AAA was on the second floor of appellant's house putting the latter's son to sleep.[8] After appellant's son had already fallen asleep, AAA decided to leave but she was prevented by appellant, who was armed with a knife. Appellant threatened AAA that he would kill "all" of them, presumably referring to AAA's family.[9]

AAA testified that while poking a knife at her, appellant told her to lie down and thereafter undressed her. She resisted but appellant went on undressing her, after which he removed his own shorts and briefs. Appellant then went on top of AAA and inserted his penis into her vagina. After the sexual intercourse,

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[5] *Id*. at 21.

[6] *Id*. at 254-255.

[7] CA *rollo*, p. 57.

[8] *Id*. at 58.

[9] *Id*.

appellant told AAA, while poking a knife at her, not to tell her parents about what had happened.[10]

AAA narrated that it was only when she and her family had already transferred to another house and when she became pregnant that her family learned about the rape incident. Thereafter, AAA and her family reported the incident to the police, which led to the filing of the complaint for rape against appellant.[11]

On September 30, 2006, AAA had an anogenital examination at the PNP Crime Laboratory in Camp Crame, Quezon City. Police Senior Inspector Edilberto S. Antonio (PSI Antonio), in his Medico-Legal Report No. R06-1894, found clear evidence of blunt force or penetrating trauma. PSI Antonio likewise found that AAA's hymen had a shallow healed laceration. During trial, PCI Baluyot testified on the findings of PSI Antonio, as the latter was no longer connected with the PNP Crime Laboratory in Camp Crame. In her testimony, PCI Baluyot categorically stated that the shallow healed laceration in AAA's hymen, as indicated in Medico-Legal Report No. R06-1894, could have been caused by a blunt penetrating trauma, such as an erect penis.[12]

Version of the Defense

As set forth in his Accused-Appellant's Brief,[13] appellant denied that he personally knew AAA. While he acknowledged that AAA's family rented the adjacent house owned by his father, appellant claimed that he lived with his own family in a two-storey house. Appellant averred that his wife took care of their two children, ages five and two, while he was at work. He strongly denied that he hired AAA to take care of his children. He insisted that he did not know how long AAA and her family had been

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[10] *Id*.

[11] *Id*. at 59.

[12] *Id*.

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

renting their house because it was his father who had dealt with them with respect to the lease. On the day of the alleged rape, he claimed that neither he nor his family left their house. He did not know of any reason why AAA filed a rape case against him.

Appellant's father corroborated his son's testimony. According to appellant's father, he lived with the appellant and the latter's family, while AAA and her family stayed at the adjacent house which he owned and rented out to AAA's family for ₱1,500.00 per month. Appellant's father likewise declared that, whenever he or the appellant would go out of the house, there would always be someone left to look after the appellant's two children.

Ruling of the Regional Trial Court

On May 28, 2015, the RTC of Caloocan City, Branch 131, found that the prosecution had successfully discharged the burden of proving that appellant did in fact rape AAA. It held that all the elements of the crime had been duly established. The RTC upheld the credible and positive declaration of the victim as against the weak defense of alibi and denial by the appellant. The dispositive portion of the Decision reads:

> WHEREFORE, accused ERNESTO AVELINO, JR. *y* GRACILLAN, is found GUILTY beyond reasonable doubt for the crime of Rape defined and punishable under Article 266-A paragraph I in relation to Article 266-B par. 1 of the Revised Penal Code, as amended by R.A. 8353 and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.
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> Likewise, he is ordered to pay complainant civil indemnity in the amount of ₱50,000.00, moral damages of ₱50,000.00, and ₱50,000.00 as and by way of exemplary damages.
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> SO ORDERED.[14]

From this judgment, appellant appealed to the CA.

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[14] Records, p. 450.

Ruling of the Court of Appeals

In its August 31, 2016 Decision, the CA affirmed with modification the appellant's conviction of rape. The dispositive portion of the CA's Decision reads:

> WHEREFORE, the instant appeal is DISMISSED. The *Decision* dated 28 May 2015 of Regional Trial Court of Caloocan City, Branch 131, in *Criminal Case No. C-77813* is hereby AFFIRMED with MODIFICATION, in that Accused-Appellant Ernesto Avelino, Jr. *y* Gracillian is ORDERED to pay AAA ₱30,000.00 as exemplary damages.
>
> SO ORDERED.[15]

Dissatisfied with the CA's Decision, appellant filed this appeal with the Court.

Issue

Whether or not appellant is guilty of rape.

According to appellant, the RTC gravely erred in convicting him of rape and giving weight and credence to the inconsistent testimony of AAA. He also claims that the RTC erred in failing to take into consideration his defense of denial. Finally, he asserts that the RTC erred in sentencing him to *reclusion perpetua* since the proper penalty should have been that provided for in Section 5 of RA 7610.

Our Ruling

After a careful review of the records, the Court finds the appeal unmeritorious, there being no cogent reason to reverse the CA in affirming with modification the RTC's ruling which found appellant guilty beyond reasonable doubt of rape. Both the RTC and the CA correctly found that all the elements of rape had been sufficiently established by the prosecution. More particularly, the prosecution had proved that appellant had carnal knowledge of AAA without her consent and through force, threat, and intimidation with the use of a knife.

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[15] CA *rollo*, p. 105.

Moreover, the Court upholds the findings of the RTC which were affirmed by the CA, that AAA's testimony was credible. It is settled that the RTC's findings on the credibility of witnesses and their testimonies are entitled great weight and respect and the same should not be overturned on appeal in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances which would have affected the case. Questions on the credibility of witnesses are best addressed to the trial court due to its unique position to observe the witnesses' deportment on the stand while testifying. In this case, both the RTC and the CA held that AAA was credible and her testimony categorically identified appellant as the person who, with the use of a knife, intimidated her and raped her. The Court finds no reason to doubt the findings of both the RTC and CA, especially since no evidence was adduced showing that AAA had ill motive to falsely charge appellant with the crime of rape.

Faced with such serious accusation, appellant raised the defense of denial and argued that he did not commit the same and that he did not know why he was being charged with rape in the first place. His defense, however, is untenable.

As held by the CA, denial cannot prevail over the positive and categorical testimony of the victim identifying him as the perpetrator of the crime of rape. As against appellant's bare denial, the Court upholds the CA's ruling that the positive and categorical testimony of AAA identifying appellant as her rapist should prevail.

Both the RTC and the CA correctly found appellant guilty of simple rape. Although it was alleged in the Information that AAA was suffering from mental retardation, no evidence was shown to prove such mental condition.[16] Moreover, it was not also proved that appellant knew of AAA's mental disability at the time of the commission of the crime.[17]

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[16] Records, p. 447.

[17] REVISED PENAL CODE, Article 266(B)(10).

Nor is there merit in appellant's contention that the proper imposable penalty in this case is that provided by Section 5 of RA 7610. RA 7610 is inapplicable in the present case because the said law governs criminal cases where the victims are children exploited in prostitution or other sexual abuse. In this case, AAA was not an exploited child who indulged in sexual intercourse or lascivious conduct for money or profit or any other consideration; neither was she coerced or influenced by an adult, syndicate, or group to indulge in the said conduct. Given the fact that AAA was not a child exploited in prostitution, the penalty provided for under RA 7610 does not apply. Hence, the RTC correctly imposed the penalty of *reclusion perpetua* provided for under Article 266-B of the Revised Penal Code for the crime of simple rape.

It is necessary, however, to modify the amounts of civil indemnity and damages imposed by the RTC as modified by the CA. In line with recent jurisprudence, in rape where the penalty imposed is *reclusion perpetua*, this Court has upgraded the amounts of civil indemnity from ₱50,000.00 to ₱75,000.00; moral damages from ₱50,000.00 to ₱75,000.00; and exemplary damages from ₱30,000.00 to ₱75,000.00.

WHEREFORE, the appeal is **DISMISSED**. The August 31, 2016 Decision of the Court of Appeals in CA-G.R. CR HC No. 07543 is **AFFIRMED with MODIFICATION** in that, appellant Ernesto Avelino, Jr. *y* Gracillian is ordered to pay AAA the following amounts: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; and (c) ₱75,000.00 as exemplary damages; all these monetary awards to earn legal interest at the rate of 6% *per annum* reckoned from the date of finality of this Decision until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 231917. July 8, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appelee, vs.* **ANSARI SARIP *y* BANTOG,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS; IN ILLEGAL SALE, THE ILLICIT DRUGS CONFISCATED FROM THE ACCUSED COMPRISE THE *CORPUS DELICTI* OF THE CHARGES.— Under Section 5, Article II, of R.A. No. 9165, or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (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. In illegal sale, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges. In *People v. Gatlabayan*, the Court held that "it is therefore of prime importance that the identity of the dangerous drug be likewise established beyond reasonable doubt. Otherwise stated, it must be proven with exactitude that the substance bought during the buy-bust operation is the same substance offered in evidence before the court." In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect. Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; SECTION 21 (1) OF RA 9165 AND ITS IMPLEMENTING RULES PROVIDES FOR THE PROCEDURE TO ENSURE THE UNBROKEN CHAIN OF CUSTODY OF THE SEIZED

ILLEGAL DRUGS; REQUIRED WITNESSES DURING THE CONDUCT OF PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED ITEMS, AMENDED UNDER RA 10640.— To ensure an unbroken chain of custody, Section 21(1) of R.A. No. 9165 specifies: (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 x x x On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, x x x Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and photograph of the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee "against planting of evidence and frame up," *i.e.*, they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity." Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof.

3. ID.; ID.; ID.; ID.; 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; NOT ESTABLISHED IN CASE AT BAR.— It must be remembered that the non-compliance of the procedure set forth in Section 21 of R.A. No. 9165 may only be allowed in certain circumstances. In *People v. Angelita Reyes, et al*., this Court enumerated certain instances where the absence of the required witnesses may be justified, x x x The above-ruling was further reiterated by this Court in *People v. Vicente Sipin y De Castro*, x x x Earnest effort to secure the attendance of the necessary witnesses must also be proven as held in *People v. Ramos,* x x x 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 illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration. The records of this case show that the prosecution was not able to present any evidence that would justify the non-compliance of Section 21 of R.A. 9165. Thus, this Court finds it apt to acquit the appellant for failure of the prosecution to prove his guilt beyond reasonable doubt.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

D E C I S I O N

PERALTA, *J.*:

This is an appeal of the Court of Appeals' (*CA*) Decision[1] dated October 7, 2016 dismissing Ansari Sarip *y* Bantog's appeal and affirming the Judgment[2] dated August 19, 2014 of the Regional Trial Court (*RTC*), Branch 25, Misamis Oriental, Cagayan de Oro City, convicting the same appellant of Violation of Section 5, Article II, of Republic Act (*R.A.*) No. 9165.

The facts follow.

Around 6:00 p.m. of May 19, 2011, a confidential informant went to the City Special Operations Group (*CSOG*) and informed the office that a certain person was selling *shabu* at Barangay 31, Santo Niño. Acting on the said information, Police Senior Inspector Gilbert Rolen and Police Senior Inspector Ludwig Charles Espera formed a buy-bust team and called the Philippine Drug Enforcement Agency (*PDEA*) for the pre-operational number of the operation. A ₱50.00 bill was also prepared as a marked money. PO2 Jerry Michael B. Baranda (*PO2 Baranda*) was designated as the team leader and the confidential informant was to act as the poseur-buyer.

Later in the evening of the same day, around 8:00 p.m., the buy-bust team composed of PO2 Baranda, PO2 Sangkula Hussein (*PO2 Hussein*), SPO1 Angelito Baguilid (*SPO1 Baguilid*) and PO1 Reymund Seno (*PO1 Seno*) went to Barangay 31 beside Pearlmont Hotel, where they parked, on board an unmarked Mitsubishi Adventure. Thereafter, PO2 Baranda and PO2 Hussein transferred to a "*trisikad*" while the confidential informant went ahead to the designated meeting place. The other members of the team remained in the vehicle.

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[1] Penned by Associate Justice Maria Filomena D. Singh, with Associate Justices Ronaldo B. Martin and Perpetua T. Atal-Paño concurring; *rollo*, pp. 3-19.

[2] Penned by Judge Arthur L. Abundiente; CA *rollo*, pp. 38-44.

At the meeting place, the confidential informant approached appellant, while PO2 Baranda and PO2 Hussein stood and observed the transaction from a well-lighted area that is more or less 10-12 meters away from the confidential informant and the appellant. The said police officers saw, from their vantage point, the confidential informant give to the appellant the marked money and the latter handed a transparent plastic sachet to the confidential informant. Immediately thereafter, the confidential informant gave the pre-arranged signal by removing his black ball cap and the buy-bust team approached the appellant. Appellant tried to resist, thus, a scuffle ensued. Eventually, the appellant was subdued.

The poseur-buyer then turned over the plastic sachet of suspected *shabu* to PO2 Baranda and the latter put the said plastic sachet inside his pocket before putting a handcuff on the appellant and apprised him of his rights. During the body search, PO2 Baranda was able to retrieve the marked money from appellant's pocket. At that time, PO2 Baranda and the rest of his team decided to conduct the marking and the inventory at the office because a lot of people started to congregate on the area.

At the office, PO2 Baranda marked the plastic sachet with his initials "*JB*." He also prepared the seized items and the request letter for laboratory examination, drug test on appellant, and the check of the presence of ultraviolet markings on appellant. Thereafter, PO2 Baranda and PO2 Hussein brought the appellant and the plastic sachet with white crystalline substance to the PNP Regional Crime Laboratory Office (*RCLO*) for examination. Appellant's urine sample tested positive for methamphetamine hydrochloride (*shabu*), and the results of the examination conducted by Police Senior Inspector (*PSI*) Charity Peralta Caceres on the seized item showed that the white crystalline substance inside the plastic sachet was *shabu*. Laboratory results also showed that both hands of appellant were positive for ultraviolet fluorescent powder, indicating that he handled the marked money.

Consequently, an Information was filed against appellant for violation of Section 5, Article II of R.A. No. 9165, which reads as follows:

> That on May 19, 2011 at about 9:00 o'clock in the evening, more or less, at Santo Niño, Barangay 31, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without being authorized to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally, and knowingly sell and/or offer to sell and give away to a poseur-buyer/decoy, one (1) pc. small heat-sealed transparent plastic sachet containing white crystalline substance of methamphetamine hydrochloride, locally known as *shabu*, a dangerous [drug], weighing 0.03 gram, which after a confirmatory test conducted by the PNP Crime Laboratory, was found positive of the presence of methamphetamine hydrochloride, accused knowing the same to be a dangerous drug, in consideration of Two Hundred Fifty (₱250) Peso Bill with one (1) ₱50 Peso Bill with Serial Number TU380843 as marked money.
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> Contrary to an in violation of Section 5, Article II of R.A. 9165.[3]

Appellant pleaded "not guilty" to the charge against him. Hence, the trial on the merits ensued.

For his defense, appellant denied committing the crime. According to him, on May 19, 2011, around 8:00 p.m., he went outside his uncle's house to buy dinner at a nearby carinderia, however, before reaching the place, he was accosted and held by two male persons wearing casual clothes, whom he later identified as PO2 Baranda and PO2 Hussein. When the two held appellant, they asked him his name and he replied, "*Ansari Sarip*." After answering, one of the men protested and insisted that appellant's real name is "*Alex*." Appellant told the police officers that there are several people with the name of Alex in their place but the latter two did not believe him. Appellant was then handcuffed behind his back and was made to ride in their service vehicle, a white Toyota Revo. The vehicle

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[3] Records, p. 3.

immediately left and stopped near Pearlmont Hotel. Appellant was asked by the police officers whether he had Fifty Thousand Pesos (₱50,000.00) so that they could release him. Appellant told them that he only had Sixteen Pesos (₱16.00), which was intended to buy food at the carinderia. Thus, appellant was brought to the Maharlika Police Station.

While at the police station, appellant noticed that an item was placed on top of the table and a picture of it was taken. He was then brought to another place where his hand was placed under an ultraviolet lamp.

The RTC, on August 19, 2014, rendered its Decision finding appellant guilty beyond reasonable doubt of the offense charged in the Information. The dispositive portion of the said Decision reads as follows:

> WHEREFORE, premises considered, this Court finds hereby accused ANSARI SARIP Y BANTOG GUILTY BEYOND REASONABLE DOUBT of the crime as charged in the Information, and hereby sentenced (sic) him to life imprisonment, and to pay the Fine in the amount of ₱500,000.00 without subsidiary penalty in case of non-payment of Fine.
>
> Let the penalty be imposed on the accused serves (sic) as an example to those who have the same propensity to commit the forbidden acts mentioned under R.A. 9165 that crime does not pay, and the temporary financial benefit which one derives in dealing with illegal drugs cannot compensate for the penalty which he will suffer if he will be arrested, prosecuted, and penalized to the full extent of the law.
>
> SO ORDERED.[4]

Appellant filed his appeal with the CA, and on October 7, 2016, the appellate court dismissed the appeal and affirmed the decision of the RTC, thus:

> WHEREFORE, the appeal is DENIED. The Judgment dated August 19, 2014 of the Regional Trial Court of Misamis Oriental, Cagayan De Oro City, Branch 25, in Criminal Case No. 2011-465, finding

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[4] CA *rollo*, pp. 43-44.

appellant ANSARI SARIP y BANTOG guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, is AFFIRMED.

SO ORDERED.[5]

After appellant's motion for reconsideration was denied, he comes to this Court for the resolution of his appeal.

In the Appellant's Brief, the following issues are raised:

THE PROSECUTION DID NOT PRESENT ITS BEST WITNESS – THE POSEUR-BUYER – WHOSE TESTIMONY IS INDISPENSABLE TO THE CONVICTION OF THE APPELLANT.

THE INTEGRITY AND EVIDENTIARY VALUE OF THE ILLEGAL DRUG WAS NOT PRESERVED.

NO BUY-BUST OPERATION WAS EVER CONDUCTED.[6]

Appellant contends that the prosecution's failure to present the testimony of the poseur-buyer is fatal, because he is the best witness to establish the charge against appellant and that the testimonies of the police officers regarding the participation of the poseur-buyer are mere hearsay. Appellant also argues that the police officers failed to observe the chain of custody required by law. According to appellant, for there to be an exception to the rule on the chain of custody, the police officers must have valid reasons behind such procedural lapses. Finally, appellant claims that there was no buy-bust operation and that the prosecution was not able to establish the validity of the alleged buy-bust operation.

The appeal is meritorious.

Under Section 5, Article II, of R.A. No. 9165, or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

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[5] *Rollo*, p. 18.

[6] CA *rollo*, pp. 26, 28 and 33.

(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.[7]

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.[8]

In illegal sale, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.[9] In *People v. Gatlabayan*,[10] the Court held that "it is therefore of prime importance that the identity of the dangerous drug be likewise established beyond reasonable doubt. Otherwise stated, it must be proven with exactitude that the substance bought during the buy-bust operation is the same substance offered in evidence before the court."[11] In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect.[12] Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[13]

To ensure an unbroken chain of custody, Section 21(1) of R.A. No. 9165 specifies:

(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

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[7] *People v. Ismael*, 806 Phil. 21, 29 (2017).

[8] *Id*.

[9] *Id*.

[10] 669 Phil. 240 (2011).

[11] *Id*. at 252.

[12] *People v. Mirondo*, 771 Phil. 345, 357 (2015).

[13] See *People v. Ismael, supra* note 7.

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 provides:

(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[.]

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially 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 her Sponsorship Speech on Senate Bill No, 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction, and also in the conflicting decisions of the courts."[14] Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in more remote areas. For another, there were instances where elected barangay officials themselves were involved in the punishable acts apprehended."[15] In addition, "[t]he requirement that inventory is required to be done in police stations is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."[16]

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."[17] In his Co-sponsorship Speech, he noted:

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[14] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

[15] *Id*.

[16] *Id*.

[17] *Id*. at 349.

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21 (a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.

x x x x x x x x x

Section 21 (a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.[18]

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[18] *Id*. at 349-350.

The foregoing legislative intent has been taken cognizance of in a number of cases. Just recently, this Court has ruled in *People v. Miranda*:[19]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not ipso facto render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[20]

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[19] G.R. No. 229671, January 31, 2018.

[20] See also *People v. Paz*, G.R. No. 229512, January 31, 2018; *People v. Mamangon*, G.R. No. 229102, January 29, 2018; *People v. Jugo*, G.R. No. 231792, January 29, 2018; *People v. Calibod*, G.R. No. 230230, November 20, 2017, 845 SCRA 370, 381-382; *People v. Ching*, G.R. No. 223556, October 9, 2017, 842 SCRA 280, 294-296; *People v. Geronimo*, G.R. No. 225500, September 11, 2017, 839 SCRA 336, 347-349; *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 624-626; and *People v. Macapundag*, 807 Phil. 234, 243 (2017).

Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and photograph of the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee "against planting of evidence and frame up," *i.e.*, they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[21] Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof.

It clearly appears in the testimony of PO3 Baranda that the provisions of Section 21 have not been followed, nor was there any explanation as to their non-compliance, thus:

Q What happened to the CI?
A The CI did not yet go Sir and he gave to me the sachet which he was able to buy.

Q What did you do with the *shabu* handed to you by the CI?
A I placed it first in my pocket Sir because we have to handcuff him and inform him of his rights.

Q And then, what happened next Mr. Witness?
A After we searched his body we were able to get the marked money including the ₱250.00, Sir.

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[21] *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 247.

Q Where did you recover the marked money, Mr. Witness?
A From his right pocket, Sir.

Q And then, what did you and your companions tell him if any?
A We then informed him his rights and after that we called the mobile to proceed to the area for him to be brought to our office, Sir.

x x x x x x x x x

Q What happened next, Mr. Witness?
A After we boarded him to our vehicle Sir we proceeded to our office and we prepared the markings and request for the laboratory examination.

Q Who was in possession of the drugs from the place you arrested him in going to the office, Mr. Witness?
A It was in my possession, Sir.

Q Also the buy-bust money?
A Yes, Sir.

Q And then, what happened at the office, Mr. Witness?
A We prepared the markings and a letter request for RCLO, Sir.

Q What is RCLO?
A Regional Crime Laboratory Office, Sir.

Q What did you do with the sachet of *shabu* bought from the accused?
A We marked it Sir and we placed it inside a cellophane.

Q Only at the office?
A Yes, Sir.

Q Why only at the office Mr. Witness not at the crime scene?
A Me, SPO1 [Hussein] and our investigator SPO1 Apollo Neil delas Alas, Sir.

Q My question is, why only at the office not at the scene did you mark the evidence?
A We immediately left the crime scene sir because there were many people already mailing (sic) around.

x x x x x x x x x

Q What else did you prepare at the office, Mr. Witness?
A The request for the crime laboratory examination, Sir.

Q Is this the request, Mr. Witness?
A Yes, Sir.

Q In the right upper portion, there is a rubber stamp Delivered by: PO2 Baranda, where did you sign this one, Mr. Witness?
A At RCLO 10, Sir.

Q At the crime lab when you delivered this?
A Yes, Sir.[22]

Furthermore, a careful examination of the records would show that the inventory receipt was not presented as evidence. Thus, it cannot be determined whether or not during the physical inventory and photograph of the items seized, the representatives required by law are present. Such was also not testified to that the police officers complied with the same provisions of the law.

It must be remembered that the non-compliance of the procedure set forth in Section 21 of R.A. No. 9165 may only be allowed in certain circumstances. In *People v. Angelita Reyes, et al.*,[23] this Court enumerated certain instances where the absence of the required witnesses may be justified, thus:

x x x It must be emphasized that the prosecution must able to prove a justifiable ground in omitting certain requirements provided in Sec.21 such as, but not limited to the following: 1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; 2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the

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[22] TSN, June 17, 2013, pp. 6-10.

[23] G.R. No. 219953, April 23, 2018.

provisions of Article 125[24] of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

The above-ruling was further reiterated by this Court in *People v. Vicente Sipin y De Castro*,[25] thus:

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and elected public official within the period required under Article 125 of the Revised Penal Could prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

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[24] Article 125. *Delay in the delivery of detained persons to the proper judicial authorities*. – The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent. In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by E.O. Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

[25] G.R. No. 224290, June 11, 2018.

Earnest effort to secure the attendance of the necessary witnesses must also be proven as held in *People v. Ramos*,[26] thus:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in Section 21 of R.A. 9165. As such, police officers are compelled not only to state the 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.

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.[27] 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

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[26] G.R. No. 233744, February 28, 2018.

[27] See *People v. Macapundag*, *supra* note 20.

the requirements of the law.[28] 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.[29] A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.[30]

The records of this case show that the prosecution was not able to present any evidence that would justify the non-compliance of Section 21 of R.A. 9165. Thus, this Court finds it apt to acquit the appellant for failure of the prosecution to prove his guilt beyond reasonable doubt.

WHEREFORE, the Decision dated October 7, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 01322-MIN dismissing appellant's appeal and affirming the Judgment dated August 19, 2014 of the Regional Trial Court, Branch 25, Misamis Oriental, Cagayan de Oro City, convicting appellant Ansari Sarip *y* Bantog of Violation of Section 5, Article II, R.A. 9165

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[28] See *People v. Miranda, supra* note 19; *People v. Paz, supra* note 20; *People v. Mamangon, supra* note 20; and *People v. Jugo*, *supra* note 20.

[29] *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529, 560.

[30] See *People v. Abelarde*, G.R. No. 215713, January 22, 2018; *People v. Macud*, G.R. No. 219175, December 14, 2017, 849 SCRA 294; *People v. Arposeple*, G.R. No. 205787, November 22, 2017, 846 SCRA 150; *Aparente v. People*, G.R. No. 205695, September 27, 2017, 841 SCRA 89; *People v. Cabellon*, G.R. No. 207229, September 20, 2017, 840 SCRA 311; *People v. Saragena*, *supra* note 29; *People v. Saunar*, G.R. No. 207396, August 9, 2017, 836 SCRA 471; *People v. Sagana*, *supra* note 21; *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16; and *People v. Jaafar*, G.R. No. 219829, January 18, 2017, 815 SCRA 19, 33.

is **REVERSED AND SET ASIDE**. Appellant 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 any other lawful cause. Let entry of final judgment be issued immediately.

Let a copy of this Decision be furnished to the Superintendent of the Davao Prison and Penal Farm, Davao del Norte, 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 has taken.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 232338. July 8, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RAMON QUILLO *y* ESMANI,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CONCEPT OF OUT-OF-COURT IDENTIFICATION AND THE FACTORS TO CONSIDER IN DETERMINING ITS ADMISSIBILITY AND RELIABILITY, EXPLAINED; TOTALITY OF CIRCUMSTANCES TEST, FACTORS TO CONSIDER. — The lower courts committed reversible error in ruling that the positive identification of Ramon by the prosecution witnesses established his guilt beyond reasonable doubt. In *People v. Teehankee, Jr.*, the Court explained the concept of out-of-court identification and the factors to consider

in determining its admissibility and reliability, thus: Out-of-court identification is conducted by the police in various ways. It is done thru **show-ups** where the suspect alone is brought face to face with the witness for identification. It is done thru **mug shots** where photographs are shown to the witness to identify the suspect. It is also done thru **line-ups** where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of **out-of-court** identification contaminates the integrity of **in-court** identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the **totality of circumstances test** where they consider the following factors, *viz*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure. In this case, the identification was done through a police line-up. Applying the totality of circumstances test, We find that the out-of-court identification made by Michael, Gina, and Corazon is unreliable and cannot be made the basis for Ramon's conviction. A comprehensive analysis of their testimonies reveals that such are dubious and lack probative weight.

2. ID.; ID.; ID.; ID.; THE NATURAL REACTION OF VICTIMS OF CRIMINAL VIOLENCE IS TO STRIVE TO SEE THE APPEARANCE OF THEIR ASSAILANTS AND OBSERVE THE MANNER THE CRIME WAS COMMITTED.— We also point out that, unlike Gina and Michael, Corazon admitted that the motorcycle only stopped for "seconds" before the riders fled from the scene of the crime. Corazon's admission negates Michael's and Gina's story and makes their testimonies even more doubtful. Their respective narrations of the incident fail to create a coherent account of the incident on May 28, 2014 because they are inconsistent with each other on substantial matters and contrary to ordinary human experience. The natural reaction of victims of criminal violence is to strive to see the appearance of their assailants and observe the manner the crime was committed. As the Court held in *People v. Esoy*: It is known

that the most natural reaction of a witness to a crime is to strive to look at the appearance of the perpetrator and to observe the manner in which the offense is perpetrated. Most often the face of the assailant and body movements thereof, create a lasting impression which cannot be easily erased from a witness's memory. Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, eyewitnesses can remember with a high degree of reliability the identity of criminals at any given time.

3. ID.; ID.; ID.; ID.; WHERE THE PROSECUTION WITNESSES GAVE THEIR SWORN STATEMENT TO THE AUTHORITIES AND IDENTIFIED ACCUSED FROM THE POLICE LINE-UP ONE (1) WEEK FROM THE TIME OF THE INCIDENT, DID NOT TESTIFY ABOUT ANY DISTINGUISHING MARK NOR SIGNIFICANT FEATURE OF THE ACCUSED'S PHYSICAL APPEARANCE OTHER THAN HIS HEIGHT AND SKIN COMPLEXION, AND ADMITTED THAT THEY HAVE NEVER MET NOR SEEN THE ASSAILANT PRIOR TO THE INCIDENT, WHEN TAKEN AS A WHOLE, DIMINISH THE CREDIBILITY OF THE PROSECUTION WITNESSES AND RAISE DOUBT ON THE TRUTHFULNESS OF THEIR TESTIMONIES AND THEIR IDENTIFICATION OF ACCUSED AS THE ASSAILANT. — Due to 1) the unusual situation that Michael, Gina and Corazon just witnessed, 2) the brief period they allegedly saw the assailant's face, and 3) their position relative to where the assailant was, We find it difficult to believe that they were able to accurately identify the assailant. We cannot disregard the possibility that the prosecution witnesses committed an error in identifying the assailant. The interim period of about one (1) week from the time of the incident and the time they gave their sworn statement to the authorities and identified Ramon from the police line-up could have affected their ability to recall the assailant's identity. The prosecution witnesses did not testify about any distinguishing mark nor significant feature of Ramon's physical appearance, other than his height and skin complexion, that they relied on in recognizing the assailant during the police line-up and trial. They also admitted that they have never met nor seen the assailant prior to the incident which compels the Court to doubt the accuracy of their recollection. To Our mind, these factors, when taken as a whole, diminish the credibility of the witnesses and raise doubt on the truthfulness of their testimonies and their identification of Ramon as the assailant.

4. ID.; ID.; ID.; THE CREDIBILITY OF THE EYEWITNESS AS TO THE IDENTIFICATION OF THE ACCUSED MUST FIRST BE ESTABLISHED BEYOND QUESTION BEFORE THE RULE THAT POSITIVE IDENTIFICATION PREVAILS OVER ALIBI CAN BE APPLIED; CONVICTION OF THE ACCUSED CANNOT BE SUSTAINED WHERE THE PROSECUTION FAILED TO PROVE HIS IDENTITY AS THE ASSAILANT. — We have settled that although the defense of alibi is inherently weak, the prosecution is not released from its burden of establishing the guilt of the accused beyond reasonable doubt. It is necessary to first establish beyond question the credibility of the eyewitness as to the identification of the accused before a court can apply the rule that positive identification prevails over alibi. The serious and inexplicable discrepancies and inconsistencies in the testimonies of the prosecution witnesses hardly lend credence to their supposed positive testimony and casts serious doubt on the credibility of their charge. Having failed to indubitably prove the identity of Ramon as the assailant, We cannot sustain Ramon's conviction.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARANDANG, *J.*:

This is an appeal[1] from the August 30, 2016 Decision[2] of the Court of Appeals (CA) finding accused-appellant Ramon Quillo *y* Esmani (Ramon) guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code, the dispositive portion of which reads:

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[1] *Rollo*, p. 18, Notice of Appeal.

[2] Penned by Associate Justice Renato C. Francisco, with Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser, concurring; *id*. at 2-17.

WHEREFORE, premises considered, the appealed 29 June 2015 Decision of the Regional Trial Court in Criminal Case No. R-QZN-14-0548 is hereby **AFFIRMED with modification** that the total awarded damages shall be subject to interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

SO ORDERED.[3]

The Antecedents

The Information[4] against Ramon alleges:

That on or about the 28th day of May 2014, in Quezon City Philippines, the above-named accused, with intent to kill, qualified with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one **VIVIEN YAP-DE CASTRO**, by then and there shooting her twice on her head, thereby inflicting upon her serious and grave wounds which were the direct and immediate cause of her untimely death, to the damage and prejudice of the heirs of said offended party.

The accused persistently planned the commission of the crime prior to the execution and adopted sudden and unexpected attack thereby assaulting the victim to ensure the commission of the crime without risk to himself therefore committing the attendant circumstances of evident premeditation and treachery.

CONTRARY TO LAW.[5]

During trial, the prosecution presented the following witnesses, namely: (1) Audrey Phoebe Yap-Lopez (Audrey); (2) Michael M. Marinas[6] (Michael); (3) Gina A. Besmonte (Gina); (4) Corazon D. Dasig (Corazon); and (5) PO2 Jogene Hernandez (PO2 Hernandez).

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[3] *Id*. at 16.

[4] Records, pp. 1-2, Information.

[5] *Id*. at 1.

[6] Also referred to as Mariñas in some parts.

According to the testimony of the companions of the victim, at about 6:30 p.m. of May 28, 2014, Michael, Gina, Corazon, and the victim, Vivien Yap-De Castro (Vivien), were walking along Ilang-Ilang Street towards IBP Road when a black motorcycle of an unknown plate number with two persons onboard stopped beside them. The back rider shouted "*ate!*", pointed a gun towards Vivien, and fired two (2) successive shots immediately killing the victim.[7] The witnesses alleged that they saw the face of the back rider as he was not wearing any helmet.[8] After about one (1) minute from the time Vivien was shot, the tandem proceeded to Litex Street. Ramon was later identified as the back rider in Camp Karingal and in court.[9]

The Medico-Legal Report No. QCA-14-202,[10] issued by Police Chief Inspector Palima MD, and the Autopsy Report[11] dated May 29, 2014, revealed that the victim sustained two (2) gunshot wounds and the one on her head caused her death.[12]

Ramon maintained that on May 28, 2014, at the time Vivien was shot, he was initially in Water Hall, Barangay Payatas B, Quezon City to look for money for his son's school shoes. Thereafter, he went to Montalban because his first wife, Charito Quillo, was confined at Rodriguez Hospital.[13] He also averred that at about 9:30 p.m. on June 3, 2014, there was a commotion between tricycle drivers and teenagers. When he scolded them for being noisy, they turned to him and hit him with a bottle of wine on his right eyebrow. He was then brought to Police Station 6 in Batasan where he saw the persons who mauled him. They accused him of starting the fight. He was brought

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[7] Records, p. 5.

[8] TSN, August 28, 2014, p. 262.

[9] Records, p. 5.

[10] *Id*. at 76.

[11] *Id*. at 77.

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

[13] TSN, October 29, 2014, pp. 359-360.

back to Barangay Payatas B and was instructed by the police officer to file a complaint because he sustained an injury. Instead of filing a complaint, he went to the house of his cousin Jun Bonifacio (Jun) where he slept until about 8:00 a.m. the next day, June 4, 2014, until a barangay mobile arrived at the house of Jun. He was brought to the house of Capt. Guarin who turned him over to Major Marcelo and Monsalve in Camp Karingal. They allegedly forced him to admit that he was "Bunso", hit his head about six (6) times with his elbow, and punched him on his left side.[14]

Ruling of the Regional Trial Court

After trial, the Regional Trial Court (RTC) rendered its judgment on June 29, 2015,[15] the dispositive portion of which reads:

> ***WHEREFORE***, premises considered, this Court finds accused Ramon Quillo y Esmani guilty beyond reasonable doubt of the offense of Murder and hereby sentences him to suffer the penalty of *reclusion perpetua*.
>
> Likewise, said accused is hereby ordered to pay the heirs of the deceased-victim, the following:
>
> 1) The amount of Php75,000.00 as civil indemnity;
> 2) The amount of Php50,000.00 as moral damages;
> 3) The amount of Php30,000.00 as exemplary damages;
> 4) The amount of Php79,000.00 as actual damages.
>
> No pronouncement as to costs.
>
> **SO ORDERED.**[16]

The RTC found that: (1) Vivien was killed on May 28, 2014 by a gunshot wound on her head; (2) Ramon, the back rider of the motorcycle, delivered the fatal shot upon Vivien;

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[14] *Id*. at 337-350.

[15] Penned by Presiding Judge Editha G. Mina-Aguba; CA *rollo*, pp. 18-26.

[16] *Id*. at 26.

(3) Treachery is present as the assault was so sudden and quick as it took Ramon only a brief moment to accomplish his mission on the unsuspecting victim and consummate the crime; and (4) the present case is neither parricide nor infanticide.[17]

On appeal,[18] Ramon impugned the findings of the trial court and insisted that the trial court gravely erred: (a) in finding him guilty of murder despite the prosecution witnesses' failure to positively identify him as the perpetrator; (b) in convicting him on the basis of insufficient circumstantial evidence; and (c) assuming arguendo that he could be held liable for killing Vivien, in finding that treachery existed.[19] He maintained that he had never seen Vivien and that, at the time she was killed, he was in Montalban because his first wife was at the hospital.[20]

Ruling of the CA

In a Decision[21] dated August 30, 2016, the CA upheld Ramon's conviction but modified the monetary award. The CA imposed the legal interest rate of six percent (6%) *per annum* from the date of finality of the judgment until fully paid on the total awarded damages.[22] In affirming Ramon's conviction, the CA found that the evidence of the prosecution sufficiently established Ramon's culpability in the crime charged and, thus, outweighs his mere denial. The qualifying circumstance of treachery was supported by the fact that at the time the incident happened, Vivien and her friends were merely walking along Ilang-Ilang Street, totally unaware and unsuspecting of the forthcoming violence to be committed on the victim's person by Ramon who was armed with a gun.[23]

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[17] *Id*. at 22-25.

[18] *Id*. at 49-62.

[19] *Id*. at 49.

[20] TSN, October 29, 2014, pp. 359-360.

[21] *Rollo*, pp. 2-17.

[22] *Id*. at 16.

[23] *Id*.

On September 15, 2016, Ramon filed a Notice of Appeal.[24] The Court notified the parties to file their supplemental briefs.[25] However, Ramon opted to adopt his Appellant's Brief as his supplemental brief. For its part, the Office of the Solicitor General manifested that it will not file a supplemental brief considering that all relevant factual and legal issues and arguments had been adequately discussed in its Appellee's Brief.

Issues

The issues to be resolved in this case are as follows:

1. Whether the prosecution witnesses positively identified Ramon as the assailant; and
2. Whether treachery was present in the killing of Vivien to qualify the crime as murder.

Ruling of the Court

The lower courts committed reversible error in ruling that the positive identification of Ramon by the prosecution witnesses established his guilt beyond reasonable doubt. In *People v. Teehankee, Jr.*,[26] the Court explained the concept of out-of-court identification and the factors to consider in determining its admissibility and reliability, thus:

> Out-of-court identification is conducted by the police in various ways. It is done thru **show-ups** where the suspect alone is brought face to face with the witness for identification. It is done thru **mug shots** where photographs are shown to the witness to identify the suspect. It is also done thru **line-ups** where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of **out-of-court** identification contaminates the integrity of **in-court** identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the

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[24] *Id*. at 18.

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

[26] 319 Phil. 128 (1995).

admissibility of and relying on out-of-court identification of suspects, courts have adopted the **totality of circumstances test** where they consider the following factors, *viz*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.[27] (Citation omitted and emphasis in the original)

In this case, the identification was done through a police line-up. Applying the totality of circumstances test, We find that the out-of-court identification made by Michael, Gina, and Corazon is unreliable and cannot be made the basis for Ramon's conviction. A comprehensive analysis of their testimonies reveals that such are dubious and lack probative weight.

During Gina's redirect examination, she testified that she identified the assailant based on his height and his complexion.[28] When prodded further about her answer during re-cross examination, the physical impossibility of assessing the height of the assailant, taking into account his position when the crime was committed, was highlighted in the following exchange between the witness and Atty. Estoesta, counsel *de officio* of Ramon:

Q Was this backrider still in the motorcycle?
A He is in the motorcycle, ma'am.

Q So he was actually sitting down on the same motorcycle with the driver of the motorcycle?
A **Yes, ma'am.**

Q And you were able to tell the height and the complexion while the alleged gunman was sitting down, is that what you are saying from the start? **You are able to identify or described [sic] a gunman of his height while sitting down?**
A **Yes, ma'am.**[29] [Emphasis supplied]

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[27] *Id*. at 180.

[28] TSN, August 20, 2014, p. 249.

[29] *Id*. at 250.

Likewise, when asked whether she was able to see the face of the back rider, Gina categorically admitted that:

A ***Naaninag ko lang po siya kasi nakafocus po ang aking paningin sa baril.***
Q Did you notice the get up or the attire of the backrider when [sic] shot Vivien?

A **No. sir.**[30]

x x x x x x x x x

Q And am I correct, Madam Witness, when you mentioned that you only saw a shadow of the gunman? So, am I correct that **you did not actually saw[sic] his face but only a shadow**?
A **Yes, ma'am.**[31] [Emphasis supplied]

Considering Gina's quoted statements above, We cannot rely on her identification of the assailant. She acknowledged seeing only the shadow of the assailant. She could not have known the height of the assailant as the latter was sitting the whole time as the back rider of a running motorcycle. Hence, her identification of Ramon during the line-up and in court cannot be given credence.

Michael's testimony likewise failed to corroborate Gina's statements. It was only after Vivien was shot that he allegedly saw the assailant because he was walking ahead of her during the incident.[32] He described the assailant whom he claims was about two (2) meters away from him, and stopped in front of him for about one (1) minute after shooting Vivien, as follows:

Q By the way, let me go back at [sic] the time that you saw the face of this back rider, what else did you notice from the back rider when you first saw him?
A "Noong una ko po siya nakita, hindi gaanong katangkaran" (interrupted)

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[30] *Id*. at 233.

[31] *Id*. at 246-247.

[32] TSN, August 14, 2014, p. 175.

PROS. DEL ROSARIO: Come again? What... okay, just proceed.

A "Hindi katangkaran, yung kulay, di naman gaanong maputi, fair complexion lang po siya, tapos medyo lubog yung..." (interrupted)

Q Aside from the physical appearance, what else did you notice from him if any?

A "Yun lang po, yung pananamit niya, yung nakawhite t-shirt siya, yun lang po yung physical niya, color niya."[33]

The statements of Michael quoted above lead this Court to question how he was able to give an accurate description for the composite illustration when he only recalled the rider's skin complexion, height, and the color of the shirt he was wearing. These are general descriptions that fail to provide a definitive account of the physical appearance of the accused-assailant sufficient to convince the Court that Ramon is the assailant.

In addition, it is worthy to note that Michael gave his description for the composite illustration only on June 2, 2014 or approximately five (5) days after the shooting incident.[34] Prior to said date, Michael, Gina and Corazon did not give any statement to the police regarding the identity of the assailant. Considering his testimony on the appearance of the assailant, We find Michael's description of the assailant, given during the trial and the composite illustration prepared through his assistance, doubtful.

Gina and Michael maintained that the assailant stayed at the scene of the crime for approximately one (1) to two (2) minutes after Vivien was shot before proceeding to Litex Road[35] which allowed them to remember his face, and, later on, identify him. However, the Court finds this alleged conduct of the assailant contrary to ordinary human experience. The instinct of any person under the same condition as the assailant is not to be

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[33] *Id*. at 177-178.

[34] Records, p. 90.

[35] TSN, August 14, 2014, p. 189; TSN, August 20, 2014, pp. 229-230.

recognized. If Ramon really shot Vivien, he would have immediately fled the scene of the crime in order to prevent being identified and accosted by the authorities. It is illogical for him to stay for a minute just to watch the victim die while there were many bystanders who could recognize him. It is expected that the riding-in-tandem would immediately get away and not linger for a minute or so just to be susceptible to identification by the bystanders. Assuming *arguendo* that the assailant stayed for another minute after shooting Vivien, that period would have been sufficient for them to recall the plate number of the motorcycle, if there was any, along with distinguishing facial features of the assailant to enable them to accurately recall his identity. We find the prosecution witnesses' story unbelievable and a mere convenient excuse to conceal the fact that they did not see the face of the assailant at the time of the incident and that they had no knowledge of the identity of the true assailant.

We also point out that, unlike Gina and Michael, Corazon admitted that the motorcycle only stopped for "seconds" before the riders fled from the scene of the crime.[36] Corazon's admission negates Michael's and Gina's story and makes their testimonies even more doubtful. Their respective narrations of the incident fail to create a coherent account of the incident on May 28, 2014 because they are inconsistent with each other on substantial matters and contrary to ordinary human experience.

The natural reaction of victims of criminal violence is to strive to see the appearance of their assailants and observe the manner the crime was committed. As the Court held in *People v. Esoy*:[37]

> It is known that the most natural reaction of a witness to a crime is to strive to look at the appearance of the perpetrator and to observe the manner in which the offense is perpetrated. Most often the face of the assailant and body movements thereof, create a lasting

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[36] TSN, August 28, 2014, p. 270.

[37] 631 Phil. 547 (2010).

impression which cannot be easily erased from a witness's memory. Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, eyewitnesses can remember with a high degree of reliability the identity of criminals at any given time.[38] (Citations omitted)

Due to 1) the unusual situation that Michael, Gina and Corazon just witnessed, 2) the brief period they allegedly saw the assailant's face,[39] and 3) their position relative to where the assailant was, We find it difficult to believe that they were able to accurately identify the assailant. We cannot disregard the possibility that the prosecution witnesses committed an error in identifying the assailant. The interim period of about one (1) week from the time of the incident and the time they gave their sworn statement to the authorities and identified Ramon from the police line-up could have affected their ability to recall the assailant's identity. The prosecution witnesses did not testify about any distinguishing mark nor significant feature of Ramon's physical appearance, other than his height and skin complexion, that they relied on in recognizing the assailant during the police line-up and trial. They also admitted that they have never met nor seen the assailant prior to the incident[40] which compels the Court to doubt the accuracy of their recollection. To Our mind, these factors, when taken as a whole, diminish the credibility of the witnesses and raise doubt on the truthfulness of their testimonies and their identification of Ramon as the assailant.

We have settled that although the defense of alibi is inherently weak, the prosecution is not released from its burden of establishing the guilt of the accused beyond reasonable doubt. It is necessary to first establish beyond question the credibility of the eyewitness as to the identification of the accused before a court can apply the rule that positive identification prevails over alibi.[41] The serious and inexplicable discrepancies and

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[38] *Id*. at 555-556.

[39] TSN, August 20, 2014, p. 251.

[40] TSN, August 28, 2014, p. 290.

[41] *People v. Maguing*, 452 Phil. 1026, 1044 (2003).

inconsistencies in the testimonies of the prosecution witnesses hardly lend credence to their supposed positive testimony and casts serious doubt on the credibility of their charge. Having failed to indubitably prove the identity of Ramon as the assailant, We cannot sustain Ramon's conviction.

In view of these findings, the Court no longer deems it necessary to discuss the other issue raised by Ramon.

WHEREFORE, the Decision dated August 30, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07692 is **REVERSED** and **SET ASIDE**. Accused-appellant Ramon Quillo *y* Esmani is **ACQUITTED** on reasonable doubt and is ordered to immediately be released unless he is being held for some other valid or lawful cause. The Director of Prisons is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 233781. July 8, 2019]

DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE), *petitioner, vs.* **KENTEX MANUFACTURING CORPORATION and ONG KING GUAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE); DEPARTMENT ORDER NO. 131-13 SERIES OF 2013; FAILURE TO APPEAL THE COMPLIANCE ORDER OF THE DOLE-NCR TO THE

SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL RENDER SUCH ORDER FINAL AND EXECUTORY AND CAN NO LONGER BE ALTERED OR MODIFIED; CASE AT BAR.— Both the DOLE-NCR and the CA correctly ruled that the June 26, 2015 Order had already become final and executory in view of the failure of respondents Kentex and Ong to appeal therefrom to the Secretary of Labor. Notice ought to be taken of the fact that, at the time the DOLE-NCR rendered its ruling, Department Order No. 131-13 Series of 2013 was the applicable rule of procedure. The pertinent provision states: **Rule 11, Section 1. Appeal.** – The Compliance Order may be appealed to the Office of the Secretary of Labor and Employment by filing a Memorandum of Appeal, furnishing the other party with a copy of the same, within ten (10) days from receipt thereof. No further motion for extension of time shall be entertained. A mere notice of appeal shall not stop the running of the period within which to file an appeal. Here, instead of filing an appeal with the DOLE Secretary, Ong moved for a reconsideration of the subject Order; needless to say, this did not halt or stop the running of the period to elevate the matter to the DOLE Secretary. Indeed, the DOLE-NCR took no action at all on Ong's motion for reconsideration; in fact, it categorically informed Ong that his resort to the filing of a motion for reconsideration was procedurally infirm. The June 26, 2015 Order having become final, it could no longer be altered or modified by discharging or releasing Ong from his accountability.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; THE ESSENCE OF DUE PROCESS IS TO BE HEARD, AND AS APPLIED TO ADMINISTRATIVE PROCEEDINGS THIS MEANS A FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN ONE'S SIDE, OR AN OPPORTUNITY TO SEEK A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF; PRESENT IN CASE AT BAR.—**Anent respondents' allegation regarding the DOLE Secretary's partiality, this Court agrees with the CA, that — x x x True, litigation is not a game of technicalities. It is equally true, however, that every case must be presented in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. The failure, therefore, of petitioners to comply with the settled procedural rules justifies the dismissal of the present petition. Neither was there merit in respondents'

claim that they had been denied or deprived of due process. The facts clearly disclose that they had substantially participated in the proceedings before the DOLE-NCR from the mandatory conference up to the filing of a position paper where their side was sufficiently heard. It is axiomatic that "[t]he observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of."

3. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A DECISION THAT HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.—**Thus, it is self-evident that the CA committed serious error when it ordered the discharge or release of Ong from the obligations of Kentex. The reason is elemental in its simplicity: contrary to settled, unrelenting jurisprudence, it unconsciously and egregiously sought to alter and modify, as indeed it altered and modified, an already final and executory verdict. We have already declared in *Mocorro, Jr. v. Ramirez* that: x x x A definitive final judgment, however erroneous, is no longer subject to change or revision. A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. x x x Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred. The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments. x x x In the absence of any showing that the CA's modification or alteration of the subject Order falls within the exceptions to the rule on the immutability of final judgments, the DOLE-NCR's June 26, 2015 Order must be upheld and respected.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Puno & Associates Law Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Petitioner Department of Labor and Employment (DOLE) filed this Rule 45 Petition[1] assailing the March 27, 2017 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 141606 discharging respondent Ong King Guan (Ong), a corporate officer of Kentex Manufacturing Corporation (Kentex), from being personally and solidarily liable with Kentex for the monetary awards specified in the June 26, 2015 Order[3] rendered by the DOLE-National Capital Region (DOLE-NCR) in NCROO-TSSD-1505-OSHI-001.[4]

The Facts

Records show that, on May 13, 2015, a fire broke out in the factory located in Valenzuela City owned by Kentex. The fire claimed 72 lives and injured a number of workers. As part of its standard procedures, personnel of the DOLE Caloocan, Malabon, Navotas and Valenzuela (DOLE-CAMANAVA) Field Office went to Kentex's premises.[5] For its part, the DOLE-

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[1] *Rollo*, pp. 10-27.

[2] *Id*. at 30-50: penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Magdangal M. De Leon and Carmelita Salandanan Manahan.

[3] *Id*. at 62-102; penned by Regional Director Alex V. Avila.

[4] In the Matter of the General Labor Standards and Occupational Safety and Health Investigation at Kentex Manufacturing Corporation located at No. 6159 Tatalon Street, Brgy. Ugong, Mapulang Lupa, Valenzuela City.

[5] While they were not able to interview Kentex representatives and workers, the team noted the following:

NCR also assessed[6] Kentex's compliance with the occupational health and safety standards.

In the course of the investigation, it was discovered that Kentex had contracted with CJC Manpower Services (CJC) for the deployment of workers. The DOLE-NCR directed Kentex and CJC to attend the mandatory conference set on May 18 and 20, 2015 at the DOLE-NCR Office in Malate, Manila. Notably, Kentex, its Chairman and Chief Executive Officer Beato Ang, and the corporation's Chief Finance Officer Ong, were made parties to this case before the DOLE-NCR.

In the meantime, on May 15, 2015, the DOLE Regional Office No. III (DOLE-RO III) conducted its own Joint Assessment[7] of CJC. The DOLE-RO III discovered that CJC, which deployed workers to Kentex, was an unregistered private recruitment and placement agency. Moreover, it noted that CJC was non-compliant with the occupational health and safety standards as well as with labor standards, such as underpayment of wages and nonpayment of statutory benefits.[8] As a result of these

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1) two plant ingresses were available; 2) the foul smell of burnt rubber materials was still present in the surrounding area, which was still cordoned by the police; 3) the whole plant structure appeared as a warehouse outside, where vents are only visible on the walls at the upper section of the structure, which was considered to be the second floor of the whole facility; 4) grilled windows were at the second floor; and 5) the ground floor where the administrative office was once located was also destroyed. *Rollo*, pp. 31-32.

[6] No. NCR00-TSSD-1505-OSHI-001.

[7] Case No. R003-JA-2015-05-002-6; *id*. at 32.

[8] The following deficiencies are as follows: On general labor standards: 1) Underpayment of minimum wage under Wage Order No. NCR-18 and Wage Order No. NCR-19 from date of employment to present; 2) Non-payment of COLA under Wage Order No. NCR-18 and Wage Order No. NCR-19; 3) Non-payment of 13th month pay for the year 2014; 4) Non-payment of holiday pay and special holiday premium; 5) Illegal deduction of cash bond (Php100.00 per week); 6) Non-membership of workers and therefore non-remittance of premiums to SSS, PhilHealth, and PAGIBIG Fund despite deductions on pay; 7) CJC Manpower Services is not registered as contractor/subcontractor under Department Order (D.O.) No. 18-A in Region III; 8) There is no written service agreement between KMC and

findings, the DOLE- RO III issued a June 8, 2015 Compliance Order[9] which effectively declared CJC as a labor-only contractor with Kentex as its principal.[10]

Meanwhile, during the mandatory conference set by the DOLE-NCR, CJC's representatives admitted that there was no service contract between CJC and Kentex; that CJC had deployed 99 workers at the Kentex factory on the day of the unfortunate incident; that there were no employment contracts between CJC and the workers; that a CJC representative was sent once a week to Kentex only to check on the workers' daily time records; that Kentex remitted to CJC the wage of Php230.00/day for each of the deployed workers from which amount CJC deducted administrative costs and other statutory contributions, leaving each worker a mere wage of Php202.50 a day.

Kentex and its corporate officers, through counsel, refuted CJC's claims. They alleged that CJC's workers were originally engaged by Panday Management and Labor Consultancy which CJC later absorbed; and that the workers' wages ranged from Php250.00 to Php350.00/day on top of CJC's wage of, more or less, Php202/day. They contended that while the corporate/ business and employment records had all been gutted by fire, Kentex nevertheless complied with the labor standards particularly on the minimum wage requirement and with the occupational health and safety standards, as evidenced by a Certificate of Compliance (COC) signed by the DOLE-NCR Regional Director Alex Avila (Avila).

CJC Manpower Services; and 9) There is no employment contract between CJC Manpower Services and workers deployed at Kentex. On occupational safety and health standards: 1) Non-registration under Rule 1020; 2) Non-submission of annual work accident/illness exposure data report; 3) Non-submission of annual medical report; 4) No company policy and program on anti-sexual harassment, drug-free workplace, tuberculosis, hepatitis B, and HIV-AIDS; *id* at 32-33.

[9] *Rollo*, pp. 54-56.

[10] Both Kentex and CJC were ordered to pay jointly and severally the total monetary deficiencies of Php8,389,655.70 to 99 workers; *id*. at 56.

The DOLE-NCR's Orders

In a June 26, 2015 Order,[11] the DOLE-NCR rejected the aforementioned arguments of Kentex. It declared that Kentex could not invoke the COC because this only attested to the findings of the compliance officer at the time of the assessment/inspection, even as Kentex was duty-bound to observe continuing compliance with the labor standards as well as the occupational health and safety standards. Like the June 8, 2015 Compliance Order of the DOLE-RO III, the DOLE-NCR also found that CJC was a mere labor-only contractor considering that it was unregistered with the DOLE Regional Office where it operated.[12] The DOLE-NCR likewise found that the workers were underpaid,[13] and computed the monetary claims due them. It concluded, thus —

WHEREFORE, premises considered, Kentex Manufacturing Corporation and/or Beato C. Ang and/or Ong King Guan is/are hereby ordered to pay within ten (10) days from receipt hereof, Louie Andaya and 56 other similarly situated employees an aggregate amount of One Million Four Hundred Forty Thousand Six Hundred Forty-One

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[11] *Rollo*, pp. 62-102.

[12] In violation of Section 14 of Department Order No. 18-A Series of 2011:

Section 14. Mandatory Registration and Registry of Legitimate Contractors. Consistent with the authority of the Secretary of Labor and Employment to restrict or prohibit the contracting out of labor to protect the rights of workers, it shall be mandatory for all persons or entities, including cooperatives, acting as contractors to register with the Regional Office of the Department of Labor and Employment (DOLE) where it principally operates.

Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting.

Accordingly, the registration system governing contracting arrangements and implemented by the Regional Offices of the DOLE is hereby established, with the Bureau of Working Conditions (BWC) as the central registry.

[13] The computations were for the underpayment of basic wages, premium pay on rest days, COLA, wages on holidays, overtime pay, night shift differential, 13th month, and the unauthorized deduction of the cash bond.

Pesos and Thirty-Nine Centavos (₱1,440,641.39). Failure to pay said workers within ten (10) days from receipt hereof shall cause the imposition of the penalty of double indemnity pursuant to Republic Act No. 8188 otherwise known as 'An Act Increasing the Penalty and Imposing Double Indemnity for Violation of the Prescribed Increase or Adjustment in the Wage Rates.'

SO ORDERED.[14]

On July 3, 2015, only Ong moved for reconsideration of the foregoing order.[15] However, in a letter dated July 7, 2015,[16] DOLE-NCR Regional Director Avila explained that Ong's motion for reconsideration was not the proper remedy. Instead, an appeal to the DOLE Secretary should have been made within 10 days from receipt of the Order pursuant to Section 1, Rule 11 of Department Order No. 131, Series of 2013. Moreover, since Ong received the June 26, 2015 Order on the same day, he had only until July 6, 2015 within which to appeal to the DOLE Secretary. However, Ong never did; thus, the Compliance Order had attained finality.

After this, Kentex and Ong filed with the CA a Rule 43 Petition[17] assailing the (1) June 8, 2015 Compliance Order; (2) the June 26, 2015 Order; and (3) the July 7, 2015 letter of the DOLE-NCR Regional Director. Among the errors Kentex and Ong assigned was the DOLE-NCR's finding that Ong was solidarily liable with Kentex for the monetary awards due the workers.

Ruling of the Court of Appeals

Although the CA ruled on the merits of the case and upheld the assailed Orders and letter of the DOLE-NCR Regional Director,[18] it observed at the outset that Kentex and Ong resorted

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[14] *Rollo*, p. 102.

[15] *Id*. at 103-113.

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

[17] *Id*. at 116-136.

[18] *Id*. at 30-50.

to the wrong remedy in filing a Rule 43 Petition, when the proper remedy should have been a Rule 65 *certiorari* petition from the decisions/resolutions of the DOLE Secretary. In fact, nothing from the assailed documents indicative of acts of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the DOLE Secretary was set forth or amply demonstrated. And given the fact that time had irretrievably lapsed without any appeal being availed of by Kentex and Ong as prescribed by the procedural rules on labor laws,[19] the CA ruled that the assailed orders had become final and executory.

Anent the particular issue involving Ong, the CA took the view that, as a company officer, he could not be personally held liable for the debts of Kentex without a showing of bad faith or wrongdoing on his part for the corporation's unlawful act.[20] The CA opined that nothing from the DOLE-NCR's June 26, 2015 Order discussed any act of Ong that showed his involvement in the wrongdoing of Kentex. Thus, the dispositive portion of the CA judgment stated:

> FOR THESE REASONS, the Order, dated June 26, 2015, of the DOLE-National Capital Region in Case No. NCR00-TSSD-1505-OSHI-001, is AFFIRMED with the MODIFICATION that petitioner Ong King Guan is held not liable for the monetary awards specified in the Order. The Order, dated June 8, 2015 of the DOLE-Regional Office No. III, San Fernando City, Pampanga, in Case No. R003-JA-2015-05-002-6 and the Order/Letter, dated July 7, 2015, of DOLE-NCR Regional Director Alex V. Avila, are AFFIRMED.

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[19] N.B. The CA cited Rule XV, Section 1 of D.O. No. 131-B, Series of 2016, *i.e.*, the "Revised Rules on Labor Laws Compliance System," which echoes the same provision cited by the DOLE Regional Director in his July 7, 2015 letter that cited Rule II, Section 1 of D.O. 131-13, Series of 2013.

[20] Citing Section 31 of the Corporation Code Liability of Directors, Trustees or Officers. – Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation x x x shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

SO ORDERED.[21]

Petitioner filed a Motion for Partial Reconsideration[22] to set aside the release or discharge of Ong from liability to pay the monetary awards. But the CA denied the motion in its August 22, 2017 Resolution.[23] Hence, this Petition.

The Arguments

Petitioner contends that the CA erred in releasing or discharging Ong from liability. It argues that, since the June 26, 2015 DOLE-NCR Order had already become final and executory, there being no appeal made or perfected from said order to the DOLE Secretary, the CA could no longer alter the subject Order.

Respondents Kentex and Ong counter that the CA Decision correctly released or discharged Ong from monetary liability because a corporate officer has a juridical personality entirely separate and distinct from the corporation. They moreover claim that the DOLE-NCR Order was a void judgment because they were deprived of due process; they assert that they could not expect a fair decision if they appealed because the then DOLE Secretary[24] had previously announced that cases would be filed against Kentex, an announcement that was clearly designed for media consumption and to gain publicity mileage.

Our Ruling

We agree with petitioner.

Both the DOLE-NCR and the CA correctly ruled that the June 26, 2015 Order had already become final and executory in view of the failure of respondents Kentex and Ong to appeal therefrom to the Secretary of Labor. Notice ought to be taken

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[21] *Rollo*, pp. 49-50.

[22] *Id*. at 137-141.

[23] *Id*. at 52-53.

[24] The then DOLE Secretary was Rosalinda Baldoz.

of the fact that, at the time the DOLE-NCR rendered its ruling, Department Order No. 131-13 Series of 2013[25] was the applicable rule of procedure. The pertinent provision states:

> **Rule 11, Section 1. Appeal.** – The Compliance Order may be appealed to the Office of the Secretary of Labor and Employment by filing a Memorandum of Appeal, furnishing the other party with a copy of the same, within ten (10) days from receipt thereof. No further motion for extension of time shall be entertained.
>
> A mere notice of appeal shall not stop the running of the period within which to file an appeal.

Here, instead of filing an appeal with the DOLE Secretary, Ong moved for a reconsideration of the subject Order; needless to say, this did not halt or stop the running of the period to elevate the matter to the DOLE Secretary. Indeed, the DOLE-NCR took no action at all on Ong's motion for reconsideration; in fact, it categorically informed Ong that his resort to the filing of a motion for reconsideration was procedurally infirm. The June 26, 2015 Order having become final, it could no longer be altered or modified by discharging or releasing Ong from his accountability.

Anent respondents' allegation regarding the DOLE Secretary's partiality, this Court agrees with the CA, that —

> [Kentex and Ong King Guan's] contention that the Secretary has already prejudged their liability in her pronouncements before the media, such that an appeal to her would be an exercise in futility, is untenable. We have the rules. And, as heretofore stated, failure to conform to the rules regarding appeal will render the judgment final and executory. True, litigation is not a game of technicalities. It is equally true, however, that every case must be presented in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. The failure, therefore, of petitioners to comply with the settled procedural rules justifies the dismissal of the present petition.[26]

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[25] Entitled "Rules on Labor Laws Compliance System."

[26] *Rollo*, p. 44.

Neither was there merit in respondents' claim that they had been denied or deprived of due process. The facts clearly disclose that they had substantially participated in the proceedings before the DOLE-NCR from the mandatory conference up to the filing of a position paper where their side was sufficiently heard. It is axiomatic that "[t]he observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of."[27]

Thus, it is self-evident that the CA committed serious error when it ordered the discharge or release of Ong from the obligations of Kentex. The reason is elemental in its simplicity: contrary to settled, unrelenting jurisprudence, it unconsciously and egregiously sought to alter and modify, as indeed it altered and modified, an already final and executory verdict. We have already declared in *Mocorro, Jr. v. Ramirez*[28] that:

> x x x A definitive final judgment, however erroneous, is no longer subject to change or revision.
>
> A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write *finis* to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must

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[27] *Vivo v. Philippine Amusement and Gaming Corporation*, 721 Phil. 34, 39 (2013).

[28] 582 Phil. 357 (2008).

immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.

The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments. x x x[29]

In the absence of any showing that the CA's modification or alteration of the subject Order falls within the exceptions to the rule on the immutability of final judgments, the DOLE-NCR's June 26, 2015 Order must be upheld and respected.

WHEREFORE, the Petition is hereby **GRANTED**. The Court of Appeals' Decision dated March 27, 2017 insofar as it holds respondent Ong King Guan not liable for the monetary awards specified in the June 26, 2015 Order is hereby **REVERSED and SET ASIDE**. The June 26, 2015 Order of the Department of Labor and Employment, National Capital Region, finding respondent Ong King Guan solidarily liable to pay the employees named in the Order the amount of Php1,440,641.39 is hereby **REINSTATED**.

Costs against respondents.

SO ORDERED.

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

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[29] *Id*. at 366-367.

SECOND DIVISION

[G.R. No. 236496. July 8, 2019]

F.F. CRUZ & CO., INC., *petitioner, vs.* **JOSE B. GALANDEZ, DOMINGO I. SAJUELA, and MARLON D. NAMOC,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; TO JUSTIFY THE GRANT OF THE EXTRAORDINARY REMEDY OF *CERTIORARI*, PETITIONERS MUST SATISFACTORILY SHOW THAT THE COURT OR QUASI-JUDICIAL AUTHORITY GRAVELY ABUSED THE DISCRETION CONFERRED UPON IT; IN LABOR DISPUTES GRAVE ABUSE OF DISCRETION MAY BE ASCRIBED TO THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) WHEN, ITS FINDINGS AND THE CONCLUSIONS REACHED THEREBY ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.— "To justify the grant of the extraordinary remedy of *certiorari*, petitioners must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered 'grave,' discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law." "In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and the conclusions reached thereby are not supported by substantial evidence. This requirement of substantial evidence is clearly expressed in Section 5, Rule 133 of the Rules of Court which provides that '[i]n cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.'"

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; QUITCLAIM AND RELEASE; WHILE QUITCLAIMS ARE GENERALLY INTENDED FOR THE PURPOSE OF PREVENTING OR PUTTNG AN END TO A LAWSUIT, JURISPRUDENCE NONETHELESS HOLDS THAT THE PARTIES ARE NOT PRECLUDED FROM ENTERING INTO COMPROMISE EVEN IF A FINAL JUDGMENT HAD ALREADY BEEN RENDERED.— At the outset, quitclaims are contracts in the nature of a *compromise* where parties make concessions, a lawful device to *avoid litigation*. It is a valid and binding agreement between the parties, provided that it constitutes a credible and *reasonable settlement* and the one accomplishing it has done so voluntarily and with a full understanding of its import. In so doing, the parties adjust their difficulties in the manner they have agreed upon, disregarding the possible gain in litigation and keeping in mind that such gain is balanced by the danger of losing. While quitclaims are generally intended for the purpose of preventing or putting an end to a lawsuit, jurisprudence nonetheless holds that the parties are not precluded from entering into a compromise even if a final judgment had already been rendered, as in this case. As pointed out in *Magbanua v. Uy*, "[t]here is no justification to disallow a compromise agreement, solely because it was entered into after final judgment. The validity of the agreement is determined by compliance with the requisites and principles of contracts, not by when it was entered into."

3. ID.; ID.; ID.; FOR A DEED OF RELEASE, WAIVER, AND QUITCLAIM TO BE VALID, REQUIREMENTS; ENUMERATED.— For a deed of release, waiver, and quitclaim to be valid, it must be shown that: (*a*) there was no fraud or deceit on the part, of any parties; (*b*) that the consideration for the quitclaim is credible and reasonable; and (*c*) 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. The burden rests on the employer to prove that the quitclaim constitutes a credible and reasonable settlement of what an employee is entitled to recover, and that the one accomplishing it has done so voluntarily and with a full understanding of its import.

APPEARANCES OF COUNSEL

Rodolfo P. Orticio for petitioner.

Arguedo Pineda & Associates for respondents Jose Galandez and Marlon D. Namoc.

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 8, 2017 and the Resolution[3] dated January 4, 2018 of the Court of Appeals (CA) in CA-G.R. SP. No. 08468 which reversed and set aside the Order[4] dated April 30, 2013 and the Resolution[5] dated March 31, 2014 of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-03-000204-2012 declaring the case closed and terminated, and instead, ordered the remand of the case to the NLRC for re-computation of the award of backwages until respondents Jose B. Galandez (Galandez), Domingo I. Sajuela (Sajuela), and Marlon D. Namoc's (Namoc; collectively, respondents) reinstatement, or if no longer viable, to include payment of separation pay.

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[1] *Rollo*, pp. 11-50.

[2] *Id*. at 290-307. Penned by Associate Justice Geraldine C. Fiel-Macaraig with Associate Justices Edgardo L. Delos Santos and Edward B. Contreras, concurring.

[3] *Id*. at 335-338.

[4] *Id*. at 142-143. Signed by Commissioner Julie C. Rendoque with Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Jose G. Gutierrez, concurring.

[5] *Id*. at 159-161.

The Facts

Galandez, Sajuela and Namoc were employed as warehouseman, purchaser, and welder,[6] respectively, by petitioner F.F. Cruz & Co., Inc. (petitioner), a company engaged in the construction business.[7] Sometime in April and May 2011, respondents were issued notices of termination[8] on the ground of retirement. Believing that they were illegally dismissed since they have not yet reached the compulsory retirement age, and instead, were compelled to retire without their consent, respondents initially filed a complaint[9] before the Department of Labor and Employment (DOLE). During the conciliation meetings, petitioner then agreed to pay respondents their separation pay of one (1) month for every year of service by way of compromise.[10] However, as petitioner failed to honor its undertaking, the DOLE referred[11] the matter to the NLRC, for which complaints[12] for illegal dismissal with money claims were filed by respondents against petitioner, its President Felipe Cruz, Vice President Eric Cruz, and Human Resources Manager Alberto Alvarez.

For its part, petitioner, together with the impleaded officers, denied that respondents were illegally dismissed. It claimed that respondents were merely notified of their retirement, which was a form of retrenchment to prevent losses, and that the offer to pay their retirement equivalent to one-half (½) month pay was just, legal, and proper given that respondents and their families were permitted to stay in a bunk house provided by

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[6] In the CA Decision, respondents were employed as head crew, attendant, and cashier, respectively (see *id*. at 291).

[7] See *id*. at 13, 106, 184, and 291.

[8] See Notices of Retirement; *id*. at 55-57.

[9] See *id*. at 59.

[10] See Minutes dated June 15, 2011; *id*. at 60.

[11] See Referral dated June 29, 2011; *id*. at 62.

[12] *Id*. at 64-71.

petitioner free of charge during the whole period of their employment.[13]

In a Decision[14] dated December 15, 2011, the Labor Arbiter (LA) ruled in favor of respondents declaring them to have been illegally dismissed, and as such, were **ordered reinstated** to their former positions without loss of seniority rights. Accordingly, petitioner and its officers were ordered to jointly and solidarily pay respondents the total monetary award of ₱179,864.69[15] representing their full backwages reckoned from the time of their dismissal until December 16, 2011, 13th month pay, as well as 10% attorney's fees.[16]

Feeling aggrieved, petitioner appealed[17] to the NLRC, and in a Decision[18] dated July 17, 2012 (NLRC) Decision) affirmed the LA's ruling finding respondents to have been illegally dismissed, and as such, are entitled to **reinstatement with backwages**.[19] In this regard, the NLRC recomputed respondents' backwages and attorney's fees in the total amount of ₱363,047.68[20] **subject to further re-computation until**

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[13] See *id*. at 80.

[14] *Id*. at 104-110. Signed by Labor Arbiter Milagros B. Bunagan-Cabatingan.

[15] See Computation; *id*. at 111-112. Backwages, 13th month pay, and attorney's fees are broken down as follows:

	Backwages		13th month pay			
Galandez	- ₱53,430.00	+	₱3,087.50	= ₱ 54,957.50	(should be ₱56,517.50)	
Sajuela	- ₱53,430.00	+	₱3,087.50	= ₱ 54,957.50	(should be ₱56,517.50)	
Namoc	- ₱46,835.10	+	₱3,643.25	= ₱ 48,103.25	(should be ₱50,478.35)	
			TOTAL: ₱163,513.35			
			Attorney's fees (10%): ₱ 16,351.34			
			GRAND TOTAL: **₱179,864.69**			

[16] See *id*. at 110-112.

[17] See Memorandum of Appeal dated March 15, 2012; *id*. at 115-117.

[18] *Id*. at 183-192. Signed by Commissioner Julie C. Rendoque with Presiding Commissioner Violeta Ortiz-Bantug, concurring.

[19] *Id*. at 191.

[20] The monetary awards as computed by the NLRC (subject to re-computation) were as follows (see *id*. at 189 and 191):

the latter's reinstatement.[21] Petitioner's motion for reconsideration[22] was denied in a Resolution[23] dated September 21, 2012.

Thus, in the letters dated February 1, 2013[24] and March 14, 2013,[25] respondents sought to enforce the afore-mentioned NLRC Decision, **demanding petitioner <u>to reinstate</u> them** and to pay their full backwages which, as of January 17, 2013, was computed at ₱520,061.68. They also proposed to be paid separation pay equivalent to one (1) month pay for every year of service should reinstatement be no longer possible.[26]

On March 25, 2013, petitioner undertook to settle and pay respondents their adjudged monetary award[27] in the total aggregate amount of ₱363,047.68, for which the latter executed a Quitclaim and Release[28] in consideration thereof before a

	Backwages	13th month pay	Attorney's fees	TOTAL
Galandez -	₱108,940.00	₱3,087.50	₱11,202.75	**₱123,230.25**
Sajuela -	₱108,940.00	₱3,087.50	₱11,202.75	**₱123,230.25**
Namoc -	₱102,345.10	₱3,643.25	₱10,598.83	**₱116,587.18**
			GRAND TOTAL:	**₱363,047.68**

[21] *Id*. at 191.

[22] Dated September 10, 2012. *Id*. at 126-127.

[23] *Id*. at 128-131.

[24] *Id*. at 262.

[25] *Id*. at 263.

[26] See *id*. at 262.

[27] See Check Vouchers dated January 25, 2013; *id*. at 137,139, and 141.

[28] Save for the names and amount appearing thereon, the document entitled Quitclaim and Release (see *id*. at 135, 138 and 140) were similarly worded as follows:

QUITCLAIM AND RELEASE

KNOW ALL MEN BY THESE PRESENTS:

THAT I, _____, his/her successors and assigns, for and in consideration of the sum of _____ (₱_____) to his/her in hand paid, the receipts of which is hereby acknowledge, does hereby release and discharged F.F. CRUZ & CO., INC., their successors and assigns, from any and all manner of claims, demand, damages, causes of action or suits

Notary Public. Believing to have settled in full its monetary obligations to respondents, petitioner filed a Manifestation[29] dated April 4, 2013 to the NLRC seeking to declare the case closed and terminated.[30]

In an **Order**[31] **dated April 30, 2013**, the NLRC approved the subject quitclaims, and accordingly, declared the case closed and terminated after finding the amicable settlement between petitioner and respondents to be "*[i]n consideration of the full satisfaction of the award in favor of the complainants as embodied in Our, 17 July 2012 Decision*,"[32] and not contrary to law, morals, and public policy.

Respondents moved for reconsideration[33] averring that: (*a*) they were not assisted by counsel when they executed the

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that he/she may now have, or that might subsequently occur to his/her by reason of any matter or thing whatsoever, and particularly growing out or in any way connected with her employment with F.F. CRUZ & CO. INC.

It is the purpose of this release to forever settle, adjust and discharge all claims of whatsoever kind of nature that the undersigned has or may have against the parties here to mention.

IN WITNESS WHEREOF, I hereby affixed my signature this _____ day of _____, 20___ at _____.

_____
Quitclaimant

WITNESSES:

_____

_____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20 ___ at _____, affiant exhibited to me his/her Community Tax Cert. No. _____ issued at _____ on _____.

[29] *Id*. at 133-134.

[30] *Id*. at 133.

[31] *Id*. at 142-143.

[32] *Id*. at 142.

[33] See Verified Motion for Reconsideration dated May 17, 2013; *id*. at 144-145.

questioned quitclaims; (*b*) they were **defrauded by petitioner into believing that, after signing the same, they would be reinstated to their former positions in accordance with the NLRC Decision**; and (c) they were made to believe that an arrangement for the said settlement had been made and there was no need to consult their lawyer.[34] By way of opposition,[35]petitioner countered that respondents freely, voluntarily, and knowingly executed the subject quitclaims, and that the absence of their counsel during execution did not invalidate the contract. Petitioner further claimed that respondents were advised of the nature and consequences of the quitclaim before signing the same, and denied defrauding them. It contended that by executing said contract, respondents effectively vacated their right to the judgment awards under the NLRC Decision including the reinstatement aspect, and instead agreed to novate petitioner's obligation into a simple monetary obligation which was fully satisfied upon payment of the same.[36]

On March 31, 2014, the NLRC issued a Resolution[37] denying respondents' motion for reconsideration, ruling that the questioned quitclaims were in order having been subscribed and sworn to before a Notary Public, and that they were paid their full monetary judgment award. It held that the acceptance by respondents of the monetary award as full settlement of their claims effectively discharged petitioner from any other claim. It added that the absence of respondents' counsel during the execution of the subject quitclaims did not invalidate the same, and that they were fully aware of what they were giving up in exchange for the full monetary judgment award.[38]

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[34] See *id*. at 144.

[35] See Comment/Opposition dated June 25, 2013; *id*. at 149-153.

[36] See *id*. at 149-152.

[37] *Id*. at 159-161.

[38] See *id*. at 160.

Aggrieved, respondents elevated the matter to the CA via a petition for *certiorari*[39] contending that the NLRC committed grave abuse of discretion when it approved the quitclaim not in accordance with the NLRC rules of procedure and in ruling that the same represented their full monetary judgment award.[40]

The CA Ruling

In a Decision[41] dated February 8, 2017, the CA gave due course to the petition and set aside the NLRC Order dated April 30, 2013 and Resolution dated March 31, 2014.[42] While the CA upheld the validity of the subject quitclaims for failure of respondents to show that the execution thereof was attended by fraud or deceit, it nonetheless ruled that the same did not bar respondents from asserting what was legally due them, particularly, the backwages and attorney's fees reckoned from the NLRC Decision up to respondents' reinstatement.[43] The CA pointed out that the subject quitclaim did not include a waiver of respondents' right to reinstatement or separation pay given that the latter had **repeatedly demanded for their reinstatement after its execution** as mandated under Article 279 [now Article 294][44] of the Labor Code, as amended.[45] It

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[39] Dated June 13, 2014. *Id*. at 162-178.

[40] See *id*. at 170-176.

[41] *Id*. at 290-307.

[42] *Id*. at 306.

[43] See *id*. at 298-304.

[44] Article 294. [279] *Security of Tenure*. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[45] Department Advisory No. 1, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

further explicated that the law does not consider as valid any agreement to receive less compensation than what a worker is entitled to recover, and held that the amount received by respondents was only for the value of their backwages until their supposed reinstatement.[46] Accordingly, the CA ordered a remand of the case to the NLRC for re-computation of respondents' backwages until their reinstatement, or should the same be no longer viable, to include in their award separation pay.[47]

Both parties moved for reconsideration[48] with respondents asserting that the subject quitclaim should have been declared invalid[49] while petitioner maintained that the monetary settlement received by them already considered reinstatement, backwages, and separation pay.[50]

In a Resolution[51] dated January 4, 2018, the CA reversed its stance as to the validity of the subject quitclaims, holding that the consideration thereof was unconscionable given that respondents received far less than what the law required. It pointed out that quitclaims are ineffective to bar claims for the full measure of a worker's legal rights when; (*a*) there is clear proof that the waiver was wangled from an unsuspecting or gullible person; or (*b*) the terms of settlement are unconscionable on their face. Since petitioner failed to establish that the settlement award is credible and reasonable as against what respondents should have received as an illegally dismissed employee, and considering further that the latter have repeatedly demanded for their reinstatement even after the execution of

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[46] See *rollo*, p. 303.

[47] *Id*. at 306.

[48] See petitioner's Motion for Reconsideration dated March 15, 2017 (*id*. at 308-325) and respondents' Most Respectful Motion for Partial Reconsideration dated March 14, 2017 (*id*. at 326-329).

[49] See *id*. at 326-328.

[50] See *id*. at 322-323.

[51] *Id*. at 335-338.

their respective quitclaims, the CA held that the acceptance by respondents of the benefits as consideration of the quitclaim did not amount to a waiver of what were legally due them.[52]

Hence, the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed any reversible error in: (*a*) holding that the questioned Quitclaims and Releases were invalid; and (*b*) ordering the remand of the case to the NLRC for re-computation of respondents' backwages until their actual reinstatement, or to pay separation pay in lieu of reinstatement.

The Court's Ruling

"To justify the grant of the extraordinary remedy of *certiorari*, petitioners must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered 'grave,' discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."[53]

"In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and the conclusions reached thereby are not supported by substantial evidence. This requirement of substantial evidence is clearly expressed in Section 5, Rule 133 of the Rules of Court which provides that '[i]n cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial

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[52] See *id*. at 335-336.

[53] *Quillopa v. Quality Guards Services and Investigation Agency*, 774 Phil. 198, 206 (2015), citing *Omni Hauling Services, Inc. v. Bon*, 742 Phil. 335, 342 (2014).

evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.'"[54]

Guided by the foregoing considerations, the Court finds that the CA correctly granted respondents' *certiorari* petition since the NLRC gravely abused its discretion in ***completely*** discharging petitioner from its obligations under a final and executory judgment in view of the Quitclaim and Release executed by respondents. In particular, as will be explained below, petitioner should not be discharged from its obligation to reinstate respondents since the Quitclaim and Release only settled the backwages aspect of petitioner's judgment debt.

At the outset, quitclaims are contracts in the nature of a *compromise* where parties make concessions, a lawful device to *avoid litigation*.[55] It is a valid and binding agreement between the parties, provided that it constitutes a credible and *reasonable settlement* and the one accomplishing it has done so voluntarily and with a full understanding of its import.[56] In so doing, the parties adjust their difficulties in the manner they have agreed upon, disregarding the possible gain in litigation and keeping in mind that such gain is balanced by the danger of losing.[57] While quitclaims are generally intended for the purpose of preventing or putting an end to a lawsuit, jurisprudence nonetheless holds that the parties are not precluded from entering into a compromise even if a final judgment had already been rendered,[58] as in this case. As pointed out in *Magbanua v. Uy*,[59] "[t]here is no

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[54] *Quillopa v. Quality Guards Services and Investigation Agency*, *id*. at 206-207, citing *Omni Hauling Services, Inc. v. Bon*, *id*. at 343.

[55] *Pilipinas Shell Foundation, Inc. v Fredeluces*, 785 Phil. 409, 442 (2016).

[56] *Pepsi-Cola Products Philippines, Inc. v. Molon*, 704 Phil 120, 142 (2013).

[57] *Cosmos Bottling Corporation v. Nagrama, Jr.*, 571 Phil. 281, 309 (2008).

[58] See *Atty. Agustin v. Cruz-Herrera*, 726 Phil. 533, 544 (2014).

[59] 497 Phil. 511 (2005).

justification to disallow a compromise agreement, solely because it was entered into after final judgment. The validity of the agreement is determined by compliance with the requisites and principles of contracts, not by when it was entered into."[60]

For a deed of release, waiver, and quitclaim to be valid, it must be shown that: (*a*) there was no fraud or deceit on the part of any parties; (*b*) that the consideration for the quitclaim is credible and reasonable; and (*c*) 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.[61] The burden rests on the employer to prove that the quitclaim constitutes a credible and reasonable settlement of what an employee is entitled to recover, and that the one accomplishing it has done so voluntarily and with a full understanding of its import.[62]

As culled from the records, it is not disputed that the **NLRC Decision had already become final and executory**, declaring respondents to have been illegally dismissed, and accordingly, ordered petitioner to: **(*a*) pay respondents their unpaid 13th month pay, backwages in accordance with Article 294 of the Labor Code, and attorney's fees (monetary aspect); and (*b*) reinstate respondents or pay their separation pay should reinstatement be no longer viable (reinstatement aspect)**.[63] It is likewise not denied that respondents immediately sought for the enforcement of the foregoing final and executory NLRC Decision[64] in their letters dated February 1, 2013 and March 14, 2013.

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[60] *Id*. at 522.

[61] See *Universal Robina Sugar Milling Corporation v. Caballeda*, 582 Phil. 118, 135 (2008).

[62] See *Sy v. Neat, Inc.*, G.R. No. 213748, November 27, 2017.

[63] *Rollo*, p. 191.

[64] See *id*. at 262-263.

However, records disclose that petitioner was only able to partly comply with the NLRC Decision by paying respondents Galandez and Sajuela the amount of ₱123,230.25 each, and Namoc the sum of ₱116,587.18, **representing their backwages, 13th month pay and attorney's fees as provisionally computed by the NLRC as of July 17, 2012**.[65] Thereafter, respondents executed a Quitclaim and Release in favor of petitioner acknowledging payment, which pertinently reads:

> THAT I,_____ , his/her successors and assigns, for and in consideration of the sum of_____ (P_____) to his/her in hand paid, the receipts of which is hereby acknowledge, does hereby release and discharged F.F. CRUZ & CO., INC., their successors and assigns, from any and all manner of claims, demand, damages, causes of action or suits that he/she may now have, or that might subsequently occur to his/her by reason of any matter or things whatsoever, and particularly growing out or in any way connected with her employment with F.F. CRUZ & CO. INC.
>
> It is the purpose of this release to forever settle, adjust and discharge all claims of whatsoever kind of nature that the undersigned has or may have against the parties here to mention.

Petitioner insists that the amount received by respondents represent the full settlement of their claims, and that they had agreed to waive not only their right to reinstatement but also to the additional backwages that would have accrued up until the time they are reinstated (additional backwages).[66] To be sure, the latter claim proceeds from the dictum that "for as long as the employer continuously fails to actually implement the reinstatement aspect of the decision x x x, the employer's obligation to the employee for his accrued backwages and other benefits continues to accumulate."[67]

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[65] See Check Vouchers dated January 25, 2013; *id*. at 137, 139, and 141.

[66] See *rollo*, pp. 38-43.

[67] *Castro, Jr. v. Ateneo de Naga University*, 739 Phil. 370, 382 (2014).

The Court disagrees that respondents waived their right to be reinstated, but agrees on the waiver of the additional backwages.

Other than petitioner's bare assertion, there is no showing that respondents intended to freely and voluntarily waive their right to reinstatement under the said quitclaim. **In fact, respondents had consistently averred that the aforementioned quitclaims were executed with the assurance that petitioner would reinstate them as decreed in the NLRC's final judgment.**[68] ***It bears stressing that in determining the intention of parties to a contract, their contemporaneous and subsequent acts shall be principally considered.***[69] For this reason, in *Solgus Corporation v. CA*,[70] the Court ruled that quitclaims and waivers should be carefully examined and strictly scrutinized with regard not only to the words and terms used, but also to the *factual circumstances* under which they have been executed.[71] Thus, as respondents executed the quitclaim in consideration of, among others, petitioner's promise of reinstatement as evinced by their contemporaneous and subsequent acts, then the said contract must be interpreted accordingly.

Notably, this conclusion holds true notwithstanding the absence of any express clause therefor in the Quitclaim and Release. This is because the said document is ambiguous as to whether or not, in fact, the decreed reinstatement has been waived. The phrase "all claims of whatsoever kind of nature" is a general, standard clause in most employee quitclaims that cannot be construed in its strict literal sense in light of this case's peculiarities. In this relation, the Court deems it apt to state that "[t]he interpretation of obscure words or stipulations in a

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[68] See NLRC Records, pp. 169, 237, and 247.

[69] See Article 1371 of the Civil Code.

[70] 543 Phil. 483 (2007).

[71] See *id*. at 495-496.

contract shall not favor the party who caused the obscurity,"[72] as petitioner in this case who prepared the quitclaim form.

On the other hand, with respect to the monetary aspect, records do not show that respondents made the same insistence anent their right to additional backwages. In fact, records fail to disclose that: (*a*) any promise of such nature was made; or (*b*) respondents further demanded any additional monetary amount after they were paid the above-stated sums upon their signing of the Quitclaim and Release. This clearly demonstrates that respondents had voluntarily accepted the said amounts to serve as a complete settlement of the monetary aspect of the NLRC Decision.

Indeed, as the Court discerns, the consideration, therefore, for respondents in acceding to the Quitclaim and Release was to realize the expeditious settlement of petitioner's monetary obligations (13th month pay, backwages, and attorney's fees), without, however, compromising their right to get back their jobs and continue to earn a living in petitioner's employ (reinstatement aspect). To the Court, this is the evident intent of the parties as may be gathered from their contemporaneous and subsequent acts. To hold otherwise — that is, to construe the Quitclaim and Release as a complete discharge of petitioner's obligations to respondents — would not only be illogical (since why would respondents waive their reinstatement if it was both promised to them and already decreed under a final and executory judgment), it would also prevent the labor quitclaim from being a fair and reasonable agreement between the parties as required by law.

In fine, the CA correctly ruled that the NLRC gravely abused its discretion in completely relieving petitioner from all of its obligations (both in its monetary and reinstatement aspects) under the final and executory NLRC Decision. Nevertheless, the Court finds it proper to set aside the CA ruling since it altogether rendered ineffective the Quitclaim and Release duly

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[72] See Article 1377 of the Civil Code.

signed by the parties. Cognizant of their intent as explained-above, the Quitclaim and Release remains valid; however, it should be interpreted as a fair and reasonable settlement between the parties only of the monetary aspect of the NLRC Decision, but not of its reinstatement aspect, which hence, should be implemented as a matter of course.

Be that as it may, the Court is aware that "there may be instances where reinstatement is not a viable remedy or where the relations between the employer and employee have been so severely strained that it is not advisable to order reinstatement, or where the employee decides not to be reinstated. In such events, the employer will instead be ordered to pay separation pay."[73] Thus, this case must be remanded to the NLRC for a determination of whether or not any of the foregoing instances obtain so as to render reinstatement non-viable and hence, instead order petitioner to pay respondents separation pay, as may be deemed appropriate.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated February 8, 2017 and the Resolution dated January 4, 2018 of the Court of Appeals in CA-G.R. SP. No. 08468 are hereby **SET ASIDE**. The case is hereby **REMANDED** to the National and Labor Relations Commission for execution proceedings in accordance with this Decision.

SO ORDERED.

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

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[73] *Nissan North EDSA Balintawak, Q.C. v. Serrano, Jr.*, 606 Phil. 222, 228 (2009); citations omitted.

THIRD DIVISION

[G.R. No. 239986. July 8, 2019]

ROMA FE C. VILLALON, *petitioner, vs.* **RURAL BANK OF AGOO, INC.,** *respondent.*

SYLLABUS

CIVIL LAW; MORTGAGE; THE REGISTRATION OF MORTGAGE IN THE REGISTRY OF DEEDS IS THE OPERATIVE ACT THAT BINDS OR AFFECTS THE LAND INSOFAR AS THIRD PERSONS ARE CONCERNED, BECAUSE REGISTRATION IS DEEMED NOTICE TO THE WHOLE WORLD; APPLICATION IN CASE AT BAR.— In the case at bar, it is clear that RBAI's mortgage was first constituted over the unregistered real properties of the Spouses Alviar on May 18, 1998 and was, likewise, registered with the RD on the same day. On the other hand, Villalon's mortgage over the said properties was executed on July 30, 2000 and registered with the RD on July 6, 2001. Considering that RBAI's mortgage was created and registered much ahead of time than that of Villalon, RBAI's mortgage should be preferred. Thus, as correctly pointed out by the CA, the proper foreclosure of the first mortgage by RBAI gave, not only the first mortgagee, but also subsequent lienholders like Villalon, the right to redeem the property within the statutory period. Further, Villalon cannot be deemed to be a third party with a better right, as provided for in Act No. 3344, as amended by Section 113 of Presidential Decree No. 1529, simply because she is a second mortgagee whose rights are strictly subordinate to the superior lien of the first mortgagee, RBAI. A second mortgagee of an unregistered land has to wait until after the debtor's obligation to the first mortgagee has been fully satisfied. Hence, notwithstanding that Villalon was first to foreclose; to have been issued a Certificate of Absolute Definitive Sale of Real Property; and is now in possession of the property as even the tax declaration is already in her name – these circumstances will not defeat the rights of RBAI whose mortgage was created and registered much ahead than that of Villalon. At most, Villalon, being a second mortgagee/junior encumbrancer, has only the right to redeem the property from RBAI, the first mortgagee. x x x Thus, she cannot claim to have

> acted in good faith as when she caused its mortgage to be entered in the Registry, it was presumed to have become aware of and taken its mortgage subject to RBAI's lien over the property. This is because registration is the operative act that binds or affects the land insofar as third persons are concerned. It is upon registration that there is notice to the whole world.

APPEARANCES OF COUNSEL

Joven F. Costales for petitioner.
Clarence J. Villanueva for respondent.

D E C I S I O N

PERALTA, *J.*:

Before Us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated August 4, 2017 of the Court of Appeals (*CA*) in CA-G.R. CV No. 106920.

The antecedent facts are as follows:

On May 18, 1998, the spouses George and Zenaida Alviar (*Spouses Alviar*) obtained a loan from herein respondent Rural Bank of Agoo, Inc. (*RBAI*) in the amount of ₱145,000.00, secured by a real estate mortgage over a residential lot and house of the spouses covered by Tax Declaration Nos. 93-001-43749 and 93-001-52100 located at Barangay I, San Fernando, La Union. On the same date, the mortgage was registered with the Register of Deeds of La Union.

The loan became due and payable on February 10, 1999, and was renewed for four (4) times with the following due dates: August 9, 1999, February 4, 2000, August 2, 2000, and January 26, 2001; all evidenced by a promissory note.

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[1] Penned by Associate Justice Rosmari D. Carandang (now a member of this Court), with Associate Justices Stephen C. Cruz and Nina G. Antonio-Valenzuela concurring; *rollo*, pp. 20-30.

On July 30, 2000, the Spouses Alviar borrowed ₱400,000.00 from herein petitioner Roma Fe C. Villalon (*Villalon*) which was secured by a Real Estate Mortgage executed on July 30, 2000 over the same residential lot and house which the spouses used as collateral with RBAI. The real estate mortgage was registered with the Register of Deeds on July 6, 2001.

On several dates, the Spouses Alviar obtained additional loan from RBAI in the amount of ₱50,000.00 and ₱30,000.00, both secured by a real estate mortgage over the same residential lot and house. For their failure to pay their loan, an extrajudicial foreclosure was resorted to by RBAI. The foreclosure sale was reset to several dates.

The Spouses Alviar, likewise, failed to pay their loan to Villalon. Thus, Villalon applied for the extrajudicial foreclosure of the mortgaged realties. The foreclosure sale was conducted on June 26, 2002, wherein Villalon was declared as the highest bidder, with a bid of ₱1,050,000.00. A Certificate of Sale of Real Property was issued to Villalon on June 27, 2002, and the same was registered with the Register of Deeds on July 5, 2002.

On June 16, 2004, the foreclosure sale initiated by RBAI finally pushed through. RBAI was the highest bidder with a bid of ₱341,830.94 and the corresponding Certificate of Sale was issued to it. On October 14, 2005, RBAI paid the requisite fees, but despite its request, the Certificate of Absolute Deed of Sale was not issued to it.

On the other hand, a Certificate of Absolute Definitive Sale was issued on August 6, 2007 to Villalon, who had been in physical possession of the property since its foreclosure in 2002. Villalon had it declared for taxation purposes in her business name "*Villalon Lending Investor*," and had paid realty taxes for the same.

Upon discovering this, RBAI filed a Complaint for recovery of sum of money and damages before the Regional Trial Court (*RTC*) of Agoo, La Union against Villalon and the Spouses Alviar, claiming principally from Villalon, and alternatively from

the Spouses Alviar, the amount of ₱750,818.34. RBAI alleged that since the mortgage of the said real properties in its favor is earlier than the mortgage to Villalon, then RBAI is the first mortgagee/superior lien holder, while Villalon is only the second mortgagee/subordinate encumbrancer/subordinate lien holder. While the second mortgagee can foreclose ahead of the first mortgagee, RBAI claimed that the proceeds of the sale should be used to satisfy first the loan obtained from the first mortgagee. In other words, RBAI's claim of ₱750,818.34 should be satisfied from the amount of ₱1,050,000.00, the bid of Villalon. Despite demand for Villalon to remit or deliver the said amount of ₱750,818.34, the latter refused. In the event that Villalon would not be held liable for or would be unable to pay the said amount, RBAI averred that the Spouses Alviar should be ordered to pay the amount of ₱750,818.34.

The Spouses Alviar did not file their Answer despite due summons publication.

Villalon, on the other hand, countered that RBAI has no cause of action against her since she was not a party to the contract between RBAI and the Spouses Alviar. Thus, she has no obligation to pay the loan granted by RBAI to the spouses. She has been in lawful and absolute ownership of the properties in question since June 27, 2002, and her ownership was confirmed and approved by Judge Carbonell,[2] when the latter issued in her favor the Certificate of Absolute Definitive Sale of Real Property on August 6, 2007. Hence, RBAI cannot assert any right over the properties in question.

On January 6, 2016, the RTC issued a Decision[3] ordering the Spouses Alviar to pay RBAI the sum of ₱750,818.34, plus interest of 12% *per annum* and attorney's fees in the amount of ₱50,000.00. The complaint against Villalon was dismissed. The RTC ruled that RBAI has no cause of action against Villalon

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[2] Civil Case No. 6869 for Annulment of Real Estate Mortgage filed by RBAI against Roma Fe C. Villalon.

[3] Penned by Executive Judge Romeo M. Atillo, Jr.; *rollo*, pp. 35-55.

there being no contractual relationship between them. It declared that the foreclosure initiated by Villalon is valid and, therefore, she has a better right over the foreclosed property. She has no obligation to pay RBAI with respect to the obligation of the spouses to RBAI. However, since it appears from evidence that the Spouses Alviar have an outstanding obligation to RBAI in the amount of ₱750,818.34, RBAI is entitled to recover from the spouses the unpaid loans and expenses in connection with the collection of such amount.

An appeal was filed by RBAI before the CA, arguing that it is legally entitled to recover from Villalon the amount of ₱750,818.34, plus interest. Being the first mortgagee and having registered the real estate mortgage ahead of Villalon, RBAI contended that Villalon, as a second mortgagee, has the legal obligation to acknowledge and respect the priority or preferred right of the first mortgagee. Hence, RBAI contends that the proceeds of the foreclosure sale initiated by Villalon in the amount of ₱1,050,000.00 should be used first to satisfy the loan obligation of the Spouses Alviar with RBAI which amounted to ₱750,818.34, plus interest until fully paid. The excess, if any, shall go to Villalon.

On August 4, 2017, the CA granted RBAI's appeal and set aside the decision of the RTC. It held that the RTC erred in dismissing the complaint against Villalon. According to the CA, RBAI has a cause of action against Villalon for it is enforcing its first lien or superior lien over the property on the basis of its prior mortgage as against Villalon, the second mortgagee or junior encumbrancer. Although the complaint is captioned as one for recovery of sum of money, the allegations in the complaint clearly show that RBAI is asserting its right as a superior lienholder.

The CA noted that the subject matter of the real estate mortgage is an unregistered property, which registration of transaction was first governed by Act No. 3344 and is now amended by Presidential Decree No. 1529. The proper foreclosure of the first mortgage by RBAI gave, not only the first mortgagee, but also subsequent lienholders like Villalon,

the right to redeem the property within the statutory period. In order for Villalon to acquire full rights over the properties subject of the mortgage, she must first redeem the property by paying off the bid price of RBAI in the auction sale, which was ₱341,830.94, plus interest of 1% per month, and the assessments or taxes, if any, paid by the purchaser, with the same rate of interest.

A motion for reconsideration was filed by Villalon, but was denied by the CA in a Resolution[4] dated June 7, 2018.

Hence, this petition, raising the following assignment of errors:

A) THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN ITS PRONOUNCEMENT THAT THE FIRST MORTGAGE WITH RESPONDENT RBAI PREVAIL OVER THE MORTGAGE TO THE PETITIONER;
B) THE RESPONDENT COURT [OF APPEALS] COMMITTED GRAVE ERROR IN ORDERING THE PETITIONER TO PAY TO THE RESPONDENT RBAI THE BID PRICE, INTEREST AND ASSESSMENT OR TAXES IF ANY; [and]
C) THE RESPONDENT COURT GRAVELY ERRED IN NOT ENTERTAINING THE CLAIM OF THE PETITIONER OF GOOD FAITH.[5]

Petitioner Villalon contends that since the foreclosure she initiated was published several times in the newspaper, which is considered as constructive notice to RBAI, the latter's non-action was tantamount as a waiver to protest the same. Likewise, petitioner Villalon claims that she was in good faith as she was not aware of the mortgage/s entered by and between RBAI and the spouses, and that no protest was received during the foreclosure proceedings she initiated. She also maintains that she has no contractual relationship with respondent RBAI, and the latter's recourse is against Spouses Alviar who did not appeal the decision of the RTC.

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[4] *Id*. at 31-34.

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

RBAI, in its Comment,[6] stated that the CA was correct in setting aside the decision of the RTC and in ordering Villalon to pay RBAI the redemption price, together with the assessments or taxes, if any, plus interest. It prayed that Villalon's petition be denied and the ruling of the CA be affirmed *in toto*.

We deny the petition.

In *Hidalgo v. La Tondeña*,[7] We held in the main decision that a mortgage created much ahead in point of time, but registered later than a levy of execution similarly registered, is preferred over the said levy. In the said case, the subject property was an unregistered land which was first mortgaged to La Tondeña to secure the payment of a debt contracted by Valenciano. The Deed of Mortgage was executed on December 12, 1952 and was registered only on August 14, 1954 with the Register of Deeds under Act No. 3344. On the other hand, Benipayo obtained a judgment in his favor and to enforce the same, he caused to be levied in execution the interest of Valenciano over the same property which levy was registered in the same Register of Deeds under the same Act on July 23, 1954. In view of the motion for reconsideration filed therein by Hidalgo, We modified our ruling[8] and held that Hidalgo's levy and lien was the better right since it was recorded earlier. This is because when La Tondeña caused its unregistered mortgage to be entered in the Registry, it was presumed to have become aware of and taken its mortgage subject to Benipayo's (Hidalgo's predecessor) execution levy (that under the Rules of Court created a lien in favor of the judgment creditor over the property levied upon).

In the case at bar, it is clear that RBAI's mortgage was first constituted over the unregistered real properties of the Spouses Alviar on May 18, 1998 and was, likewise, registered

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[6] *Id*. at 59-71.

[7] 123 Phil. 445, 448-449 (1966).

[8] *Hidalgo v. La Tondeña, Inc., et al*., 150-B Phil. 227, 231 (1972).

with the RD on the same day. On the other hand, Villalon's mortgage over the said properties was executed on July 30, 2000 and registered with the RD on July 6, 2001. Considering that RBAI's mortgage was created and registered much ahead of time than that of Villalon, RBAI's mortgage should be preferred. Thus, as correctly pointed out by the CA, the proper foreclosure of the first mortgage by RBAI gave, not only the first mortgagee, but also subsequent lienholders like Villalon, the right to redeem the property within the statutory period.

Further, Villalon cannot be deemed to be a third party with a better right, as provided for in Act No. 3344, as amended by Section 113 of Presidential Decree No. 1529, simply because she is a second mortgagee whose rights are strictly subordinate to the superior lien of the first mortgagee, RBAI. A second mortgagee of an unregistered land has to wait until after the debtor's obligation to the first mortgagee has been fully satisfied. Hence, notwithstanding that Villalon was first to foreclose; to have been issued a Certificate of Absolute Definitive Sale of Real Property; and is now in possession of the property as even the tax declaration is already in her name – these circumstances will not defeat the rights of RBAI whose mortgage was created and registered much ahead than that of Villalon. At most, Villalon, being a second mortgagee/junior encumbrancer, has only the right to redeem the property from RBAI, the first mortgagee.

The extrajudicial foreclosure of real estate mortgage, as in this case, is governed by Act No. 3135, as amended by Act No. 4118. Section 6 thereof provides:

> Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and **such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure**,

in so far as these are not inconsistent with the provisions of this Act.[9]

Section 28 of Rule 39 of the 1997 Rules of Civil Procedure provides:

> Section 28. Time and manner of, and amounts payable on, successive redemptions; notice to be given and filed. – The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within one (1) year from the date of the registration of the certificate of sale, **by paying the purchaser the amount of his purchase, with the per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount at the same rate**; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest.[10]

Thus, in order for Villalon to acquire full rights over the properties subject of the mortgage, she must first redeem them by paying off: (1) the bid price of RBAI in the auction sale, which is ₱341,830.94; (2) the interest on the bid price, computed at one percent (1%) per month; and (3) the assessments or taxes, if any, paid by the purchaser, with the same interest rate.

Petitioner cannot escape the fact that when she caused the mortgage to be entered in the Registry, RBAI's lien over the property was already registered as early as May 18, 1998. Thus, she cannot claim to have acted in good faith as when she caused its mortgage to be entered in the Registry, it was presumed to have become aware of and taken its mortgage subject to RBAI's lien over the property. This is because registration is the operative act that binds or affects the land

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[9] Emphasis ours.

[10] Emphasis ours.

insofar as third persons are concerned.[11] It is upon registration that there is notice to the whole world.[12]

WHEREFORE, premises considered, the petition is **DENIED**. The Decision and Resolution of the Court of Appeals, dated August 4, 2017 and June 7, 2018, respectively, in CA-G.R. CV No. 106920, are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 241254. July 8, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARMIE NARVAS *y* BOLASOC,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE/ POSSESSION OF DANGEROUS DRUGS; ELEMENTS; 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 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

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[11] *Egao v. Court of Appeals (Ninth Division)*, 256 Phil. 243, 252 (1989).

[12] *Calalang v. Register of Deeds of Quezon City*, 284 Phil. 343, 358 (1992).

delivery of the thing sold and the payment therefor. 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. 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 requires **strict compliance** with procedures laid down by it to ensure that rights are safeguarded.

2. ID.; ID.; ID.; SECTION 21, ARTICLE II OF RA 9165; CHAIN OF CUSTODY RULE; IN ALL DRUG CASES, COMPLIANCE WITH THE CHAIN OF CUSTODY RULE IS CRUCIAL IN ANY PROSECUTION THAT FOLLOWS BUY-BUST OPERATION, 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 AS EVIDENCE; REQUIREMENTS, EXPLAINED.— In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt. 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 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 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. 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 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that could 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.

3. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 OF THE IRR OF RA 9165 UNDER JUSTIFIABLE GROUNDS SHALL NOT RENDER VOID OR INVALID THE SEIZURES AND CUSTODY OF THE SEIZED ITEMS, AS LONG AS THE INTEGRITY AND THE EVIDENTIARY VALUE THEREOF ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICER/TEAM; NOT ESTABLISHED IN CASE AT BAR.— 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.

> 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. In this case, to reiterate, the prosecution neither recognized, much less tried to justify, the police officers' deviation 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 have been compromised. x x x In sum, the prosecution miserably 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, accused-appellant Narvas must perforce be acquitted.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Armie Narvas *y* Bolasoc (accused-appellant Narvas), assailing the Decision[2] dated December 6, 2017 (assailed

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[1] See Notice of Appeal dated January 24, 2018; *rollo*, pp. 16-18.

[2] *Id.* at 2-15. Penned by Associate Justice Ramon Paul L. Hernando (now a Member of this Court), with Associate Justices Remedios A. Salazar-Fernando and Mario V. Lopez, concurring.

Decision) of the Court of Appeals First Division (CA) in CA-G.R. CR No. 08839, which affirmed the Decision[3] dated June 13, 2016 rendered by the Regional Trial Court of Dagupan City, Pangasinan, Branch 40 (RTC) in Criminal Case Nos. 2011-0117-D and 2011-0118-D, titled *People of the Philippines v. Armie Narvas y Bolasoc*, finding accused-appellant Narvas 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 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:

> Accused-appellant [Narvas] was charged with the illegal sale of dangerous drugs, in violation of Section 5, and illegal possession of dangerous drugs, in violation of Section 11, both under Article II of R.A. No. 9165. The Informations, docketed as Crim. Case Nos. 2011-0117-D and 2011-0118-D, read:
>
> ### Crim. Case No. 2011-0017-D
>
> That on or about March 2, 2011, at around 12:30 o'clock noontime in Villa subdivision, Brgy. Minien West, Sta. Barbara, Pangasinan and within the jurisdiction of the Honorable Court, the above-named accused did, then and there willfully, unlawfully and feloniously SELL, TRADE, and DELIVERED two (2) heat-sealed transparent plastic sachets of methamphetamine hydrochloride, commonly known as *shabu*, with a total weight of 0.032 grams (*sic*) to an undercover public officer of PNP Sta.

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[3] CA *rollo*, pp. 63-73. Penned by Presiding Judge Mervin Jovito S. Samadan.

[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.

Barbara during a buy-bust operation, without any permit or license to do so.

CONTRARY TO Section 5, Art. II, of RA 9165.

Crim. Case No. 2011-0118-D

That on or about March 2, 2011 at around 12:30 o'clock noontime in Villa subdivision, Brgy. Minien West, Sta. Barbara, Pangasinan and within the jurisdiction of the Honorable Court, the above-named accused did, then and there willfully, unlawfully and feloniously have in his possession, control and custody two (2) heat-sealed transparent plastic sachets of methamphetamine hydrochloride, commonly known as *shabu*, with a total weight of 0.019 grams (*sic*), when he was arrested and frisked after having sold two (2) other heat-sealed transparent plastic sachets to an undercover police officer of PNP Sta. Barbara during a buy-bust operation, without any permit or license to possess them.

CONTRARY TO Section 11, Art. II, of RA 9165.

When arraigned on May 17, 2011, accused-appellant [Narvas] pleaded "not guilty." Trial then ensued.

The version of the prosecution, as synthesized by the Office of the Solicitor General, is as follows:

On 2 March 2011, a concerned citizen gave a tip to the desk officer of the Sta. Barbara Police Station regarding drug-related activities in Villa [subdivision,] Sta. Barbara. PO2 [Christopher] Idos ["**PO2 Idos**"], who was also at Sta. Barbara Police Station, was instructed by the desk officer to conduct a buy-bust operation in the target area. In line with the operation, the buy-bust team prepared two (2) bills worth Five Hundred Pesos (PhP500.00) each. PO2 Idos acted as the poseur-buyer and PO1 [Angelo] Quibrantos, ["**PO1 Quibrantos**"] acted as the back-up. The team, consisting of PO2 Idos and PO1 Quibrantos, proceeded to the place of operation in Barangay Minien West.

PO2 Idos told the bystanders that he wanted to buy *shabu*. One of the bystanders, later identified as herein [accused-appellant Narvas], obliged, going in and coming out of his house carrying two (2) plastic sachets. He handed to the police officers said plastic sachets. In exchange, PO2 Idos gave the marked

money consisting of the two bills. The moment [accused-appellant Narvas] took the marked money, the police officers arrested him. [Accused-appellant Narvas] was apprised of his constitutional rights.

PO2 Idos searched the person of [accused-appellant], which yielded two (2) more plastic sachets. PO1 Quibrantos took the items and gave them to the investigator. SPO1 [Raymundo] Bauzon ["**SPO1 Bauzon**"] conducted an inventory of the items seized. Thereafter, photographs were taken. PO2 Idos placed the markings "CVI-1" and "CVI-2" on two (2) plastic sachets, while PO1 Quibrantos placed the markings on the other two.

At the police station, SPO1 Bauzon prepared the request for laboratory examination. He then submitted the specimen to the crime laboratory. The plastic sachets were received by PCI [Imelda Besarra] Roderos ["**PCI Roderos**"] and PO2 Tahon. After the conduct of laboratory examination, the specimen[s] were found to be positive for the presence of methamphetamine hydrochloride, a dangerous drug.

Accused-appellant [Narvas] vehemently [denied] the accusations against him. In his defense, he [claimed] that on the day in question, the following events transpired:

On March 2, 2011, he played basketball afterwhich, (sic) while still wearing his jersey shorts, he went to the house of his friend Adrian Antonis ["**Adrian**"] with Maxie Torio ("**Torio**"), Jello Ferrer ("**Ferrer**") and [Adrian was] cooking for the birthday celebration of [his] son. Suddenly, a group of seven (7) to eight (8) men, later identified as police officers, barged into the house, dragged and frisked them, but produced nothing. However, they were still handcuffed and brought outside the house.

Thereat, one of the men brought out six (6) plastic sachets and two (2) Five Hundred Pesos (₱500.00) bills and laid it (*sic*) on the table. Photographs of the said items and of the [accused-appellant] were subsequently taken.

[Accused-appellant Narvas], Torio, Ferrer, and [Adrian] were brought to the municipal hall, where [accused-appellant] was asked to point to Allan Antonis ("**Allan**"), the brother of Adrian, which he failed to do so because he did not know Allan. Thereat, the [accused-appellant Narvas] was put on blindfolds (*sic*) and

his head was submerged in water for thirty (30) minutes, repeated five (5) times. The police officers then poured his body with gasoline. On the way to jail, he was likewise kicked and punched by the police officers.[5]

The Ruling of the RTC

On June 13, 2016, the RTC rendered its Decision convicting accused-appellant Narvas on both charges. The dispositive portion of the RTC's Decision reads:

WHEREFORE, premises considered, the accused, **ARMIE NARVAS y BOLASOC** is hereby found **GUILTY** beyond reasonable doubt for the felonies of *illegal sale of dangerous drugs* and *illegal possession of dangerous drugs* under Sections 5 and 11, Art. II of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002, and he is sentenced to suffer the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (PhP500,000.00) in Criminal Case No. **2011-0117-D** and twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and a fine of ₱300,000.00 in Criminal Case No. **2011-0118-D**.

The seized shabu is hereby confiscated in favor of the State for its destruction in accordance with law.

SO ORDERED.[6]

Aggrieved, accused-appellant Narvas filed an appeal before the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of accused-appellant Narvas. The dispositive portion of the assailed Decision reads:

ACCORDINGLY, the appeal is **DENIED**. The assailed Decision dated June 13, 2016 of the Regional Trial Court (RTC), Branch 40 of Dagupan City in Crim. Case Nos. 2011-0117 and 2011-0118-D which found accused-appellant Armie Narvas y Bolasoc guilty beyond

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[5] *Rollo*, pp. 3-5; emphasis in the original.

[6] CA *rollo*, p. 73.

reasonable doubt of a violation of Sections 5 and 11, Article II of Republic Act No 9165 is **AFFIRMED**.

SO ORDERED.[7]

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 accused-appellant Narvas for violating Sections 5 and 11, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious. The Court acquits accused-appellant Narvas for failure of the prosecution to prove his guilt beyond reasonable doubt.

Accused-appellant Narvas 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.[8]

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.[9]

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[7] *Rollo*, p. 14.

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

[9] *People v. Fernandez*, G.R. No. 198875 (Notice), June 4, 2014.

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.[10] 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,[11] the law nevertheless 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.[12] 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.[13]

In this connection, **Section 21, Article II of RA 9165**,[14] the applicable law at the time of the commission of the alleged

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[10] *People v. Guzon*, 719 Phil. 441, 450-451 (2013).

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

[12] *People v. Guzon*, *supra* note 10 at 451, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

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

[14] 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:

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 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 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.[15]

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**

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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[.]

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

be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[16] In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that could 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, as borne by the evidence on record, it cannot be denied that *serious breaches of the mandatory procedures required in the conduct of buy-bust operations* were committed by the police. These cast serious doubt as to the integrity of the allegedly confiscated drug specimens, hence creating reasonable doubt as to the guilt of accused-appellant Narvas.

First and foremost, as readily revealed by the testimonies of the prosecution's witnesses, the supposed inventory that was conducted by the police at the scene of the alleged buy-bust operation is *highly doubtful and questionable, to say the least*.

According to the testimony of PO2 Idos, the inventory and picture-taking of the evidence were conducted by the investigator, SPO1 Bauzon:

Q Who conducted the inventory?

A The investigator who was with us, sir.

Q Who was he?

A SPO1 Raymundo de Leon Bauzon, sir.

x x x x x x x x x

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

Q You said about taking of photographs, who took the photographs?

A Also the investigator, sir.[17]

However, on direct examination, SPO1 Bauzon patently contradicted the foregoing testimony and revealed that he has *no direct knowledge* as to the events that transpired during the buy-bust operation as *he was not present during the supposed buy-bust operation* and that *he received the alleged plastic sachets containing shabu at the police station*:

Q You have no knowledge of the event that transpired?

A Yes sir.

Q Where did you receive these alleged four (4) heat sealed transparent plastic sachets?

A At the Police Station, sir.

Q What time, Mr. Witness?

A Past 1:00 p.m. of March 2, 2011, sir.

x x x x x x x x x

Q So, you got hold of these four (4) plastic sachets of shabu?

A I got hold at that time only, sir.

Q From the Police Station to the Crime Laboratory?

A Yes sir.[18]

In fact, to completely belie the prosecution's theory that an inventory was indeed conducted by SPO1 Bauzon at the place of the alleged buy-bust operation immediately after the apprehension of accused-appellant Narvas and the seizure of the drug specimens, when asked if there was any examination of the evidence conducted, SPO1 Bauzon answered that *he does not even recall that there was an examination of the drug specimens supposedly seized*:

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[17] TSN, March 22, 2012, pp. 11-12.

[18] TSN, February 11, 2014, pp. 7-8.

Q Do you recall if there was an examination actually conducted on those items?

A I do not recall, sir.[19]

Even if the Court believes the tall tale of the prosecution that a legitimate inventory was indeed conducted, it does not escape the attention of the Court that, on direct examination, PO2 Idos revealed that the Inventory Receipt was prepared and accomplished, not at the place of the alleged buy-bust operation, but only at the police station:

Q You mentioned about an Inventory Receipt prepared in your office. I am showing to you a document denominated as receipt of items seized, is that anyone of the inventory receipts prepared?

A Yes sir.[20]

Hence, it is painstakingly clear from the prosecution's own evidence that there was no legitimate inventory of the alleged seized drug specimens that was conducted, both in the scene of the crime and at the police station.

Second, according to the prosecution's theory, photographs of the allegedly seized plastic sachets containing *shabu* were taken during the supposed buy-bust operation. Again, upon extensive review of the evidence on record, it is made apparent that there was no photographing of the evidence conducted immediately after, or at the place of apprehension as required under Section 21 of RA 9165.

As clearly seen in the photographs submitted into evidence by the prosecution, *there were absolutely no photographs taken of the alleged buy-bust operation and inventory conducted by the police*. Only photographs of the accused-appellant under detention and the supposed marked money and marked plastic sachets placed on a table obviously taken inside an office were offered into evidence.

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[19] *Id*. at 6.

[20] TSN, May 21, 2013, pp. 20-21; underscoring supplied.

This was confirmed by the prosecution's own witness, PO1 Quibrantos, on cross-examination:

Q But these pictures were already taken at the police station?

A Yes, sir.

Q In fact, when he was already inside the jail?

A Yes, sir.

x x x x x x x x x

Q In fact, you have no pictures that the Barangay Kagawads were witnessing the inventory?

A Yes, sir.

Q In fact, these pictures of the items attached to the record were taken at the police station, am I correct?

A It was on the table, but I cannot remember, sir.

Q You do not know where this was taken, but you are sure with respect to the picture of the accused this was taken at the police station?

A Yes sir.[21]

Third, it was not explained by the prosecution why only elected public officials, *i.e.*, local barangay officials, were present during the supposed buy-bust operation. Such claim is in itself highly doubtful, considering that, as already explained above, the Inventory Receipt was prepared and executed only at the police station. Further, there were no photographs whatsoever showing that such witnesses were present during the alleged buy-bust operation. As correctly argued by the defense, the testimonies of the prosecution's witnesses did not sufficiently explain the surrounding circumstances of the presence of these barangay officials. Nothing in the testimonies showed that these officials actually witnessed first-hand the seizure and inventory of the allegedly seized drug specimens.

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[21] TSN, August 27, 2013, p. 28.

But even if the Court accepts the prosecution's tale that local barangay officials were indeed present at the scene of the crime, to reiterate, Section 21 of RA 9165 also mandatorily requires the presence of a representative from the media and a representative from the DOJ. It must be emphasized that the prosecution failed to offer any reason whatsoever accounting for the absence of any representative of the media and of the DOJ. In fact, the prosecution failed to even acknowledge or recognize this crucial violation of the law.

Fourth, as made evident by the photographs of the plastic sachets supposedly confiscated from accused-appellant Narvas, *the marking of the said specimens was highly irregular*.

Under the 2010 Manual on Anti-Illegal Drugs Operation and Investigation, one of the critical procedures that must be observed in the conduct of buy-bust operations is the marking of the evidence with the initials of the apprehending officer/evidence custodian, as well as indicating the date, time and place the evidence was confiscated/seized.[22]

In the instant case, the plastic sachets were merely marked with the initials of the apprehending officers without indicating the date, time, and place the pieces of evidence were supposedly confiscated.

Aside from the foregoing, a simple perusal of the testimonies of the prosecution's witnesses reveals the obvious inconsistencies and contradictions in these testimonies.

As correctly pointed out by accused-appellant Narvas in his Brief for the Accused-appellant,[23] while PO2 Idos testified that it was PO2 Quibrantos who seized the plastic sachets from the body of accused-appellant Narvas and turned them over to the investigator.[24] PO2 Quibrantos, on the other hand, testified that it was PO2 Idos who seized the drug specimens from

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[22] Section 13 (c).

[23] CA *rollo*, pp. 28-61.

[24] TSN, March 22, 2012, pp. 13-14.

accused-appellant Narvas and turned them over to the investigator.[25]

Also, as correctly observed by accused-appellant Narvas, the prosecution was not even able to properly identify the four plastic sachets containing the allegedly seized *shabu* during the trial. When asked to identify the two plastic sachets marked with the inscriptions "CVI-1" and "CVI-2," which were allegedly seized by PO2 Idos, the latter instead identified the plastic sachets with the markings "CVI-2" and "AQ-2."[26] on the part of PO2 Quibrantos, he testified in open court that he marked the two other sachets "EQ-1" and "EQ-2."[27] However, as evidently seen in the photograph of the plastic sachets, the other two plastic sachets were marked "AQ-1 and "AQ-2," and not "EQ-1" and "EQ-2."

Furthermore, while PO2 Idos testified on direct examination that the information on the accused-appellant Narvas' supposed business of selling illegal drugs was tipped off by a concerned citizen[28] and that all the information gathered on accused-appellant Narvas came from a third source,[29] on cross-examination, PO2 Idos contradicted himself and testified that two surveillance operations were already conducted by the police a week before the alleged buy-bust operation, with PO2 Idos himself being part of the surveillance team.[30]

Moreover, while on direct examination, PO2 Idos testified that it was the desk officer of the police station who told them to conduct the buy-bust operation,[31] PO2 Idos sharply contradicted himself on cross-examination, testifying that it was the Chief

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[25] TSN, August 27, 2013, pp. 7-8.

[26] TSN, May 17, 2012, p. 5.

[27] TSN, August 27, 2013, p. 10.

[28] TSN, March 22, 2012, p. 5.

[29] TSN, May 21, 2013, p. 3.

[30] *Id*. at 3-4.

[31] TSN, March 22, 2012, p. 5.

of Police who ordered the team to conduct the buy-bust operation.[32]

Bearing in mind the foregoing, the Court must again stress that the procedural requirements laid down in Section 21 of RA 9165 is ***mandatory***, and that the law imposes these requirements to serve an essential purpose. In *People v. Tomawis*,[33] the Court explained that these requirements are crucial in safeguarding the integrity and credibility of the seizure and confiscation of the evidence:

> 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*,[34] 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.[35]

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

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[32] TSN, May 21, 2013, p. 4.

[33] G.R. No. 228890, April 18, 2018, accessed at < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs /1/64241 >.

[34] 736 Phil. 749 (2014).

[35] *Id.* at 764.

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."[36] (Emphasis in the original)

Hence, considering the brazen and wholesale non-observance by the police of the mandatory requirements of Section 21 of RA 9165 — assuming their story of a buy-bust is believed — including the patently contradictory and inconsistent testimonies of the prosecution's witnesses, the Court is bewildered by the CA's assessment that the chain of custody of the allegedly seized illegal drugs was not in any way broken. The CA's belief that the lapses and irregularities committed by the buy-bust team are mere "minor matters"[37] is unquestionably incorrect.

Regrettably, 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.[38] This presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases and has proven the guilt of the accused

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[36] *People v. Tomawis*, *supra* note 33.

[37] *Rollo*, p. 13.

[38] CONSTITUTION, Art. III, Sec. 14 (2): "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

beyond reasonable doubt,[39] by proving each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[40] Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

It is worth emphasizing that ***this burden of proof never shifts***. Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent.

In this connection, the prosecution therefore, in cases involving dangerous drugs, **always** has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:[41]

> We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. **The State must fully establish that for us.** If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.
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> **Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the**

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[39] 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)

[40] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[41] 745 Phil. 237 (2014).

Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.[42] (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.

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.[43] **In this case, to reiterate, the prosecution neither recognized, much less tried to justify, the police officers' deviation 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 have been compromised.[44] As the Court explained in *People v. Reyes*:[45]

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

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[42] *Id*. at 250-251.

[43] See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

[44] See *People v. Sumili*, 753 Phil. 342, 350 (2015).

[45] 797 Phil. 671 (2016).

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.[46] (Emphasis supplied)

In *People v. Umipang*,[47] 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 pursuant to Section 21. 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 efforts were**

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[46] *Id.* at 690.

[47] 686 Phil. 1024 (2012).

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.[48] (Emphasis and underscoring supplied)

In sum, the prosecution miserably 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, accused-appellant Narvas must perforce be acquitted.

As a final note, despite the blatant disregard of the mandatory requirements provided under RA 9165 and the patent unreliability and lack of credibility of the prosecution's witnesses, accused-appellant Narvas has been made to suffer incarceration for eight (8) years. While the Court now reverses this grave injustice by ordering the immediate release of accused-appellant Narvas, there is truth in the time-honored precept that *justice delayed is justice denied. Such an injustice must not be repeated*.

In this connection, the Court *sternly* reminds the trial and appellate courts to exercise extra vigilance in trying drug cases, *and directs the Philippine National Police to conduct an investigation on this incident* and other similar cases, lest an innocent person be made to suffer the unusually severe penalties for drug offenses.

The Court likewise 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,

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[48] *Id*. at 1052-1053.

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.[49]

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.[50]

Nevertheless, 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. 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 further under statutory law, should not be sacrificed for the sheer sake of convenience and expediency. Otherwise, the rule of men shall overtake the rule of law. In a democracy, this cannot and should not be permitted, *not while this Court sits*.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated December 6, 2017 of the Court of Appeals in CA-G.R. CR No. 08839 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **ARMIE NARVAS *y* BOLASOC** is **ACQUITTED** of the

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[49] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, accessed at < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63908 >.

[50] CONSTITUTION, Art. II, Sec. 5.

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 blatant 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.

SECOND DIVISION

[G.R. No. 242160. July 8, 2019]

PEOPLE OF THE PHILIPPINES *plaintiff-appellee, vs.* **JAN JAN TAYAN *y* BALVIRAN and AIZA SAMPA *y* OMAR,** *accused,* **AIZA SAMPA *y* OMAR,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** The elements of the crime of illegal sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. The prosecution must satisfactorily show the concurrence of these elements with moral certainty to establish its case and secure the conviction of an accused under Section 5, Article II of R.A. No. 9165. Equally crucial is the ascertainment of the identity of the illicit drug which constitutes the *corpus delicti* of the crime. Thus, courts are duty-bound to examine the conduct of the entrapment operation *vis-à-vis* the chain of custody rule and place under close scrutiny the precautions undertaken by the members of the apprehending team to safeguard the integrity of the seized illegal drugs.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE MARKING OR THE AFFIXING OF INITIALS AND SIGNATURE OF THE APPREHENDING OFFICER OR THE POSEUR-BUYER ON THE CONFISCATED ITEM IN THE PRESENCE OF THE APPREHENDED VIOLATOR IMMEDIATELY UPON CONFISCATION, PRESERVES THE INTEGRITY OF THE EVIDENCE AS IT ENTERS THE CHAIN; BASIC REQUIREMENTS, ENUMERATED.—** Section 21 (a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 mandates that in carrying out an entrapment operation, the police officers shall "immediately after seizure and confiscation, physically inventory and photograph the [seized items] 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." While R.A. No. 9165 and its IRR are silent on the marking requirement, the Court has clarified in *People v. Sanchez* that marking or the affixing of initials and signature of the apprehending officer or the poseur-buyer on the confiscated item in the presence of the apprehended violator immediately upon confiscation, preserves the integrity of the

evidence as it enters the chain. Hence, the basic requirement on the proper disposition of confiscated and/or surrendered dangerous drugs enjoins the members of the apprehending team having initial custody and control of the illicit drugs to conduct the: (1) marking; (2) inventory; and (3) photograph taking of the seized illegal drugs immediately after seizure in the presence of: (a) the accused or the person/s from whom such items were confiscated and/or seized, or his representative or counsel; (b) a representative from the media; and (c) a representative from the DOJ.

3. **ID.; ID.; ID.; ID.; SECTION 21 (A) OF THE RA 9165 IMPLEMENTING RULES AUTHORIZES THAT THE IMMEDIATE MARKING, INVENTORY, AND PHOTOGRAPHING OF THE SEIZED DRUGS BE DONE IN THE NEAREST POLICE STATION OR THE NEAREST OFFICE OF THE APPREHENDING OFFICER/TEAM IF THE SAME WERE NOT FEASIBLE ON THE GROUND OF ITS IMPRACTICABILITY.—** Existing jurisprudence clarifies the phrase "immediately after seizure and confiscation" to purport an ideal scenario of conducting the physical inventory and photographing of the drugs immediately after, or at the place of apprehension. However, if, on the ground of impracticability, immediate marking, inventory, and photographing were not feasible, Section 21 (a) of the IRR of R.A. No. 9165 authorizes that the same be done at the nearest police station or the nearest office of the apprehending officer/team.

4. **ID.; ID.; ID.; ID.; THE ABSENCE OF THREE (3) INSULATING WITNESSES DURING THE ANTI-NARCOTICS OPERATION WITHOUT PLAUSIBLE REASON AND THE LACK OF HONEST-TO-GOODNESS EFFORTS TO SECURE THEIR PRESENCE ARE SERIOUS LAPSES THAT TAINT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ILLICIT DRUGS; CASE AT BAR.—** It is undisputed that the apprehending team did not faithfully observe Section 21 insofar as securing the presence of the representative from the media, the representative from the DOJ, and the elected public official during the marking, physical inventory, and photograph taking of the seized prohibited drug immediately at the place of seizure and confiscation. In fact, as testified to by IO1 Asaytono, the entrapment team did not strive to obtain a representative from the DOJ to witness the marking and inventory by reason of

unavailability which was never proved by convincing evidence. Moreover, the only witness secured by the apprehending team – media representative Ding Bermudez – did not actually see the conduct of the inventory since he only signed in the certificate of inventory and reviewed its contents. The requirement of having an elected public official and representatives from the media and the DOJ to personally witness the marking, inventory, and photographing of the seized illegal drugs is not a burden imposed upon police officers in the conduct of legitimate buy-bust operations. On the contrary, it serves to protect them from accusations of planting, switching, or tampering of evidence in support to the government's strong stance against drug addiction. x x x The absence of the three insulating witnesses during the anti-narcotics operation against accused Tayan and accused-appellant Sampa, *sans* plausible reason, and the lack of honest-to-goodness efforts to secure their presence are serious lapses that taint the integrity and evidentiary value of the seized illicit drugs.

5. ID.; ID.; ID.; ID.; KNOWN AS THE SAVING CLAUSE, SECTION 21 (A) OF THE RA 9165 IRR, RECOGNIZES THAT THE EXISTENCE OF JUSTIFIABLE GROUNDS COUPLED WITH A CLEAR SHOWING THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE POLICE OFFICERS SHALL NOT INVALIDATE THE PROCEDURAL BREACHES COMMITTED BY THE APPREHENDING TEAM; NOT PRESENT IN CASE AT BAR.— Under Section 21 (a) of the IRR, R.A. No. 9165, "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[.]" Known as the saving clause, the provision recognizes that the existence of justifiable grounds coupled with a clear showing that the integrity and evidentiary value of the seized items are properly preserved by the police officers shall not invalidate the procedural breaches committed by the apprehending team. Here, the prosecution miserably failed to set in motion the application of the saving mechanism. The lapses of the members of the entrapment team in the conduct of the buy-bust operation were not identified and explained by the prosecution. Its feeble

attempt to justify the police officers' failure to conduct the marking, physical inventory, and photographing at the place of seizure and confiscation is unacceptable, to say the least, as it remained uncorroborated by evidence. x x x The absence of credible explanation as to the police officers' deviation from the procedures laid down under Section 21 of R.A. No. 9165 creates serious doubt as to the integrity of the seized drug. Right at its inception, the chain of custody was broken in view of the marking of the seized illegal drug inside the police officers' service vehicle with none of the insulating witnesses present to attest that the first link of the chain was sufficiently established.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Gil A. Valera for accused-appellant.

D E C I S I O N

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

Before us is an appeal from the Decision[1] dated June 20, 2018, of the Court of Appeals (CA), in CA-G.R. CR-HC No. 08481, which affirmed the Judgment[2] dated July 12, 2016, of the Regional Trial Court (RTC) Branch 79, Quezon City, in Criminal Case No. R-QZN-14-01991-CR. The RTC convicted Jan Jan Tayan *y* Balviran (accused Tayan) and Aiza Sampa *y* Omar (accused-appellant Sampa) of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Information against the accused reads:

That on or about the 24th day of February, 2014, in Quezon City, Philippines, the above-named accused, conspiring together,

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[1] Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Mario V. Lopez and Zenaida T. Galapate-Laguilles, concurring; *rollo,* pp. 2-11.

[2] CA *rollo,* pp. 41-58.

confederating with and mutually helping with each other, without lawful authority, did, then and there willfully, unlawfully sell, trade and deliver one (1) heat-sealed transparent plastic sachet containing a total net weight of five zero point six three seven four grams (50.6374 grams) of white crystalline substance containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.[3]

Upon arraignment on March 14, 2014, the two accused pleaded not guilty of the crime charged. Pre-trial and trial on the merits then ensued.

Version of the Prosecution

On February 23, 2014, at around 3:00 p.m., a regular confidential informant of Regional Office No. 4A of the Philippine Drug Enforcement Agency (PDEA) went to Camp Vicente Lim, Canlubang, Laguna to report about the alleged illegal drug activities of one alias "Mike," later identified as accused Tayan, in Quezon City. He gave the tip to Intelligence Officer 2 Paul Andrew Arteche (IO2 Arteche) and represented that he would be able to facilitate a drug deal with him. Acting as the team leader, IO2 Arteche formed a team of six police operatives to conduct a buy-bust operation and designated Intelligence Officer 1 Jonis Asaytono (IO1 Asaytono) as the poseur-buyer. The informant arranged the meeting with accused Tayan at 3:00 p.m. of February 24, 2014, at Jollibee Don Mariano Marcos Avenue corner Regalado Street in Fairview, Quezon City.[4] Thereafter, the assigned desk officer prepared the Authority to Operate Outside Jurisdiction while IO1 Asaytono put together the buy-bust money consisting of one ₱500 bill marked with the initials "JBA" placed on top of the paper cuttings which appear to amount to ₱50,000.00.[5]

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[3] *Id*. at 41.

[4] *Id*. at 133-134.

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

On February 24, 2014, the buy-bust team left Camp Vicente Lim at around 9:00 a.m. on board its Toyota Innova service vehicle and went to Pinyahan, Quezon City, to meet its informant. IO2 Arteche talked to the informant and reiterated to the buy-bust team its operation before going to the agreed place of transaction. When they arrived at Jollibee at around 1:00 p.m., IO1 Asaytono and the informant went inside the food chain while the rest of the team strategically positioned themselves in the premises. They waited for three hours until a man in red and white striped polo shirt and *maong* pants approached their table. The informant introduced the man to IO1 Asaytono as Mike (accused Tayan). The latter asked the informant if IO1 Asaytono is the man he was referring to. The informant answered in the affirmative and asked accused Tayan if he brought the illegal drugs. In response, accused Tayan told him that they would just have to wait for his companion who is in possession of the items. He also asked to see the payment. IO1 Asaytono opened the paper bag and showed the money to him. Upon securing the money, accused Tayan called someone on his mobile phone. A woman, later identified as accused-appellant Sampa, came and walked towards accused Tayan's direction. She handed a medium-sized plastic sachet containing white powdery substance to accused Tayan who immediately instructed IO1 Asaytono to follow him to the comfort room. When they reached the wash area, accused Tayan showed IO1 Asaytono the plastic sachet of white granules and examined it. IO1 Asaytono handed the buy-bust money to accused Tayan who, in turn, gave the plastic sachet to him. IO1 Asaytono brought out his handkerchief as pre-arranged signal that the transaction was completed. He introduced himself as a PDEA agent, apprised accused Tayan of his constitutional rights and effected the arrest. Meanwhile, accused-appellant Sampa was apprehended by IO2 Arteche. A commotion stirred when accused Tayan resisted the arrest. This prompted IO2 Arteche to order the buy-bust team to leave the place of operation and return to their office so as not to compromise their safety and security. The buy-bust team boarded accused Tayan and accused-appellant Sampa in their service vehicle. IO2 Arteche informed them of their constitutional rights

while IO1 Asaytono marked the medium-sized heat-sealed transparent plastic sachet containing white crystalline substance suspected to be *shabu* with "JBA EXH A 2/24/14" and signed thereon.[6]

When the entrapment team arrived at Camp Vicente Lim, its members conducted the inventory and photographing in the presence of accused Tayan, accused-appellant Sampa and media representative Ding Bermudez and prepared the letter-request for laboratory examination. IO1 Asaytono brought the letter-request and the seized evidence to the crime laboratory. They were received by the forensic chemist who placed the confiscated substance inside a bigger re-sealable zipper storage bag. Upon quantitative and qualitative analysis, the confiscated item tested positive for Methamphetamine Hydrochloride or *shabu,* a dangerous drug.[7]

Version of the Defense

On February 24, 2014, Nesren Blo asked her mother accused-appellant Sampa to accompany her at Expressions Bookstore in Fairview Central Mall. They were at a Jollibee outlet across the mall when accused-appellant Sampa was arrested by unknown armed men. One of them held and dragged her to the parking lot and forced her to board a Toyota Innova. The armed men brought accused-appellant Sampa to the PDEA Office at Camp Vicente Lim in Canlubang, Laguna and ordered her to affix her thumbprint on the certificate of inventory.[8]

Accused-appellant Sampa claims that she was not informed of her rights when she was apprehended nor was she assisted by a lawyer while at the PDEA Office.

On July 12, 2016, the RTC found accused Tayan and accused-appellant Sampa guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 and ordered them to

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

[7] *Id*. at 135-136.

[8] *Id*. at 84.

suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

The RTC found that the prosecution was able to establish all the elements of illegal sale of prohibited drugs. It gave great weight to the testimony of IO1 Asaytono who positively identified accused Tayan and accused-appellant Sampa as the persons from whom he purchased the plastic sachet of *shabu*. It noted that the failure of the members of the apprehending team to mark, inventory and photograph the seized dangerous drugs at the place of arrest did not weaken the case of the prosecution as it was shown that IOl Asaytono was the one in possession of the illegal drugs from the time of arrest until it was brought to the laboratory for examination. Finally, it stated that the defense failed to show any ill motive or odious intent on the part of the PDEA agents to impute such a serious crime that would put in jeopardy accused's life and liberty.

Aggrieved, accused Tayan and accused-appellant Sampa filed their separate appeals.

On June 20, 2018, the CA affirmed the July 12, 2016 Decision.[9] It held that there was substantial compliance with the procedural requirements on the custody and control of the seized illegal drugs. It declared that the sequence of events, as established by the evidence of the prosecution, and the overall handling of the confiscated items by the arresting officers show that the seized plastic sachet *of shabu* is the same evidence identified in open court. It further stated that it is not necessary to present during trial each and every person who came into possession of the confiscated drugs as long as the chain of custody is shown not to have been compromised as in this case. It discarded accused-appellant Sampa's claim of irregularities that attended the buy-bust operation, *i.e.,* failure to indicate the amount of boodle money, failure to mark the buy-bust money and present it as evidence, and failure to use ultraviolet fluorescent powder, as they did not affect the validity of the anti-narcotics operation.

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[9] *Id*. at 41-58.

On July 12, 2018, accused-appellant Sampa filed a Notice of Appeal[10] with the CA which the CA gave due course on August 3, 2018, and directed its Judicial Records Division to elevate to us the entire records of CA-G.R. CR-HC No. 08481 for review.[11]

On November 12, 2018, the Court issued a Resolution[12] notifying the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice.

Accused-appellant Sampa[13] filed her Supplemental Brief[14] on November 22, 2018, questioning, among others, the absence of a representative from the Department of Justice (DOJ) and an elected public official to witness the marking, inventory and photographing of the seized evidence. She also pointed out that the existence of a commotion is not a justifiable ground for not conducting the marking, inventory, and photographing of the illegal drugs immediately at the place of arrest. She asserted that the PDEA agents committed gross violation of the substantive law when they transported the confiscated item from Fairview, Quezon City to Calamba, Laguna for its marking considering that the law instructs that it should be brought to the nearest police station to remove doubts on the identity of the *corpus delicti.*

The People, through the Office of the Solicitor General, on the other hand, filed its Manifestation (in lieu of Supplemental Brief),[15] on February 14, 2019, submitting that the June 20, 2018 CA Decision exhaustively discussed and judiciously passed upon the errors raised by accused-appellant Sampa such that the filing of a supplemental brief is no longer necessary.

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[10] *Id*. at 12.

[11] *Id*. at 13.

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

[13] Referred to as "Rosemarie Gabunada" in the Supplemental Brief.

[14] *Rollo,* pp. 16-19.

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

Our Ruling

The Court resolves to acquit accused-appellant Sampa on the ground of reasonable doubt.

The elements of the crime of illegal sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[16] The prosecution must satisfactorily show the concurrence of these elements with moral certainty to establish its case and secure the conviction of an accused under Section 5, Article II of R.A. No. 9165. Equally crucial is the ascertainment of the identity of the illicit drug which constitutes the *corpus delicti* of the crime.[17] Thus, courts are duty-bound to examine the conduct of the entrapment operation *vis-à-vis* the chain of custody rule and place under close scrutiny the precautions undertaken by the members of the apprehending team to safeguard the integrity of the seized illegal drugs.

Section 21 (a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 mandates that in carrying out an entrapment operation the police officers shall "immediately after seizure and confiscation, physically inventory and photograph the [seized items] 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." While R.A. No. 9165 and its IRR are silent on the marking requirement, the Court has clarified in *People v. Sanchez*[18] that marking or the affixing of initials and signature of the apprehending officer or the poseur-buyer on the confiscated item in the presence of the apprehended violator immediately upon confiscation, preserves the integrity

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[16] *People v. Ceralde,* G.R. No. 228894, August 7, 2017, 834 SCRA 613, 622.

[17] *People v. Bangalan,* G.R. No. 232249, September 3, 2018.

[18] 590 Phil. 214, 241-242 (2008).

of the evidence as it enters the chain. Hence, the basic requirement on the proper disposition of confiscated and/or surrendered dangerous drugs enjoins the members of the apprehending team having initial custody and control of the illicit drugs to conduct the: (1) marking; (2) inventory; and (3) photograph taking of the seized illegal drugs immediately after seizure in the presence of: (a) the accused or the person/s from whom such items were confiscated and/or seized, or his representative or counsel; (b) a representative from the media; and (c) a representative from the DOJ.

In this case, when accused Tayan and accused-appellant Sampa were arrested, the PDEA agents, upon the instruction of IO2 Arteche, left the scene of operation in Fairview, Quezon City for the inventory and photographing of the seized item at their office in Camp Vicente Lim in Canlubang, Calamba, Laguna. IO1 Asaytono placed the marking "JBA EXH A 2/24/14" and his signature on the plastic sachet of suspected *shabu* while inside the buy-bust team's service vehicle in the presence of accused Tayan and accused-appellant Sampa. When they reached Camp Vicente Lim, the inventory and photographing of the subject specimen were made before accused Tayan, accused-appellant Sampa, and media representative Ding Bermudez. These bare facts alone reveal significant deviations from the law's prescribed method of handling the seized illicit drugs upon confiscation.

Marking, Physical Inventory, Photograph taking

IO1 Asaytono did not mark the seized item at the place of arrest but inside the service vehicle allegedly in the presence of the two accused. The physical inventory and photograph taking were not conducted immediately after the subject specimen was confiscated but only when they arrived at their office in Camp Vicente Lim in Canlubang, Laguna at around 6:00 p.m.[19] The prosecution reasoned that the commotion inside the Jollibee outlet prevented IO1 Asaytono from complying with the rule

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[19] CA *rollo,* p. 102.

that the marking, inventory, and photograph taking must be made immediately after seizure and confiscation.

Existing jurisprudence clarifies the phrase "immediately after seizure and confiscation" to purport an ideal scenario of conducting the physical inventory and photographing of the drugs immediately after, or at the place of apprehension.[20] However, if, on the ground of impracticability, immediate marking, inventory, and photographing were not feasible, Section 21 (a) of the IRR of R.A. No. 9165 authorizes that the same be done at the nearest police station or the nearest office of the apprehending officer/ team.

The Court is not unaware that, in drugs cases, the phrase "existence of a commotion" has been the apprehending team's most convenient excuse to justify its non-compliance with the procedural safeguards encapsulated in Section 21. While it is not beyond the realms of possibility, its mere invocation does not *ipso facto* operate as substantial compliance with the law especially when it is not supported by the evidence on record, as in this case. After the prosecution alleged that a commotion ensued when accused Tayan and accused-appellant Sampa were arrested, it did not attempt to provide its details and the circumstances that prompted the buy-bust team to delay the marking, inventory, and photograph taking. Neither did it point out the measures carried out by the members of the entrapment team to ensure that the plastic sachet *of shabu* seized from accused Tayan and accused-appellant Sampa was the same item marked inside the vehicle and subjected to physical inventory and photographing in Camp Vicente Lim considering the absence of the three insulating witnesses required by Section 21.

Three-witness rule

IO1 Asaytono testified:

x x x x x x x x x

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[20] *People v. Reyes,* G.R. No. 225736, October 15, 2018.

Q: When you failed to secure the presence of the barangay officials, you did not exert effort to contact any Media representative in Quezon City, correct?
A: Yes. Ma'am.

Q: Likewise, you did not exert effort to contact any DOJ representative in Quezon City?
A: We did not, ma'am.

Q: According to you, **you marked the evidence inside the vehicle**?
A: **Yes,** ma'am.

Q: So, **no representative from the Media, Barangay, and DOJ was present during your marking?**
A: **There was none** but there were witnesses who can attest for that matter.

Q: After the marking, you brought them back to Laguna, correct?
A: Yes, ma'am.

Q: You have an office here in Quezon City?
A: National [Headquarters], ma'am.

Q: Despite that fact, **you decided to go back to Laguna to conduct the inventory,** correct?
A: Yes, ma'am.

Court: There were other police stations?
A: During that time, your Honor, we exerted effort to locate nearby police station, but our team leader did not want to pursue in locating other police station.

Court: Why not?
A: Because the place is not familiar to us and we have advance information that the place is not safe for us.

Court: Why did you not proceed to your office here in Manila?
A: Because our SOP, we will not go to our National [Headquarters] but to our Regional [Headquarters], that is our SOP.[21] x x x

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[21] CA *rollo,* pp. 88-89.

x x x x x x x x x

Q: Where did you conduct the inventory?
A: Inside our office, sir.

Q: Who was present during the inventory?
A: The media representative, sir.

Q: Who was the media representative?
A: Mr. Ding Bermudez, sir.

Q: What media outfit this Ding Bermudez belongs?
A: From a local newspaper, sir.

Q: Aside from the media representative, who else were present at that time?
A: The two apprehended persons, Jan Jan Tayan and Aiza Sampa, sir.

Q: Why, Mr. Witness, there was no representative from the DOJ and from the local officials of the place where you arrested the accused?
A: We are not so familiar with the place, sir.

Q: How about the DOJ representative?
A: **We did not seek the DOJ representative,** sir.

Q: Why?
A: **On our part usually we do not seek the DOJ representative because based on our experience, usually they are not available, sir.**[22] x x x

It is undisputed that the apprehending team did not faithfully observe Section 21 insofar as securing the presence of the representative from the media, the representative from the DOJ, and the elected public official during the marking, physical inventory, and photograph taking of the seized prohibited drug immediately at the place of seizure and confiscation. In fact, as testified to by IO1 Asaytono, the entrapment team did not strive to obtain a representative from the DOJ to witness the

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[22] *Id*. at 92.

marking and inventory by reason of unavailability which was never proved by convincing evidence. Moreover, the only witness secured by the apprehending team – media representative Ding Bermudez – did not actually see the conduct of the inventory since he only signed in the certificate of inventory and reviewed its contents.[23]

The requirement of having an elected public official and representatives from the media and the DOJ to personally witness the marking, inventory, and photographing of the seized illegal drugs is not a burden imposed upon police officers in the conduct of legitimate buy-bust operations. On the contrary, it serves to protect them from accusations of planting, switching, or tampering of evidence in support to the government's strong stance against drug addiction. The case of *People v. Dela Cruz*[24] is illuminating:

> 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 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,* 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. (Emphasis supplied)

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[23] *Id*. at 93-94.

[24] G.R. No. 234151, December 5, 2018.

> The presence of the three witnesses must be secured not only during the inventory but more importantly, **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.
>
> The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.
>
> To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation." x x x (Citations omitted)

The absence of the three insulating witnesses during the anti-narcotics operation against accused Tayan and accused-appellant Sampa, *sans* plausible reason, and the lack of honest-to-goodness efforts to secure their presence are serious lapses that taint the integrity and evidentiary value of the seized illicit drugs.

Application of the saving mechanism

Under Section 21 (a) of the IRR, R.A. No. 9165, "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[.]" Known as the saving clause, the provision recognizes that the existence of justifiable grounds coupled with a clear showing that the integrity and evidentiary value of the seized items are properly preserved by the police officers shall not invalidate the procedural breaches committed by the apprehending team. Here, the prosecution miserably failed to set in motion the application of the saving mechanism.

The lapses of the members of the entrapment team in the conduct of the buy-bust operation were not identified and explained by the prosecution. Its feeble attempt to justify the police officers' failure to conduct the marking, physical inventory, and photographing at the place of seizure and confiscation is unacceptable, to say the least, as it remained uncorroborated by evidence. The existence of a commotion after accused Tayan and accused-appellant Sampa were arrested was not established as a fact. Further, the apprehending team's failure to secure the presence of the three insulating witnesses at the place and time of seizure as well as during the actual marking, inventory, and photograph taking were never acknowledged.

The absence of credible explanation as to the police officers' deviation from the procedures laid down under Section 21 of R.A. No. 9165 creates serious doubt as to the integrity of the seized drug. Right at its inception, the chain of custody was broken in view of the marking of the seized illegal drug inside the police officers' service vehicle with none of the insulating witnesses present to attest that the first link of the chain was sufficiently established.

WHEREFORE, premises considered, the appeal is hereby **GRANTED**. The Decision dated June 20, 2018, of the Court of Appeals in CA-G.R. CR-HC No. 08481 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Aiza Sampa *y* Omar is **ACQUITTED for failure of the prosecution to prove her guilt beyond reasonable doubt**. She is ordered **IMMEDIATELY RELEASED** from detention, unless she is

confined for any other lawful 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, for immediate implementation. Said director is ordered to report the action he has taken to this Court, within five (5) days from receipt of this Decision.

SO ORDERED.

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

EN BANC

[A.M. No. P-19-3972. July 9, 2019]
(Formerly OCA I.P.I. No. 12-3971-P)

ATTY. LEANIE GALVEZ-JISON, *complainant, vs.* **MAY N. LASPIÑAS[*] and MAE VERCILLE H.[**] NALLOS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; WHEN CHARGED WITH MISCONDUCT; THE MISCONDUCT MUST BE GRAVE, SERIOUS, IMPORTANT, WEIGHTY, MOMENTOUS, AND NOT TRIFLING IN ORDER TO WARRANT DISMISSAL FROM SERVICE.— Misconduct is a transgression or a wrongdoing under some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public

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[*] Also referred to as "May N. Las Piñas" in some parts of the *rollo*.

[**] Also referred to as "Vercille A. Nallos" in some parts of the *rollo*.

officer. The misconduct must be grave, serious, important, weighty, momentous, and not trifling in order to warrant dismissal from the service. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.

2. **ID.; ID.; ID.; WHEN CHARGED WITH DISHONESTY; THE CIVIL SERVICE COMMISSION RESOLUTION NO. 06-0538 CLASSIFIED DISHONESTY IN THREE (3) GRADATIONS, NAMELY: SERIOUS, LESS SERIOUS OR SIMPLE; SERIOUS DISHONESTY, ELEMENTS.—** [D]ishonesty is the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth. Civil Service Commission Resolution No. 06-0538 classifies dishonesty in three gradations, namely: serious, less serious or simple. In this case, petitioner was charged with serious dishonesty, which necessarily entails the presence of any of the following circumstances: (a) the dishonest act caused serious damage and grave prejudice to the Government; (b) the respondent gravely abused his authority in order to commit the dishonest act; (c) where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (d) the dishonest act exhibits moral depravity on the part of respondent; (e) the respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment; (f) the dishonest act was committed several times or in various occasions; (g) the dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets; and (h) other analogous circumstances. Dishonesty, like bad faith, is not simply bad judgment or negligence, but a question of intention. In determining the intention of a person charged with dishonesty, scrutiny must be taken not only of the facts and circumstances giving rise to the act committed

by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.

3. ID.; ID.; ID.; EVERYONE IN THE JUDICIARY FROM THE PRESIDING JUDGE TO THE CLERK, MUST ALWAYS BE BEYOND REPROACH, FREE OF ANY SUSPICION THAT MAY TAINT THE JUDICIARY, SUSTAINED.— In *Office of the Court of Administrator v. Isip*, we held that all court employees must practice a high degree of professionalism and responsibility at all times. Service in the judiciary is not only a duty, but also a mission. It cannot be overemphasized that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach, free of any suspicion that may taint the judiciary. Public service requires utmost integrity and discipline. No less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency." It requires public officers to live up to the strictest standards of honesty, probity and moral righteousness. Accordingly, their conduct, at all times, must not only be characterized by propriety and decorum, but must also be above suspicion.

D E C I S I O N

***PER CURIAM*:**

This resolves the Complaint[1] filed on August 3, 2012 by Atty. Leanie Galvez-Jison (complainant) against Legal Researcher May N. Laspiñas (Laspiñas) and Clerk III Mae Vercille A. Nallos (Nallos), both of Branch 40, Regional Trial Court (RTC), Silay City, Negros Occidental, for Serious Dishonesty and Grave Misconduct.

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[1] *Rollo*, pp. 2-3.

Antecedents

On August 3, 2012, complainant filed a letter-complaint for Serious Dishonesty and Grave Misconduct against Laspiñas and Nallos.[2]

Complainant filed a Petition for Change of Gender and Correction of Certificate of Live Birth on November 17, 2011 in behalf of her client, Geno Adelantar Reyes (Reyes). Later on, the petition was docketed as Spec. Proc. Case No. 2034 and raffled to Branch 40, RTC, Silay City, Negros Occidental. Hence, she paid all the legal fees before the Office of the Clerk of Court (OCC), RTC, Silay City and apprised her client to wait for the issuance of the order for publication coming from the trial court. However, to the surprise of complainant, the trial court issued an Order dated March 6, 2012 directing the complainant's client, Reyes, to pay for the publication fee or risk the dismissal of the petition. This came as a surprise since complainant already paid the publication fee when she filed the petition. She averred that because of the Order of the court, her client thought that she pocketed the money given to her for the payment of the fees were it not for the acknowledgment receipt she had which was issued by the OCC.[3]

After complainant conducted an investigation, she learned that Nallos claimed the publication fee from the OCC on December 1, 2011 by claiming that she was authorized to do so by former Branch Clerk of Court Karen Joy T. Gaston (former Branch Clerk Gaston [now a Judge at Branch 5, Municipal Trial Court in Cities, Bacolod City]. Nallos received the total amount of ₱3,520.00 and turned over the said amount to former Branch Clerk Gaston only in March 2012 when they discovered the trial court's Order dated March 6, 2012.[4]

Complainant averred that former Branch Clerk Gaston did not authorize Nallos to claim the publication fee from the OCC

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[2] *Id*. at 128.

[3] *Id*. at 128-129.

[4] *Id*. at 129.

and that it was another court employee, Laspiñas, who gave such instruction. It is the complainant's position that both Laspiñas and Nallos should be administratively charged for their actions which prejudiced her client.[5]

Respondents' Positions

Nallos vehemently denied the complainant's accusations against her. She claimed that she was under the impression that she can receive the publication fee paid to the OCC being the clerk-in-charge of special proceedings cases. Besides, it has been a practice in their court for her to deliver the publication fee and the corresponding court order to the publisher concerned. Since the court has not yet issued any order when she received the money from the OCC, complainant and her client were not prejudiced. She also stressed that when former Branch Clerk Gaston asked for the money, she was able to immediately produce it. She further denied the allegation that she only remitted the money after she discovered that the court had issued the Order dated March 6, 2012 threatening to dismiss the petition if the publication fee remains unpaid stating that she does not have access to court records and that it is Cheryl Luzarita, a local government employee, who releases the orders of the court in civil cases, special proceedings and cadastral cases.[6]

Meanwhile, Laspiñas stressed that as a Legal Researcher, she had no participation in the publication fee anomaly paid by the complainant. She averred that handling of fees is different from her job description as a Legal Researcher and that she does not meddle in matters relating to civil cases, special proceedings and cadastral cases.[7]

Laspiñas further denied the charge that she and Nallos only remitted the money after discovering the Order of the court dated March 6, 2012. She stressed that her name was not

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[5] *Id*.

[6] *Id*. at 129.

[7] *Id*. at 129-130.

mentioned in the narration of facts of the complainant and that it was the name of Nallos which was consistently mentioned therein. She also refuted the allegation that she instructed Nallos to receive the money from OCC, stating that it was merely hearsay.[8]

Furthermore, Laspiñas stated that the instant administrative complaint is malicious due to the fact that complainant Jison is a close friend of Judge Felipe G. Banzon, who is the respondent in an administrative case wherein she is the complainant.

The instant case was referred to Executive Judge Dyna Doll Chiongson-Trocio, (Judge Trocio) RTC, Silay City, for investigation, through a Resolution dated June 16, 2014.[9]

In her Investigation Report[10] dated April 6, 2015, Judge Trocio recommended the penalty of dismissal from service for Nallos, for patent act of dishonesty and grave misconduct. As for Laspiñas, Judge Trocio recommended the dismissal of the complaint finding that there is no direct evidence showing her participation in the receipt of the publication fee and misappropriation.[11]

Atty. Eric B. De Vera, Clerk of Court VI, OCC, RTC, Silay City, Negros Occidental testified that he received the publication fees in Spec. Proc. Case No. 2034 in the amount of ₱3,520.00 which was subsequently received by respondent Nallos being the clerk-in-charge of Branch 40, RTC, Silay City, Negros Occidental.[12]

Aileen Gamboa (Gamboa), the cashier at the OCC, testified that she issued a provisional receipt to the complainant for the paid publication fee. She further testified that it is a common

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[8] *Id*. at 130.

[9] *Id*. at 43-44.

[10] *Id*. at 119-125.

[11] *Id*. at 125.

[12] *Supra* note 8.

practice in the OCC to turn over the publication fees to the assigned branch on the same day, or within the week after the raffle of the petition. She narrated that she usually gives the publication fees to the branch clerks of courts or to the clerks-in-charge, in the absence of the former. Gamboa stated that for Branch 40, it was Nallos who was in-charge of special proceedings cases and to whom the publication fee in Spec. Proc. Case No. 2034 was delivered.[13]

Another witness that was presented was former Branch Clerk Gaston. She testified that she did not authorize Nallos to get the publication fees from the OCC and that there was not an instance where Nallos was asked to do so. Former Branch Clerk Gaston also issued an Office Memorandum, directing Nallos to explain why she failed to remit the publication fees in a number of cases including Spec. Proc. Case No. 2034. Former Branch Clerk Gaston averred that Nallos admitted to her that she claimed the publication fees from the OCC. Nallos further admitted partially using the fees since her husband was unemployed at that time and pointed out that some of the amount went to Laspiñas for she was the one who instructed her to get the publication fees. Nallos also asked former Branch Clerk Gaston if she could repay the amounts on installment basis. Regarding the publication fee in Spec. Proc. Case No. 2034, the amount was returned only on March 20, 2012. Former Branch Clerk Gaston also stressed that Spec. Proc. Case No. 2034 was not the first and only time where the publication fee was not timely turned over to her by Nallos.[14]

In their defense, Nallos testified that she did not withdraw the publication fee from the OCC and that it was voluntarily given to her by Gamboa. However, Nallos admitted that she did not immediately endorse the said amount to former Branch Clerk Gaston and instead kept it because she was the one in-charge of bringing the amount to the publisher. She anticipated that the publication fee would be given back to her by the branch

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[13] *Id*.

[14] *Id*. at 130-131.

clerk to be delivered to the publisher. Nallos also admitted that she did not inform former Branch Clerk Gaston about her receipt of the publication fee because she forgot to do so. She also confessed that she used the money for her family. She only returned the amount after the issuance of the memorandum by former Branch Clerk Gaston. Nallos also denied the allegation of former Branch Clerk Gaston that she told her that it was Laspiñas who directed her to receive the publication fee from the OCC.[15]

OCA's Report and Recommendation

In the Memorandum dated August 16, 2015[16] the Office of the Court Administrator (OCA) adopted the findings of Judge Trocio and recommended the penalty of dismissal from the service of Nallos and dismissal of the complaint for Laspiñas. To quote:

IN VIEW OF THE FOREGOING, it is respectfully recommended for the consideration of the Honorable Court that:

1. **OCA IPI No. 12-3971-P** be **RE-DOCKETED** as a regular administrative matter, and respondent Mae Vercille H. Nallos, Clerk III, Branch 69, Regional Trial Court, Silay City, Negros Occidental, be found **GUILTY** of grave misconduct and dishonesty, and be **DISMISSED** from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to her re-employment in any branch or agency of the government, including government-owned or controlled corporations, without prejudice to the criminal liability of respondent Nallos arising from the said infraction; and

2. [T]he instant complaint against May N. Laspiñas, Legal Researcher, Branch 40, Regional Trial Court, Silay City, [Negros] Occidental, be **DISMISSED** for utter lack of merit.[17]

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[15] *Id*. at 131.

[16] *Id*. at 128-134.

[17] *Id*. at 134.

Hence, the case was transmitted to this Court for review.

The Court's Ruling

Misconduct is a transgression or a wrongdoing under some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The misconduct must be grave, serious, important, weighty, momentous, and not trifling in order to warrant dismissal from the service. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.[18]

On the other hand, dishonesty is the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth.[19] Civil Service Commission Resolution No. 06-0538[20] classifies dishonesty in three gradations, namely: serious, less serious or simple. In this case, petitioner was charged with serious dishonesty, which necessarily entails the presence of any of the following circumstances: (a) the dishonest act caused serious damage and grave prejudice to the Government; (b) the respondent gravely abused his authority in order to commit the dishonest act; (c) where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and

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[18] *Office of the Deputy Ombudsman for Luzon v. Dionisio*, G.R. No. 220700, July 10, 2017, 830 SCRA 501, 514-515.

[19] *Fajardo v. Corral*, G.R. No. 212641, July 5, 2017, 830 SCRA 161, 169.

[20] Otherwise known as the "Rules on the Administrative Offense of Dishonesty," dated April 4, 2006.

the respondent shows an intent to commit material gain, graft and corruption; (d) the dishonest act exhibits moral depravity on the part of respondent; (e) the respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment; (f) the dishonest act was committed several times or in various occasions; (g) the dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets; and (h) other analogous circumstances.

Dishonesty, like bad faith, is not simply bad judgment or negligence, but a question of intention. In determining the intention of a person charged with dishonesty, scrutiny must be taken not only of the facts and circumstances giving rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.[21]

Both grave misconduct and serious dishonesty, of which respondents were charged, are classified as *grave offenses* for which the penalty of dismissal is meted even for first time offenders.[22]

After a judicious study of the case, the Court finds no reason to depart from the findings and recommendation of the OCA that the evidence on record sufficiently demonstrate respondent Nallos' culpability for the charges and fully satisfy the standard of substantial evidence, which is defined as such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently.[23]

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[21] *The Office of the Court Administrator v. Egipto, Jr.*, A.M. No. P-05-1938, November 7, 2017, 844 SCRA 131, 141.

[22] Revised Rules on Administrative Cases in the Civil Service, Rule 10, Sec. 50(A)(1) and (3).

[23] *Fajardo v. Corral*, *supra* note 19, at 168.

A reading of respondent Nallos' refutation would show that she substantially admitted to the accusations against her. First, respondent Nallos contended that she did not withdraw the publication fee from the OCC and that it was voluntarily given to her. However, even if it was given to her voluntarily, as custodian of the funds, she should have immediately accounted for it with the Branch Clerk of Court. As mere custodian of the fee, she cannot appropriate the money as she has admitted. Her reason that she kept the money because she anticipated that the publication fee would be given back to her by the Branch Clerk to be delivered to the publisher is self-serving and flimsy. Even if that were the case, she still should have made it known to the persons higher in rank than her that she has the money and ask for instructions as to where the money should be safekept. Instead, respondent Nallos reasoned that she forgot to inform former Branch Clerk Gaston about her receipt of the publication fee. Moreover, it also took approximately four months before the publication fee taken by Nallos was returned. The long period of time before the said amount was remitted shows that there was really no intention on the part of Nallos to return the amount. In other words, such act can be considered as a mere afterthought.

As for respondent Laspiñas, this Court agrees with the dismissal of the complaint against her for lack of merit. First of all, there is no clear direct evidence presented against her. Nothing in the certifications issued by the OCC contained the name of Laspiñas. The only basis to implicate her was the testimony of former Branch Clerk Gaston that Nallos admitted to her that it was respondent Laspiñas who ordered her to get the publication fees from the OCC and that some of the money went to Laspiñas. However, later on, during the investigation of the case, Nallos repudiated this claim by former Branch Clerk Gaston. These facts cast serious doubts regarding the alleged involvement of Laspiñas in the case. Besides, it is highly unlikely that Nallos took orders from Laspiñas. It must be remembered that Laspiñas is a Legal Researcher of RTC, Branch 40. As such, she does not have the authority to command another staff of the said branch. She does not have the power to take care of administrative matters, such as the handling of funds, since these are matters within the responsibility of the branch clerk.

In *Office of the Court of Administrator v. Isip*,[24] we held that all court employees must practice a high degree of professionalism and responsibility at all times. Service in the judiciary is not only a duty, but also a mission. It cannot be overemphasized that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach, free of any suspicion that may taint the judiciary. Public service requires utmost integrity and discipline. No less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency." It requires public officers to live up to the strictest standards of honesty, probity and moral righteousness. Accordingly, their conduct, at all times, must not only be characterized by propriety and decorum, but must also be above suspicion.[25]

WHEREFORE, respondent Mae Vercille H. Nallos, Clerk III, Branch 40, Regional Trial Court, Silay City, Negros Occidental is found **GUILTY** of grave misconduct and dishonesty, and is **DISMISSED** from the service immediately, with **FORFEITURE** of all retirement benefits, except accrued leave credits, and with prejudice to her reemployment in any branch or agency of the government, including government-owned or controlled corporations, without prejudice to the criminal liability of Nallos arising from the said infraction.

The instant complaint against May N. Laspiñas, Legal Researcher, Branch 40, Regional Trial Court, Silay City, Negros Occidental is **DISMISSED** for lack of merit.

SO ORDERED.

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

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[24] 613 Phil. 32 (2009).

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

SECOND DIVISION

[A.M. No. P-19-3985. July 10, 2019]
(Formerly OCA I.P.I. No. 12-3839-P)

PRECIOUSA CASTILLO-MACAPUSO, *complainant, vs.* **ATTY. NELSON B. CASTILLEJOS, JR., Office of the Clerk of Court, Regional Trial Court, Cauayan, Isabela,** *respondent.*

[A.M. No. P-19-3986. July 10, 2019]
(Formerly OCA I.P.I. No. 13-4199-P)

ANONYMOUS, *complainant, vs.* **PRECIOUSA C. MACAPUSO, SOCIAL WELFARE OFFICER II, Office of the Clerk of Court, Regional Trial Court, Makati City,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); THE LAWYER AND SOCIETY; IMMORAL CONDUCT; FOR IMMORAL CONDUCT TO WARRANT DISCIPLINARY ACTION, THE SAME MUST BE GROSSLY IMMORAL, THAT IS, IT MUST BE SO CORRUPT AND FALSE AS TO CONSTITUTE A CRIMINAL ACT OR SO UNPRINCIPLED AS TO BE REPREHENSIBLE TO A HIGH DEGREE; PRESENT IN CASE AT BAR.— "Immoral conduct" has been defined as that conduct which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. This Court has held that "for such conduct to warrant disciplinary action, the same must be 'grossly immoral,' that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree." It is not easy to state with accuracy what constitutes "grossly immoral conduct," let alone what constitutes the moral delinquency and obliquity that renders a lawyer unfit or unworthy to continue as a member of the bar in good standing. In *Ventura v. Samson*, we explained that immoral conduct involves acts that are willful, flagrant, or shameless, and that show a moral

indifference to the opinion of the upright and respectable members of the community. It is gross when it is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency. x x x In the instant cases, it is clearly shown that Atty. Castillejos was amiss in maintaining his moral righteousness which is expected from officers of the court. He admitted that his act of entering in a relationship with Preciousa who is married, though separated, constitutes gross immorality. What makes it more reprehensible is the fact that Atty. Castillejos himself is a married man with one child. Describing his relationship with Preciousa as merely for mutual lust and desire only proves that his moral fiber is questionable. His sense of propriety and righteousness has gone beyond control, casually committing infidelity whenever there is an opportunity to satisfy his carnal desire. The promiscuous nature of his acts calls for correction.

2. ID.; ID.; ID.; WHEN LAWYERS ARE ENGAGED IN WRONGFUL RELATIONSHIPS THAT BLEMISH THEIR ETHICS AND MORALITY, THE USUAL RECOURSE IS FOR THE ERRING ATTORNEY'S SUSPENSION FROM THE PRACTICE OF LAW, IF NOT DISBARMENT; SUSTAINED.— Based on jurisprudence, extramarital affairs of lawyers are regarded as offensive to the sanctity of marriage, the family, and the community. "When lawyers are engaged in wrongful relationships that blemish their ethics and morality, the usual recourse is for the erring attorney's suspension from the practice of law, if not disbarment." This is because 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. Under the CPR: Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. It is no accident that these are the first rules laid down in the CPR for these are a lawyer's foremost duties. Lawyers should always keep in mind that, although upholding the Constitution and obeying the law are obligations imposed on every citizen, a lawyer's responsibilities under Canon 1, mean more than just staying out of trouble with the law. As servants of the law and officers of the court, lawyers are required to be at the forefront of observing and maintaining

the rule of law. They are expected to make themselves exemplars worthy of emulation.

3. POLITICAL LAW; ADMINISTRATIVE LAW; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN CIVIL SERVICE; DISGRACEFUL AND IMMORAL CONDUCT ARE PUNISHABLE BY SUSPENSION FOR SIX (6) MONTHS AND ONE (1) DAY TO ONE (1) YEAR, WHILE THE PENALTY FOR THE SECOND OFFENSE IS DISMISSAL; CASE AT BAR.— Under Section 46 (B) (3), Rule 10 of the Revised Uniform Rules on Administrative Cases in Civil Service, disgraceful and immoral conduct are punishable by suspension for six (6) months and one (1) day to one (1) year, while the penalty for the second offense is dismissal, to wit: The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense: 1. Less serious dishonesty; 2. Oppression; 3. **Disgraceful and immoral conduct[.]** It is important to note that Atty. Castillejos appears to be remorseful and repentant and has already taken steps to rectify his past mistakes by reconciling with his wife and terminating his illicit relationship with Preciousa. Though commendable, however, his past transgressions cannot be disregarded without punishment. Because of his indiscretion and imprudence maintaining relations with Preciousa for a period of at least one year until complications arose, the proper penalty to be imposed is one year suspension which is the maximum period of suspension under the rules. As for Preciousa, respondent in A.M. No. P-19-3986 [OCA IPI No. 13-4199-P], she definitely commits the same infraction as that of Atty. Castillejos.

4. ID.; ID.; COURT PERSONNEL; THE CONDUCT OF COURT PERSONNEL MUST BE FREE FROM ANY WHIFF OF IMPROPRIETY, NOT ONLY WITH RESPECT TO THEIR DUTIES IN THE JUDICIAL BRANCH, BUT ALSO TO THEIR BEHAVIOR OUTSIDE THE COURT AS PRIVATE INDIVIDUALS.— In *Concerned Employee v. Mayor*, the Court characterized the act of having sexual relations with a married person, or of married persons having relations outside their marriage as "disgraceful and immoral" conduct because such manifests deliberate disregard by the actor of the marital vows protected by the Constitution and our laws. The Court went further and pronounced that such perversion is especially

egregious if committed by judicial personnel, or those persons specifically tasked with the administration of justice and the laws of the land. Indeed, even if not all forms of extramarital relations are punishable under penal law, the sanctity of marriage is constitutionally recognized and likewise affirmed by our statutes as a special contract of permanent union. As such, the Court has had little qualms with penalizing judicial employees for their dalliances with married persons or for their own betrayals of the marital vow of fidelity. Time and again, it has been stressed that while every office in the government is a public trust, no position exacts a greater necessity for moral righteousness and uprightness from an individual that is part of the Judiciary. Indeed, the image of a court of justice is reflected in the conduct of the personnel who work thereat, from the judge to the lowest of its personnel. Court employees are enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the courts of justice. The conduct of court personnel must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch, but also to their behavior outside the court as private individuals. There is no dichotomy of morality; a court employee is also judged by his or her private morals.

APPEARANCES OF COUNSEL

James M. Imbong for Preciousa Castillo-Macapuso.
Jose Romeo S. Dela Cruz for Atty. Nelson B. Castillejos, Jr.

D E C I S I O N

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

This is a consolidation of two cases filed. The first case is against Atty. Nelson B. Castillejos, Jr. (Atty. Castillejos), Clerk of Court VI, of the Office of the Clerk of Court (OCC), Regional Trial Court (RTC), Cauayan City, Isabela, for disbarment and removal from office arising from the complaint of Preciousa Castillo-Macapuso (Preciousa) on the ground of grave misconduct, immorality and conduct unbecoming of a court employee.

The second case emanated from an anonymous complaint against the complainant in the previous case, Preciousa, for removal from office on the ground of immorality.

Antecedents

Preciousa, separated-in-fact from her husband for sixteen (16) years, is a Social Welfare Officer II at the OCC, RTC of Makati City and Vice President of the Philippine Association of Court Employees (PACE), National Capital Judicial Region.[1] She met Atty. Castillejos, Clerk of Court VI, of the OCC, RTC, Cauayan City, Isabela, in February 2010, during one of the meetings of PACE in Region 2, RTC, Cauayan City.[2] After getting acquainted with each other, Preciousa received text messages and calls regularly between February and March 2010, from Atty. Castillejos regarding work related matters concerning the organization.[3]

Sometime in March 2010, Preciousa had to go to Cauayan, Isabela for the Regional Election of the PACE in Region 2. Being the host chapter President, Preciousa coordinated with Atty. Castillejos for their lodging. At the hotel, Preciousa learned that Atty. Castillejos had already paid for the lodging. After that, she received a text message from Atty. Castillejos inviting her for dinner to discuss confidential matters to which she obliged. They met at the silver Toyota Vios of Atty. Castillejos parked outside the hotel. After entering the car, Atty. Castillejos kissed Preciousa and drove the car to a motel. Atty. Castillejos assured Preciousa that he is a good and trustworthy person. Subsequently, they had sex that night. Upon her return to the hotel, Atty. Castillejos revealed that he had a child with a live-in partner.[4]

After the said incident, Atty. Castillejos started to court Preciousa through text messages and phone calls from April

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[1] *Rollo*, p. 1. A.M. No. P-19-1986 [OCA I.P.I. No. 12-3839-P].

[2] *Id*. at 2.

[3] *Id*. at 3.

[4] *Id*. at 3 and 438.

2010 to February 2011. On February 18, 2011, Preciousa went to Cauayan City again on the invitation of Atty. Castillejos. It was at that time that they officially became a couple. From that time on, they had intimate relations with one another seeing each other twice a month.[5]

In March 2011, Atty. Castillejos was able to convince Preciousa to have her marriage annulled since she had trouble changing her beneficiary in her SSS from her former husband to her children. Atty. Castillejos said that he will be the one to take care of everything regarding the case from the preparation of the petition, hiring of a lawyer and a psychologist until the issuance of a final decree. The agreed fee was ₱150,000.00 to which an additional payment of ₱100,000.00 was asked by Atty. Castillejos.[6]

In May 2011, Preciousa was scheduled for an operation for total hysterectomy in June 2011, which necessitated her to take a leave from work for two months. Atty. Castillejos convinced her to stay in Isabela for her recovery after the operation to which she acceded. During her stay in Isabela, Atty. Castillejos visited her all the days of the week where they would have sexual congress, except on Sundays. On the days that she does not want to have sexual intercourse, he asked her to perform oral sex on him. She stayed in Isabela until the last week of July 2011.[7]

On August 25, 2011, she fetched Atty. Castillejos from the airport where he came from a convention of the Clerks of Courts in Cebu. They had dinner that night and had sex at Go Hotels in Edsa, Mandaluyong. The following morning, she felt pain in her abdomen and asked Atty. Castillejos if he had a previous sexual encounter with any woman. Atty. Castillejos admitted that he had a sexual encounter with a commercial sex worker while he was in Cebu. This prompted them to undergo medical

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[5] *Id*. at 31.

[6] *Id*.

[7] *Id*. at 32.

examination. They proceeded to Philippine General Hospital (PGH) for consultation with Dr. Analyn T. Fuentes-Fallarme, a doctor who specializes in infectious diseases. The examination of Preciousa showed that she had a purulent discharge like *nana* as a result of a sexually transmitted infection caused by gonorrhea and chlamydia although the said doctor could not determine whether Atty. Castillejos was the one who transmitted it to Preciousa. Aside from that, they were advised by the doctor to undergo HIV testing after 6 weeks, as Cebu is a known hotspot for HIV and that there is a big possibility that Atty. Castillejos might be infected given that he had an unprotected sexual encounter with a commercial sex worker.[8]

In September that year, it was revealed by Atty. Castillejos that he was in truth a married man but promised that if the results turned out to be positive, then he would leave his wife and live with Preciousa. The tests turned out to be negative, however, a repeat testing was advised after 6 months counted from the time of the sexual contact. They returned to PGH for a repeat of HIV testing on October 7, 2011.[9]

In the second week of November 2011, Preciousa asked Atty. Castillejos about the status of her nullity case, but the latter always diverted her attention to avoid the topic. On November 14, 2011, Preciousa texted Atty. Castillejos regarding the status of her case, but the latter replied that he knew nothing about the case. This prompted her to go to Cauayan City the following day to seek assistance from City Prosecutor Rudy Cabrera to meet Executive Judge Raul Babaran (Judge Babaran) regarding the subject case. She learned from Judge Babaran that there was really no case for nullity of her marriage that was filed. Preciousa told Judge Babaran that she already gave ₱250,000.00 to Atty. Castillejos to facilitate the filing and attend to the case.[10]

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[8] *Id*. at 439.

[9] *Id*. at 440.

[10] *Id*.

On November 18, 2011, Preciousa went to the OCC, RTC, Cauayan City to obtain a certification that, indeed, there was no nullity case filed and, on November 22, 2011, she sent a demand letter to Atty. Castillejos through LBC but to no avail.[11]

In December 2011, Preciousa filed a case against Atty. Castillejos for violation of Republic Act No. 9262 or the Anti-Violence Against Women and Children Act.[12]

Respondent's Position

Atty. Castillejos denied the allegations of Preciousa. He refuted the statement of Preciousa that he took advantage of her in March 2010, and that he misrepresented himself as a bachelor. He averred that he never concealed that he is married and that he has a love child with another woman.[13]

Atty. Castillejos also questioned the credibility of Preciousa because of certain inconsistencies. According to Atty. Castillejos, Preciousa failed to show that he resorted to falsehood and unlawful and dishonest conduct in his acts and the motivation thereof. Atty. Castillejos averred that what transpired between them was nothing but mutual lust and desire, and that it was his belief that their exchange of text messages was made by two consenting married adults who very well knew that they could not enter into a serious and intimate relationship.[14]

Furthermore, Atty. Castillejos denied the allegations that money was paid to him regarding the processing of Preciousa's petition for annulment of her marriage in the amount of ₱250,000.00. He also repudiated the allegation that he asked Preciousa to stay in Isabela and had carnal knowledge of her while she was recovering from her total hysterectomy. He, likewise, denied having sexual intercourse with a commercial

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[11] *Id*.

[12] *Id*.

[13] *Id*. at 441.

[14] *Id*.

sex worker when he went to Cebu and just agreed to undergo an HIV test to pacify Preciousa.[15]

Atty. Castillejos admitted that he committed a mistake when he had carnal knowledge of a woman other than his wife. In spite of everything, Atty. Castillejos stressed that he had already discontinued any connections or ties with Preciousa and is starting anew and continuing to maintain the moral integrity necessary for the practice of law.[16]

In the meantime, closely intertwined with the complaint was an anonymous complaint charging Preciousa of immorality and grave misconduct for her alleged affair with Atty. Castillejos. On March 17, 2014, the court resolved that the two cases be consolidated in order to expedite the investigation and resolution of both cases.[17]

Report and Recommendation

In his Report and Recommendation,[18] Investigating Executive Judge Omar T. Viola (Judge Viola) recommended that Atty. Castillejos be meted the penalty of DISMISSAL FROM THE SERVICE and thereafter, be suspended for SIX MONTHS as a member of the Philippine Bar, quote:

> For this and in all fairness, it is respectfully recommended that respondent Atty. Nelson B. Castillejos, Jr., be meted the penalty of DISMISSAL FROM THE SERVICE and thereafter SIX MONTHS SUSPENSION as a member of the Philippine Bar.

On January 26, 2015, a Memorandum[19] was passed by the Office of the Court Administrator (OCA) finding both Atty. Castillejos and Preciousa guilty of disgraceful and immoral

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[15] *Id*.

[16] *Id*.

[17] *Id*. at 444.

[18] *Id*. at 409-422.

[19] *Id*. at 437-446.

conduct and that both of them be meted the penalty of one (1) year suspension from office without pay, quote:

> **IN VIEW OF THE FOREGOING**, we respectfully recommend for the consideration of the Court that: (a) the instant cases be **REDOCKETED** as regular administrative matters; and (b) both Atty. Nelson B. Castillejos, Jr., Clerk of Court VI, Office of the Clerk of Court, Regional Trial Court, Cauayan, Isabela, and Preciousa Castillo-Macapuso, Social Welfare Officer II, OCC, RTC, Makati City, be found **GUILTY** of Disgraceful and Immoral Conduct and that each be imposed the penalty of One (1) Year **SUSPENSION** from office without pay effective upon [the] receipt of notice from the court with a **STERN WARNING** that a repetition of the same or similar act shall be dealt with more severely.

Hence, the case was transmitted to this court for review.

The Court's Ruling

After reviewing the records of the case, the Court agrees with the Report and Recommendation of Judge Viola and the Memorandum of the OCA regarding the guilt of Atty. Castillejos and Preciousa.

"Immoral conduct" has been defined as that conduct which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community.[20] This Court has held that "for such conduct to warrant disciplinary action, the same must be 'grossly immoral,' that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree."[21]

It is not easy to state with accuracy what constitutes "grossly immoral conduct," let alone what constitutes the moral delinquency and obliquity that renders a lawyer unfit or unworthy to continue as a member of the bar in good standing.[22]

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[20] *BLACK'S LAW DICTIONARY* 6th edition, citing *In re Monaghan* 126 Vt. 53, 222 A.2d 665, 674. *See also Ui v. Atty. Bonifacio*, 388 Phil. 691, 706 (2000).

[21] *Ui v. Atty. Bonifacio*, *supra*, at 707.

[22] *Advincula v. Atty. Macabata*, 546 Phil. 431, 442 (2007).

In *Ventura v. Samson*,[23] we explained that immoral conduct involves acts that are willful, flagrant, or shameless, and that show a moral indifference to the opinion of the upright and respectable members of the community. It is gross when it is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency.

Here, based on the records of these administrative cases, we agree with the Recommendation of Judge Viola as well as the Memorandum of the OCA that, indeed, Atty. Castillejos committed acts of gross immorality in the conduct of his personal affairs with Preciousa. These show his utter disregard of the lawyer's oath and the Code of Professional Responsibility (CPR).

In the instant cases, it is clearly shown that Atty. Castillejos was amiss in maintaining his moral righteousness which is expected from officers of the court. He admitted that his act of entering in a relationship with Preciousa who is married, though separated, constitutes gross immorality. What makes it more reprehensible is the fact that Atty. Castillejos himself is a married man with one child. Describing his relationship with Preciousa as merely for mutual lust and desire only proves that his moral fiber is questionable. His sense of propriety and righteousness has gone beyond control, casually committing infidelity whenever there is an opportunity to satisfy his carnal desire. The promiscuous nature of his acts calls for correction.

Based on jurisprudence, extramarital affairs of lawyers are regarded as offensive to the sanctity of marriage, the family, and the community. "When lawyers are engaged in wrongful relationships that blemish their ethics and morality, the usual recourse is for the erring attorney's suspension from the practice of law, if not disbarment."[24] This is because possession of good

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[23] 699 Phil. 404, 415 (2012).

[24] *Torres v. Dalangin*, A.C. No. 10758, December 5, 2017, 847 SCRA 472, 495.

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.[25] Under the CPR:

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

It is no accident that these are the first rules laid down in the CPR for these are a lawyer's foremost duties. Lawyers should always keep in mind that, although upholding the Constitution and obeying the law are obligations imposed on every citizen, a lawyer's responsibilities under Canon 1, mean more than just staying out of trouble with the law. As servants of the law and officers of the court, lawyers are required to be at the forefront of observing and maintaining the rule of law. They are expected to make themselves exemplars worthy of emulation.[26]

Under Section 46 (B) (3), Rule 10 of the Revised Uniform Rules on Administrative Cases in Civil Service, disgraceful and immoral conduct is punishable by suspension for six (6) months and one (1) day to one (1) year, while the penalty for the second offense is dismissal, to wit:

> The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:
>
> 1. Less serious dishonesty;
> 2. Oppression;
> 3. **Disgraceful and immoral conduct[.]** (Emphasis supplied)

It is important to note that Atty. Castillejos appears to be remorseful and repentant and has already taken steps to rectify his past mistakes by reconciling with his wife and terminating his illicit relationship with Preciousa. Though commendable, however, his past transgressions cannot be disregarded without

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[25] *Valdez v. Atty. Dabon, Jr.*, 773 Phil. 109, 121 (2015).

[26] *See* AGPALO, *COMMENTS ON THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE CODE OF JUDICIAL CONDUCT*, 18 (2001 ed).

punishment. Because of his indiscretion and imprudence maintaining relations with Preciousa for a period of at least one year until complications arose, the proper penalty to be imposed is one year suspension which is the maximum period of suspension under the rules.

As for Preciousa, respondent in A.M. No. P-19-3986 [OCA IPI No. 13-4199-P], she definitely commits the same infraction as that of Atty. Castillejos. To reiterate, she is, herself, married to another at the time of the illicit relationship with Atty. Castillejos. Moreover, the Court doubts the truthfulness of the allegation of Preciousa that she did not know the marital status of Atty. Castillejos. Considering that Atty. Castillejos is one of the more notable employees of the RTC of Cauayan City, Isabela, as Clerk of Court VI of the OCC, it is quite impossible that nobody told her about his real marital status. At the same time, it is very easy for Preciousa to ask one of her co-employees about Atty. Castillejos. Instead, she chooses to turn a blind eye from the truth to satisfy her desire to enter into a relationship with Atty. Castillejos. In Preciousa's reply to the charge, instead of answering the allegations, she attacks the motive of the person who sent the anonymous complaint as a way to discredit her and put her credibility in question.

Furthermore, noteworthy to emphasize are the abusive, insulting and demeaning text messages sent by Preciousa to Atty. Castillejos and his wife. The said text messages are uncalled for and show the erratic and impulsive attitude of Preciousa. Aside from that, the court cannot give credence to the existence and truthfulness of the claim that Atty. Castillejos received ₱250,000.00 as facilitation fee for the nullity case of Preciousa. She has not presented any proof as to the veracity of her claim.

In *Concerned Employee v. Mayor*,[27] the Court characterized the act of having sexual relations with a married person, or of married persons having relations outside their marriage as "disgraceful and immoral" conduct because such manifests

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[27] 486 Phil. 51, 64 (2004).

deliberate disregard by the actor of the marital vows protected by the Constitution and our laws. The Court went further and pronounced that such perversion is especially egregious if committed by judicial personnel, or those persons specifically tasked with the administration of justice and the laws of the land.

Indeed, even if not all forms of extramarital relations are punishable under penal law, the sanctity of marriage is constitutionally recognized and likewise affirmed by our statutes as a special contract of permanent union. As such, the Court has had little qualms with penalizing judicial employees for their dalliances with married persons or for their own betrayals of the marital vow of fidelity.[28]

Time and again, it has been stressed that while every office in the government is a public trust, no position exacts a greater necessity for moral righteousness and uprightness from an individual that is part of the Judiciary. Indeed, the image of a court of justice is reflected in the conduct of the personnel who work thereat, from the judge to the lowest of its personnel. Court employees are enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the courts of justice. The conduct of court personnel must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch, but also to their behavior outside the court as private individuals. There is no dichotomy of morality; a court employee is also judged by his or her private morals.[29]

WHEREFORE, premises considered, the Court hereby resolves to:

1) find respondents Atty. Nelson B. Castillejos, Jr. and Preciousa Castillo-Macapuso **GUILTY** of disgraceful and immoral conduct, and accordingly, penalize them with

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[28] *Id*. at 63.

[29] *Court Employees of the MCTC, Ramon Magsaysay, Zamboanga del Sur v. Sy*, 512 Phil. 523, 535-536 (2005).

SUSPENSION for one (1) year without pay effective upon receipt of notice from the Court; and

2) **STERNLY WARN** respondents that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 193136. July 10, 2019]

ABS-CBN BROADCASTING CORPORATION, *petitioner, vs.* **HONORATO C. HILARIO, substituted by GLORIA Z. HILARIO and DINDO B. BANTING,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW RAISED ARE REVIEWABLE BY THE SUPREME COURT.— As a general rule, only questions of law raised via a petition for review on *certiorari* under Rule 45 of the Rules of Court are reviewable by this Court. "Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence." In any case, even if the case be decided on its merits, the Court still finds no cogent reason to depart from the findings of the labor tribunals and the appellate court that respondents were illegally dismissed.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; ILLEGAL DISMISSAL; AN EMPLOYEE CAN ONLY BE VALIDLY DISMISSED FROM WORK IF THE DISMISSAL IS PREDICATED UPON ANY OF THE JUST AND AUTHORIZED CAUSES ALLOWED UNDER THE LABOR CODE, CORRESPONDINGLY, A DISMISSAL THAT IS NOT BASED ON EITHER OF THE SAID CAUSES IS REGARDED AS ILLEGAL.— In *Veterans Federation of the Philippines v. Eduardo L. Montenejo, et al.*, the Court ruled thus: In our jurisdiction, the right of an employer to terminate employment is regulated by law. Both the Constitution and our laws guarantee security of tenure to labor and, thus, an employee can only be validly dismissed from work if the dismissal is predicated upon any of the just or authorized causes allowed under the Labor Code. Correspondingly, a dismissal that is not based on either of the said causes is regarded as illegal and entitles the dismissed employee to the payment of backwages and, in most cases, to reinstatement.

3. ID.; ID.; ID.; CESSATION OF BUSINESS OPERATIONS, AS A GROUND; ONE OF THE AUTHORIZED CAUSES FOR DISMISSAL RECOGNIZED UNDER THE LABOR CODE IS THE *BONA FIDE* CESSATION OF BUSINESS OPERATIONS BY THE EMPLOYER; REQUIREMENTS.— One of the authorized causes for dismissal recognized under the Labor Code is the *bona fide* cessation of business operations by the employer. Article 298 (formerly Art. 283) of the Labor Code explicitly sanctions terminations due to the employer's cessation or business or operations – as long as the cessation is *bona fide* or is not made "for the purpose of circumventing the employee's right to security of tenure." x x x Based on the provision of Article 298, there are three requirements for a valid cessation of business operations: (a) service of a written notice to the employees and to the DOLE at least one month before the intended date thereof; (b) the cessation of business must be *bona fide* in character; and (c) payment of the employees of termination pay amounting to one month pay or at least one-half month pay for every year of service, whichever is higher.

4. ID.; ID.; ID.; ID.; A CLOSURE OR CESSATION OF BUSINESS OR OPERATIONS AS GROUND FOR THE TERMINATION OF AN EMPLOYEE IS CONSIDERED INVALID WHEN THERE WAS NO GENUINE CLOSURE OF BUSINESS BUT MERE SIMULATIONS WHICH MAKE IT APPEAR THAT THE EMPLOYER INTENDED TO CLOSE ITS BUSINESS OR OPERATIONS WHEN IN TRUTH, THERE WAS NO SUCH INTENTION; CASE AT BAR.— A closure or cessation of business or operations as ground for the termination of an employee is considered invalid when there was no genuine closure of business but mere simulations which make it appear that the employer intended to close its business or operations when in truth, there was no such intention. To unmask the true intent of an employer when effecting a closure of business, it is important to consider not only the measures adopted by the employer prior to the purported closure but also the actions taken by the latter after the act. However, both the labor tribunals and the CA found that the purported closure of business operation of CCI was undertaken for the purpose of circumventing the provisions of the Labor Code which guarantees security of tenure of respondents and all other employees of CCI. We are not inclined to depart from the uniform findings which are substantially supported by the evidence on records. The Court is not a trier of facts and will not review factual findings of the lower tribunals as these are generally binding and conclusive.

5. ID.; ID.; ID.; ILLEGAL DISMISSAL; WHERE REINSTATEMENT IS NO LONGER VIABLE AS AN OPTION FOR AN ILLEGALLY DISMISSED EMPLOYEE, SEPARATION PAY EQUIVALENT TO ONE (1) MONTH FOR EVERY YEAR OF SERVICE SHOULD BE AWARDED AS AN ALTERNATIVE; CASE AT BAR.— In *ICT Marketing Services, Inc. v. Sales*, the Court ruled that: Settled is the rule that 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 up to the time of actual reinstatement. "Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month for every year of service should

be awarded as an alternative." Here, separation pay is granted because reinstatement is no longer advisable and a long time has lapsed, particularly sixteen (16) years, since the dismissal of respondents. In fact, it should be noted that respondent Hilario died on September 2, 2015 during the pendency of this appeal and was substituted by his heirs, namely his wife Gloria Hilario and his children. Under the foregoing circumstances, the payment of separation pay is considered an acceptable alternative to reinstatement since the latter option is no longer desirable or viable.

6. **MERCANTILE LAW; CORPORATION CODE; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; DEFINED; APPLICABLE IN THREE (3) BASIC AREAS, ENUMERATED; CASE AT BAR.—** The doctrine of piercing the veil of corporate fiction is a legal precept that allows a corporation's separate personality to be disregarded under certain circumstances so that a corporation and its stockholders or members, or a corporation and another related corporation should be treated as a single entity. In *PNB v. Hydro Resources Contractors Corp.,* the Court said that: The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: (1) defeat public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or (3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. The present case falls under the third instance where a corporation is merely a farce since it is a mere alter ego or business conduit of person or in this case a corporation. "The corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation."

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo for petitioner.
Reynaldo C. Rafael for respondents.

D E C I S I O N

CARANDANG, *J.*:

Before Us is a petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[2] of the Court of Appeals (CA) dated March 4, 2010 and the Resolution[3] dated July 29, 2010 in CA-G.R. SP No. 107739 which held ABS-CBN Broadcasting Corporation [ABS-CBN for brevity] (petitioner) jointly and severally liable with Creative Creatures, Inc. (CCI) for illegally dismissing respondents Honorato C. Hilario (Honorato), substituted by Gloria Z. Hilario, and Dindo B. Banting (Banting). The CA, however, partially granted the petition filed by petitioner. The amount received by respondents by way of quitclaims was ordered deducted from their monetary award to be computed from the time of their termination on October 5, 2003 up to their actual reinstatement.

The Facts of the Case

Petitioner is a domestic corporation primarily engaged in the business of international and local broadcasting of television and radio content. ABS-CBN's Scenic Department initially handled the design, construction and provision of the props and sets for its different shows and programs. Subsequently, petitioner engaged independent contractors to create, provide and construct its different sets and props requirements. One of the independent contractors engaged by petitioner was Mr. Edmund Ty (Ty).

In 1995, CCI was formed and incorporated by Ty together with some officers of petitioner, namely, Mr. Eugenio Lopez

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[1] *Rollo*, pp. 8-40.

[2] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Apolinario D. Bruselas, Jr. and Florito S. Macalino, concurring; *id*. at 449-470.

[3] *Id*. at 487-488.

III, Charo Santos-Concio, Felipe S. Yalong and Federico M. Garcia. It was organized to engage in the business of conceptualizing, designing and constructing sets and props for use in television programs, theater presentations, concerts, conventions and/or commercial advertising.[4] Ty became the Vice-President and Managing Director of CCI. On or about the time of CCI's incorporation, the Scenic Department of petitioner was abolished and CCI was engaged by petitioner to provide props and set design for its shows and programs.

On March 6, 1995, respondent Honorato was hired by CCI as Designer. He rose from the ranks until he became Set Controller, receiving a monthly salary of ₱9,973.24 as of October 5, 2003. Respondent Banting, on the other hand, was engaged by CCI as Metal Craftsman in April 1999. He likewise rose from the ranks and became Assistant Set Controller, with a monthly salary of ₱8,820.73 as of October 5, 2003.

In June 2003, Ty decided to retire as Managing Director of CCI. His decision was prompted by his intention to organize and create his own company. While Ty and the directors of his company were still in the process of setting up the company, Ty entered into a Consultancy Agreement[5] dated June 30, 2003 with petitioner as regards the set design and production setting for the television programs of the latter.

Without Ty to manage and lead CCI, and considering that CCI was not generating revenue but was merely "breaking even", the Board of Directors of CCI decided to close the company down by shortening its corporate term up to October 31, 2003. The Minutes of the Special Joint Meeting of the Board of Directors and Stockholders[6] of CCI dated July 15, 2003 reads:

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[4] *Id*. at 54-64, "Articles of Incorporation" of CCI.

[5] *Id*. at 74-77, Annex "H".

[6] *Id*. at 72-73, Annex "G".

IV. RETIREMENT OF THE MANAGING DIRECTOR

The Chairman informed the Directors and stockholders that the managing Director of the Corporation, Mr. Edmund Ty, retired from his position effective 30 June 2003.

On behalf of the Corporation, the Chairman accepted Mr. Ty's retirement and expressed his gratitude for Mr. Ty's service to the Corporation.

V. CESSATION OF BUSINESS OPERATIONS AND DISSOLUTION OF CORPORATION BY SHORTENING ITS CORPORATE TERM

The Directors and stockholders were provided with the latest financial statements of the Corporation which reflect that it is merely breaking-even in its operations. This fact, in addition to the retirement of Mr. Ty whose expertise and service is considered vital to the Corporation's operation, prompted the Directors and stockholders to consider concluding the operations of the Corporation. After thorough discussions, it was unanimously approved that the Corporation cease its operations and that all employees thereof will receive their statutory and legal benefits as a result of the cessation of operations of the Corporation.[7]

In August 2003, Ty organized and created Dream Weaver Visual Exponents, Inc. (DWVEI). Like CCI, DWVEI is primarily engaged in the business of conceptualizing, designing and constructing sets and props for use in television programs and similar projects. With the incorporation of DWVEI, petitioner engaged the services of DWVEI.

On September 4, 2003[8] and September 5, 2003,[9] respondents Banting and Hilario were served their respective notices of the closure of CCI effective October 5, 2003. Except for the personal circumstances, their termination letters uniformly reads:

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[7] *Id*. at 72-73, Annex "G'.

[8] *Id*. at 107, Annex "N".

[9] *Id*. at 108, Annex "O".

This has reference to your employment with Creative Creatures, Inc. (the "Company") as [Set Controller/Assistant Set Controller].

We would like to inform you that Management has decided to cease operations of CCI effective October 5, 2003.

For this reason, effective October 5, 2003, your employment with the Company shall cease. As a consequence of your separation from the Company, you shall receive separation pay for services rendered to the Company.

x x x x x x x x x
Sgd.
EDMUND TY
Managing Director

With the said termination, respondent Honorato received the total amount of ₱118,205.87[10] while respondent Banting received the total amount of ₱66,383.54.[11] Both respondents executed individual release and quitclaims in favor of CCI.

Consequently, the list of terminated employees was submitted to the Department of Labor and Employment (DOLE) and notices of cessation of operations were filed with the Bureau of Internal Revenue and Home Development Mutual Fund.

On September 24, 2003, respondents filed a complaint for illegal dismissal, illegal deduction, non-payment of meal allowances, with prayer for damages against CCI and petitioner before the National Labor Relations Commission (NLRC) Arbitration Branch. The case was docketed as NLRC-NCR Case No. 00-09-11214-03. In their position paper, respondents claimed that the closure of CCI was not due to any of the authorized causes provided by law but was done in bad faith for the purpose of circumventing the provisions of the Labor Code, as CCI was still conducting operations under the guise of DWVEI.

Petitioner and CCI, represented by the same counsel, submitted their position paper claiming that they are separate and distinct corporations. Petitioner and CCI maintained that an employer

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[10] *Id*. at 116-117.

[11] *Id*. at 118-119.

may close its business even if it is not suffering from losses or financial reverses, as long as it pays its employees their termination pay. Accordingly, the employees of CCI received separation pay equivalent to 1 ½ month pay for every year of service, commutation of unused leaves and pro-rated 13th and 14th month pay. Respondents even executed quitclaims and waivers in favor of petitioner.

Ruling of the Labor Arbiter

After weighing the positions taken by the opposing parties, including the evidence adduced in support of their respective cases, the Labor Arbiter (LA) issued a Decision[12] dated March 1, 2006 finding respondents to have been illegally dismissed, and ordering CCI and petitioner to reinstate them to their former or equivalent positions and to jointly and severally pay their full backwages and other allowances. The dispositive portion of the decision reads:

> **WHEREFORE,** premises considered, it is hereby declared that the complainants' termination was illegal and the respondents are jointly and severally ordered to reinstate them to their former or equivalent position with full backwages from October 2003 up to the date of reinstatement, as follows:
>
> **HONORATO C. HILARIO** **₱259,303.24**
> (Nov. 2003 to Dec. 2005 = 26 mos. x ₱9,973.24 = ₱259,303.24
>
> **DINDO B. BANTING** **₱229,338.98**
> (Nov. 2003 to Dec. 2005 = 26 mos. x ₱8,820.73 = ₱229,338.98)
>
> The respondents are likewise ordered to pay jointly and severally to complainant Hilario his meal allowance from the time it was withheld or deprived in October 2000 up to present. Whatever money claims herein awarded should be deducted by whatever the complainants previously received incident to their illegal dismissal.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[13]

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[12] Rendered by Labor Arbiter Ramon Valentin C. Reyes; *id*. at 251-262.

[13] *Id*. at 261-262.

The LA held that the purported closure of business operation of CCI was undertaken for the purpose of circumventing the provisions of the Labor Code, particularly Article 279[14] thereof which guarantees the security of tenure of workers. Hence, the LA ordered the reinstatement of respondents with full backwages from October 2003 up to March 1, 2006.

In finding petitioner jointly and severally liable with CCI for illegal dismissal, the LA noted that CCI appears to have been created, organized and operated under the direction, control and management of petitioner. CCI was principally formed to perform the functions and activities formerly undertaken by petitioner's ABS-CBN Scenic Department whose functions and activities of handling design, construction and provision of props and sets are necessary in petitioner's business. CCI was also affiliated with and/or a subsidiary of petitioner and majority of its stockholders are also the major stockholders of petitioner. As found by the LA, petitioner had a clear hand in the purported closure of the latter and the subsequent creation of DWVEI. It further held that the closure of operation and consequent dismissal of the respondents was designed, orchestrated and implemented with the participation and involvement of petitioner.

Respondent Honorato moved for their immediate reinstatement pending appeal but was denied in an Order dated August 9, 2006 of the LA.

Ruling of the NLRC

In a Decision[15] dated June 30, 2008, the NLRC affirmed the decision of the LA in finding petitioner and CCI jointly and

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[14] Art. 279. Security of tenure. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (As amended by Section 34, Republic Act No. 6715, March 21, 1989).

[15] *Rollo*, pp. 307-318.

severally liable to pay respondents their backwages and other allowances. The NLRC agreed with the LA that the creation and abolition of CCI was done with the direct participation of, and with sole dependence on petitioner, hence, petitioner and CCI should be treated as a singular entity since petitioner controlled the affairs of CCI. The NLRC added that the corporate shield of CCI was used to justify the dismissal of respondents. When CCI ceased to exist, there was supposedly no more reason to hire respondents but in reality, the functions of respondents continued to be performed in ABS-CBN. Hence, there was no reason to terminate the services of respondents. The dispositive portion of the NLRC Decision states, to wit:

> **WHEREFORE,** judgment is hereby rendered:
>
> 1. DISMISSING the appeal of respondents and affirming the Decision of Labor Arbiter Ramon Valentin C. Reyes dated march 1, 2006;
> 2. GRANTING the appeal of complainant Hilario; and
> 3. DIRECTING ABS-CBN to immediately REINSTATE complainants to their former or equivalent positions, and to REPORT COMPLIANCE with this order within ten (10) days from receipt hereof.
>
> **SO ORDERED**.[16]

Ruling of the CA

Petitioner elevated the case to the CA, arguing that the NLRC erred and gravely abused its discretion in treating petitioner and CCI as a single entity and in ruling therewith respondents' termination as illegal. Petitioner reiterates its assertion that it was erroneous for the NLRC to treat CCI and petitioner as a single entity when there is clear and convincing evidence on record that each has separate corporate personality. Petitioner likewise argued that respondents' dismissal was valid, as the requirement for termination of employees by reason of closure of business operations was complied with and the closure was an exercise of its management prerogative.

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[16] *Id*. at 316-317.

The CA rendered a Decision[17] dated March 4, 2010 which affirmed the finding of illegal dismissal of respondents but modified the decision of the NLRC and ordered the respondents' reinstatement, to wit:

> **WHEREFORE**, the instant petition is hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated June 30, 2008 issued by the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 049933-06 and its Resolution dated January 30, 2009 denying petitioners' motion for reconsideration, are hereby **MODIFIED**, in that, the amount received by the private respondents by way of quitclaims shall be deducted from their respective monetary award to be computed from the time of their termination on October 5, 2003 up to their actual reinstatement.
>
> **SO ORDERED.**[18]

Petitioner filed a Motion for Reconsideration[19] from the CA decision but was denied in a Resolution[20] dated July 29, 2010.

Issues

Unrelenting, petitioner filed the present petition arguing that:

THE QUESTIONED DECISION AND RESOLUTION OF THE COURT OF APPEALS SHOULD BE REVERSED AND SET ASIDE INASMUCH AS THE SAME WAS RENDERED CONTRARY TO LAW AND PREVAILING JURISPRUDENCE CONSIDERING THAT:

I. THERE IS NO FACTUAL AND LEGAL BASIS TO DISREGARD THE SEPARATE CORPORATE PERSONALITIES OF ABS-CBN AND CCI

II. RESPONDENTS' TERMINATION AS A RESULT OF CCI'S CLOSURE WAS VALID AND LEGAL AND WAS DONE IN GOOD FAITH AND IN ACCORDANCE WITH THE LAW

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[17] *Id*. at 449-470.

[18] *Id*. at 469-470.

[19] *Id*. at 471-484.

[20] *Id*. at 487-488.

III. [RESPONDENTS'] REINSTATEMENT TO ABS-CBN IS IMPOSSIBLE INASMUCH AS THERE IS NO POSITION AS DESIGNER AND METAL CRAFTSMAN THEREAT.[21]

Petitioner maintains that ABS-CBN and CCI are separate and distinct corporations and that there was no factual and legal basis to disregard their separate corporate personalities. Petitioner contends that contrary to the ruling of the CA, respondents' termination was valid and legal and was done in good faith in accordance with the law and not a scheme to get rid of some employees. According to petitioner, the fact that CCI is a subsidiary of petitioner and that a majority of petitioner's stockholders are also the stockholders of CCI is not a justification to treat the said corporation as a single entity. Even assuming that CCI exclusively provides services to petitioner and its other subsidiaries such will still not justify disregarding the separate corporate personalities of ABS-CBN and CCI.

In their Comment,[22] respondents counter that Edmund Ty's resignation was feigned – a ploy to circumvent labor laws to the prejudice of respondents. Respondents point out that CCI's operation was entirely dependent upon petitioner and that CCI was created by, and its services intended only for, the sole benefit of petitioner, so much so that without petitioner, there would be no CCI, and vice versa. In addition, respondents posit that contrary to petitioner's claim that CCI closed down on October 5, 2003, which was the basis for the termination of the services of respondents therein, CCI continued to operate and accept job orders and render services to petitioner and thereafter continued to operate under the guise of DWVEI, a front corporation for CCI/petitioner.

In their Reply,[23] petitioner counters that the fact that CCI was a subsidiary of ABS-CBN prior to its closure and that former CCI officers are the incorporators and officers of DWVEI cannot

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[21] *Id*. at 21.

[22] *Id*. at 500-508.

[23] *Id*. at 520-535.

be used as a justification to pierce the separate corporate fiction of these companies, much more to consider petitioner and DWVEI as one and the same entity. This is especially true considering that the said former officers of CCI who became incorporators and officers of DWVEI are not officers and employees of ABS-CBN. The Articles of Incorporation of ABS-CBN and CCI show with clarity that they are indeed separate and distinct corporations and such is the best evidence to prove their separate corporate personality.

Essentially, the core issues presented in this petition are: (1) whether respondents' termination of employment due to cessation of business operations was valid; (2) whether petitioner is jointly and severally liable with CCI for the dismissal of respondents; and (3) whether reinstatement of respondents is proper under the circumstances.

We deny the petition.

Ruling of the Court

As a general rule, only questions of law raised via a petition for review on *certiorari* under Rule 45 of the Rules of Court are reviewable by this Court. "Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence."[24] In any case, even if the case be decided on its merits, the Court still finds no cogent reason to depart from the findings of the labor tribunals and the appellate court that respondents were illegally dismissed.

In *Veterans Federation of the Philippines v. Eduardo L. Montenejo, et al.*,[25] the Court ruled thus:

In our jurisdiction, the right of an employer to terminate employment is regulated by law. Both the Constitution and our laws guarantee

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[24] *Reyes v. Global Beer Below Zero, Inc.,* G.R. No. 222816, October 4, 2017.

[25] G.R. No. 184819, November 29, 2017.

security of tenure to labor and, thus, an employee can only be validly dismissed from work if the dismissal is predicated upon any of the just or authorized causes allowed under the Labor Code.[26] (Citations omitted)

Correspondingly, a dismissal that is not based on either of the said causes is regarded as illegal and entitles the dismissed employee to the payment of backwages and, in most cases, to reinstatement.

One of the authorized causes for dismissal recognized under the Labor Code is the *bona fide* cessation of business operations by the employer. Article 298 (formerly Art. 283) of the Labor Code explicitly sanctions terminations due to the employer's cessation or business or operations – as long as the cessation is *bona fide* or is not made "for the purpose of circumventing the employee's right to security of tenure." Article 298 is hereby quoted for reference, *viz*:

Art. 298. Closure of establishment and reduction of personnel. – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operations of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) one month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and **in cases of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to at least one (1) month pay or at least one (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.** (Emphasis ours)

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[26] *Id*.

Based on the foregoing provision, there are three requirements for a valid cessation of business operations: (a) service of a written notice to the employees and to the DOLE at least one month before the intended date thereof; (b) the cessation of business must be *bona fide* in character; and (c) payment of the employees of termination pay amounting to one month pay or at least one-half month pay for every year of service, whichever is higher.[27]

In the present case, the reason cited by CCI for discontinuing its operations was that it was not making money but was merely "breaking even" and that the closure of business of CCI was a business decision of which discretion lies with the CCI's Board of Directors. Claiming good faith in the cessation of CCI's operations, petitioner claims that CCI has faithfully complied with the procedural requirements of due process under the Labor Code in that it has served a written notice on the worker and the DOLE and has given the dismissed employees separation pay.

We are not convinced. While the CCI has complied with the requirements of service of notice of cessation of operations one month before the intended date of closure and the payment of termination pay, it was not sufficiently proven that its closure of business was done good faith. As correctly noted by both the LA and the NLRC, as well as the appellate court, CCI failed to satisfactorily show that its closure of business or cessation of operations was *bona fide* in character and not intended to defeat or circumvent the tenurial rights of employees.

A closure or cessation of business or operations as ground for the termination of an employee is considered invalid when there was no genuine closure of business but mere simulations which make it appear that the employer intended to close its business or operations when in truth, there was no such intention. To unmask the true intent of an employer when effecting a

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[27] *Manila Polo Club Employees' Union (MPCEU) FUR-TUCP v. Manila Polo Club, Inc.,* 715 Phil. 18, 27-28 (2013).

closure of business, it is important to consider not only the measures adopted by the employer prior to the purported closure but also the actions taken by the latter after the act.

However, both the labor tribunals and the CA found that the purported closure of business operation of CCI was undertaken for the purpose of circumventing the provisions of the Labor Code which guarantees security of tenure of respondents and all other employees of CCI. We are not inclined to depart from the uniform findings which are substantially supported by the evidence on records. The Court is not a trier of facts and will not review factual findings of the lower tribunals as these are generally binding and conclusive.

Here, suspicions were raised when CCI decided to immediately cease its business operations when one its officers, Ty, retired and decided to form his own company to engage in the same business as CCI. It becomes even more evident that the closure of CCI was done in bad faith and with the intention of circumventing the laws when petitioner dropped CCI and instead hired and engaged the services of Ty as consultant, and subsequently Ty's new company DWVEI for the props and set design of its various programs, thereby resulting in the termination of respondents and the other employees of CCI. Apparently, CCI's purported closure was a ploy to get rid of some employees and there was actually a plan to continue with the business operations under the guise of a new corporation, DWVEI, which merely transferred and rehired most of the employees of CCI, to the prejudice of herein respondents who were terminated. Clearly, respondents' termination of employment was illegal as it was done in bad faith and in circumvention of the law.

Having ruled that respondents' termination as illegal, We now proceed to rule on whether petitioner was correctly held jointly and severally liable with CCI for payment of monetary award to respondents.

The doctrine of piercing the veil of corporate fiction is a legal precept that allows a corporation's separate personality

to be disregarded under certain circumstances so that a corporation and its stockholders or members, or a corporation and another related corporation should be treated as a single entity. In *PNB v. Hydro Resources Contractors Corp.*,[28] the Court said that:

> The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: (1) defeat public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or (3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[29]

The present case falls under the third instance where a corporation is merely a farce since it is a mere alter ego or business conduit of person or in this case a corporation. "The corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation."[30] By looking at the circumstances surrounding the creation, incorporation, management and closure and cessation of business operations of CCI, it cannot be denied that CCI's existence was dependent upon Ty and petitioner. First, the internal Scenic Department which initially handled the props and set designs of petitioner was abolished and shut down and CCI was incorporated to cater to the props and set design requirements of petitioner, thereby transferring most of its personnel to CCI. Notably, CCI was a subsidiary of petitioner and was incorporated through the collaboration of Ty and the other major stockholders and officers of petitioner. CCI provided services mainly to petitioner and its other subsidiaries. When

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[28] 706 Phil. 297 (2013).

[29] *Id*. at 309.

[30] *Zambrano, et al. v. Philippine Carpet Manufacturing Corporation, et al.*, G.R. No. 224099, June 21, 2017.

Edmund Ty organized his own company, petitioner hired him as consultant and eventually engaged the services of his company DWVEI. As a result of which CCI decided to close its business operations as it no longer carried out services for the design and construction of sets and props for use in the programs and shows of petitioner, thereby terminating respondents and other employees of CCI. Petitioner clearly exercised control and influence in the management and closure of CCI's operations, which justifies the ruling of the appellate court and labor tribunals of disregarding their separate corporate personalities and treating them as a single entity.

Another notable fact is that in the Certification[31] dated August 22, 2011 issued by petitioner as to the employment status of Ty, it was stated that the latter was holding the position of Vice-President and Managing Director of its Division, CCI, from February 1, 1996 up to October 5, 2003, the date of effectivity of CCI's closure. This shows that Ty was in fact considered a regular employee of petitioner and CCI was considered a division of petitioner which bolster the conclusion that petitioner should be held jointly and severally liable with CCI for the illegal dismissal of respondents.

Anent the issue of the propriety of reinstatement of respondents, We find it necessary to modify the decision of the CA.

In *ICT Marketing Services, Inc. v. Sales*,[32] the Court ruled that:

> Settled is the rule that 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 up to the time of actual reinstatement.[33]

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[31] *Rollo*, p. 543, Annex "B".

[32] 769 Phil. 498 (2015).

[33] *Id*. at 512.

"Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month for every year of service should be awarded as an alternative."[34]

Here, separation pay is granted because reinstatement is no longer advisable and a long time has lapsed, particularly sixteen (16) years, since the dismissal of respondents. In fact, it should be noted that respondent Hilario died on September 2, 2015 during the pendency of this appeal and was substituted by his heirs, namely his wife Gloria Hilario and his children.[35] Under the foregoing circumstances, the payment of separation pay is considered an acceptable alternative to reinstatement since the latter option is no longer desirable or viable.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision of the Court of Appeals dated March 4, 2010 and the Resolution dated July 29, 2010 in CA-G.R. SP No. 107739 finding respondents Honorato C. Hilario and Dindo B. Banting illegally dismissed and holding petitioner ABS-CBN Broadcasting Corporation and Creative Creatures, Inc. jointly and severally liable to pay respondents' backwages are hereby **AFFIRMED with MODIFICATION**, in that in lieu of reinstatement, petitioner and CCI are hereby ordered to pay respondents Banting and the heirs of Hilario, separation pay equivalent to one (1) month salary for every year of service from the date of their respective employment up to the finality of this Decision.

Petitioner and CCI are hereby ordered to pay respondents Banting and the heirs of Hilario the following:

1. Full backwages from the date of their dismissal on October 5, 2003 up to the finality of this Decision less the amount they received by way of quitclaim;

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[34] *Reyes, et al. v. RP Guardians Security Agency, Inc.,* 708 Phil. 598, 605 (2013).

[35] Notice and Manifestation dated January 19, 2016.

2. Separation pay equivalent to one month pay for every year of service from their respective date of employment, March 1995 and April 1999, respectively, up to the finality of this Decision;

3. Interest of six percent (6%) *per annum* of the total monetary award computed from the date of dismissal up to the finality of this Decision; and thereafter, twelve percent (12%) *per annum* from finality of this Decision up to the full satisfaction.[36]

SO ORDERED.

Bersamin, C.J., del Castillo, Caguioa,[*] and *Gesmundo, JJ.*, concur.

FIRST DIVISION

[G.R. Nos. 203076-77. July 10, 2019]

AZUCENA E. BAYANI, *petitioner, vs.* **EDUARDO, LEONORA, VIRGILIO, VILMA, CYNTHIA and NANCY, all surnamed YU and MR. ALFREDO T. PALLANAN,** *respondents.*

[G.R. Nos. 206765 and 207214. July 10, 2019]

HEIRS OF CONCEPCION NON ANDRES, namely: SERGIO, JR., SOFRONIO and GRACELDA, all surnamed ANDRES, *petitioners, vs.* **HEIRS OF**

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[36] See *Innodata Knowledge Services, Inc. v. Socorro D'Marie T. Inting et al.,* G.R. No. 211892, December 6, 2017.

[*] Designated Additional Member per Raffle dated March 11, 2019 *vice* Associate Justice Francis H. Jardeleza.

MELENCIO YU AND TALINANAP MATUALAGA, namely: EDUARDO, LEONORA, VIRGILIO, VILMA, CYNTHIA, IMELDA and NANCY, all surnamed YU; THE PROVINCIAL SHERIFF OF GENERAL SANTOS CITY; MR. ALFREDO T. PALLANAN, in his capacity as deputy sheriff of the Regional Trial Court (Branch 36), General Santos City; and HON. ISAAC ALVERO V. MORAN, Presiding Judge of the Regional Trial Court (Branch 36), General Santos City; YARD URBAN HOMEOWNERS ASSOCIATION, INC., herein represented by its President, ROGELIO ENERO, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; ACTION *IN PERSONAM*; IN AN ACTION *IN PERSONAM*, THE COURT IS EMPOWERED TO RENDER PERSONAL JUDGMENT OR TO SUBJECT THE PARTIES IN A PARTICULAR ACTION TO THE JUDGMENT AND OTHER RULINGS RENDERED IN THE ACTION ONLY WHEN IT REGULARLY ACQUIRED JURISDICTION OVER THE PARTIES; CASE AT BAR.—The present controversy stems from the implementation against them of the RTC's judgment rendered in **Civil Case No. 1291** despite their being strangers in the action. The following circumstances show that, indeed, they were strangers to the action. Firstly, the proceedings in **Civil Case No. 1291** – being *in personam* – were exclusively between the spouses Melencio and Talinanap, on one hand, and Sycip and YUHAI, on the other. The mere mention of Alfonso Non in the **1990 Case** did not mean that he had participated at the trial, or that he had knowledge of the proceedings, or that he had been duly notified of the case as to bind him to the effects of the judgment therein. Secondly, the character of **Civil Case No. 1291** as an action *in personam* — being an action for the declaration of nullity of document and recovery of possession of real property—was unquestionable. Such character of the action empowered the court "to render personal judgment or to subject the parties in a particular action to the judgment and other rulings rendered in the action" only

when it regularly acquired jurisdiction over the parties. As such, the RTC would acquire jurisdiction over the parties only if they had been properly impleaded and personally served with the summons and copies of the complaint. x x x The Heirs of Non Andres were not impleaded in **Civil Case No. 1291,** much less personally served summons therefor, the RTC did not acquire jurisdiction over any of them. The execution of the judgment rendered therein could not validly include strangers to the case like the Heirs of Non Andres, for the court did not acquire jurisdiction over them and were consequently not given their day in court.

2. ID.; ID.; JUDGMENTS; EXECUTION OF JUDGMENT; THE EXECUTION OF ANY JUDGMENT FOR A SPECIFIC ACT CANNOT EXTEND TO PERSONS WHO WERE NEVER PARTIES TO THE MAIN PROCEEDING; RATIONALE.—It is equally worthy to note that Rule 39 of the *Rules of Court* sets the following guidelines to govern the execution of judgments for the delivery or restitution of property, *viz.:* SECTION 10. Execution of Judgments for Specific Act. x x x Evident from the foregoing is that such guidelines only extend to the judgment obligor or any person claiming rights under him. It is truly doctrinal that the execution of any judgment for a specific act cannot extend to persons who were never parties to the main proceeding. A court process that forcefully imposes its effects on or against a stranger, even if issued by virtue of a final judgment, certainly offends the constitutional guarantee under Section 1, Article III of the 1987 Constitution that no person shall be deprived of life, liberty, or property without due process of law.

3. ID.; ID.; ID.; ID.; THE SHERIFF'S DUTY TO STRICTLY ADHERE TO THE MANDATE OF THE ORDERS REGULARLY ISSUED BY THE COURT FOR THE EXECUTION STAGE OF A JUDGMENT CANNOT BE ARBITRARILY IGNORED AND SET ASIDE, BUT MUST BE FAITHFULLY DISCHARGED AND COMPLIED WITH, SUSTAINED.—The sheriff's duty to strictly adhere to the mandate of the orders regularly issued by the court for the execution stage of a judgment cannot be arbitrarily ignored or set aside, but must be faithfully discharged and complied with. The sheriff is bereft of the power or discretion to expand

the mandate in any way. As pointed out in *Stilgrove v. Sabas,* to wit: The sheriff's duty to execute a judgment is ministerial. He need not look outside the plain meaning of the writ of execution. And when a sheriff is faced with an ambiguous execution order, prudence and reasonableness dictate that he seek clarification from a judge.

4. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; CHARGES FOR CONTEMPT MUST BE PROPERLY BROUGHT TO AND HEARD BY THE COURT AGAINST WHOSE AUTHORITY THE CONTEMPT IS COMMITTED, WHICH HAS THE PREFERENTIAL RIGHT TO INQUIRE WHETHER ANY PARTY HAS OBEYED ITS ORDER; CASE AT BAR.—We agree with the ruling of the RTC that the sheriff was entitled to be presumed to have regularly performed his duties; and with the finding that Bayani had not presented sufficient evidence to overcome the presumption. Nonetheless, the sheriff's persistence on demolishing the structures erected on Lot No. 2 by strangers to the action clearly exceeded the tenor and coverage of the orders. The sheriff thus acted not only erroneously but also outside the bounds of his authority. However, we have to clarify that the charge brought against him for contempt of court based on such circumstances must be properly brought to and heard by the RTC, conformably with the recognized rule that the court against whose authority the contempt is committed has the preferential right to inquire whether any party has disobeyed its order.

5. LEGAL ETHICS; CODE OF JUDICIAL CONDUCT; THE JUDGE MUST INHIBIT HIMSELF FROM ANY PROCEEDING THAT MAY CAST DOUBT OVER HIS IMPARTIALITY, SUCH AS HAVING A FORMER CLIENT AS A PARTY IN A CASE BEFORE HIM; VIOLATION IN CASE AT BAR.—The Heirs of Non Andres have averred that **Judge Majaducon had been Melencio's former counsel prior to his appointment as the Presiding Judge.** x x x This averment by the Heirs of Non Andres certainly demonstrates a probable conflict of interest committed by Judge Majaducon. He had no right to preside in any case that involved the same interests pertaining to Melencio, the predecessor of the Heirs of Yu, who was his former client. We cannot turn a blind eye to this averment, which must be treated herein as a very serious

accusation that impairs and diminishes the good reputation of a judicial officer as well as of the entire Judiciary. It is elementary, indeed, that every judge should administer justice impartially. As such, the judge must inhibit himself from any proceeding that may cast doubt over his impartiality, such as having a former client as a party in a case before him. Every judge is duty-bound not only to render a just judgment but also to render it in a manner "completely free from suspicion as to its fairness and as to his integrity." Under the circumstances, the Court must demand from Judge Majaducon a written explanation why he should not be administratively sanctioned for violating the ethical rules demanding his impartiality and requiring him to shun conflicts of interest in every matter he handled as a judicial officer.

APPEARANCES OF COUNSEL

Ferrer & Associates Law Offices for petitioners in G.R. Nos. 206765 & 207214.

Camilo Cariño Dionio, Jr. for respondents heirs of Melencio Yu and Talinanap Matualaga.

D E C I S I O N

BERSAMIN, *C.J.*:

The guarantee of due process requires that the judgment of the court in an action *in personam* shall be enforced only against individuals who have been properly impleaded and whose persons have regularly come under the jurisdiction of the trial court. Any person not duly served with the summons or who has not voluntarily appeared in the action cannot be prejudiced by the judgment.

The Case

Before us are consolidated appeals by petition for review on *certiorari,* specifically: (1) **G.R. No. 206765** and **G.R. No. 207214,** filed by the Heirs of Concepcion Non Andres against the Heirs of Melencio Yu and Talinanap Matualaga, *et al.*; and

(2) **G.R. Nos. 203076-77,** filed by Azucena Bayani. These appeals assail the decision promulgated by the Court of Appeals (CA) on May 20, 2011 (assailed decision), as well as the resolutions promulgated on July 19, 2012 and April 17, 2013 respectively in **CA-G.R. SP No. 02118-MIN** and **CA-G.R. No. SP No. 02084-MIN.**

Petitioners Sergio Andres, Jr., Sofronio Andres, and Gracelda Andres (collectively, Heirs of Non Andres) are the children of the late Concepcion Non Andres, the daughter of the late Alfonso Non. Respondents Eduardo, Leonora, Virgilio, Vilma, Cynthia, and Nancy (collectively, Heirs of Yu) are the heirs of the late Spouses Melencio Yu and Talinanap Matualaga.

Antecedents

In 1953, a parcel of land, with an approximate aggregate area of 54.4980 hectares, located in Makar, General Santos City (Makar property), was subdivided into Lots Nos. 1, 2, 3, 4, and 5. Melencio filed applications for free patent as to Lots Nos. 2 and 4, and his applications were eventually approved.[1]

Sometime after 1963, Melencio executed an *Agreement to Transfer Rights and Deed of Sale* and a *Quitclaim Deed* upon the intervention of Alfonso Non. It turned out, however, that said documents were for the sale of *all* the subdivided lots to one John Z. Sycip, instead of only the lots covered by the free patent issued to Melencio. As a result, the original certificate of title was delivered to Sycip instead of to Melencio and Talinanap.

After the subdivision, the disposition of the Makar property — particularly Lot No. 2 — became the subject of controversy in several civil cases, the rulings in which were ultimately brought to the Court, namely: (a) **G.R. No. 76487** entitled *Heirs of Sycip v. Court of Appeals,*[2] whose decision was promulgated on

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[1] *Heirs of John Z. Sycip v. Court of Appeals,* G.R. No. 76487, November 9, 1990, 191 SCRA 262, 264.

[2] *Id*.

November 9, 1990 **(1990 Case)**; (b) **G.R. No. 182371** entitled *Heirs of Yu v. Court of Appeals,*[3] whose decision was promulgated on September 4, 2013 **(2013 Case)**; and (c) the present consolidated appeals.

A.
1990 Case (G.R. No. 76487)

After discovering that the original certificate of title had been delivered to Sycip, Melencio and Talinanap commenced in the Court of First Instance (CFI) of South Cotabato an action against Sycip for the declaration of nullity of documents and recovery of possession of real property (with a prayer for a writ of preliminary mandatory injunction). The action, docketed as **Civil Case No. 1291,** was assigned to Branch I of the CFI.

The ruling in **Civil Case No. 1291** eventually reached the Court **(G.R. No. 76487),** and the pivotal question raised was whether or not the sale of Lot No. 2 was null and void *ab initio*. Through the decision promulgated on November 9, 1990,[4] the Court nullified the *Agreement to Transfer Rights and Deed of Sale* and the *Quitclaim Deed* on the ground that with Melencio and Talinanap being native Muslims belonging to the cultural minority or non-Christian Maguindanao tribe, the real property transactions to which they were parties were governed by the pertinent provisions of the *Revised Administrative Code of Mindanao and Sulu,* the *Public Land Act,* and Republic Act No. 3872, laws that respectively required the real property transactions to be approved by the relevant Provincial Governor, the Commissioner of Mindanao and Sulu, and the Chairman of the Commission on National Integration; and that, therefore, the documents were void and inexistent for being falsified, without consideration, and lacking of the requisite approvals.[5]

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[3] G.R. No. 182371, September 4, 2013, 705 SCRA 84.

[4] *Supra* note 1, at 266.

[5] *Id*. at 267.

The ruling in the **1990 Case (G.R. No. 76487)** became final and executory on December 10, 1990, and the entry of judgment was issued on February 2, 1991. As a result, the Regional Trial Court (RTC) in General Santos City directed the issuance of the writ of execution in its order dated February 26, 1991.[6]

As it turned out, Sycip had long abandoned the Makar property since the 1980s. As of the time of the execution of the ruling in **Civil Case No. 1291,** however, other persons were already occupying Lot No. 2 and had built improvements thereon. Among them were: (1) the group of illegal settlers that had entered the disputed property in the interim, and who had organized themselves into the Yard Urban Homeowners Association, Inc. **(YUHAI)**; (2) another group of illegal entrants who had organized themselves as the Sogod Homeseekers Association, against whom the Heirs of Yu brought an action for forcible entry docketed as Civil Case No. 1668-22;[7] and (3) the Heirs of Non Andres, represented by Gracelda.

When the sheriff implemented the writ of execution issued in the **1990 Case,** the occupants refused to vacate Lot No. 2. Thus, the Heirs of Yu moved for the demolition of the occupants' improvements on Lot No. 2.[8] In the order dated April 26, 1991, the RTC granted this motion and directed "the defendants who have remained in the premises xxx to remove their houses, otherwise, corresponding demolition will automatically follow."[9]

To prevent the Heirs of Yu from taking over the property where its members had erected their houses, YUHAI filed a complaint for injunction and damages with prayer for writ of preliminary injunction or temporary restraining order (TRO), docketed as **Civil Case No. 4647,** in the RTC, which was assigned to Branch 23 **(YUHAI Injunction Case).**[10] By this time, the

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[6] *Rollo* (G.R. No. 206765 & G.R. No. 207214), p. 254.

[7] *Id*. at 255.

[8] *Id*. at 254.

[9] *Id*. at 115.

[10] *Id*. at 42.

same RTC branch was hearing both **Civil Case No. 1291** and **Civil Case No. 4647,** which had been consolidated.

The RTC dismissed the **YUHAI Injunction Case** on March 25, 1995, and the CA affirmed the dismissal on August 28, 1998 in CA-G.R. No. 54003.[11]

Still unsuccessful in obtaining possession of Lot No. 2, the Heirs of Yu again sought the issuance of a special order of demolition. However, on March 10, 1998, the RTC, then presided by Acting Presiding Judge Monico G. Cabales, denied their motion to that effect,[12] observing that the improvements being sought to be demolished had been built by persons not privy to Civil Case No. 1291; and holding that the judgment did not bind persons who were not parties in the action because every person was entitled to due process of law.[13]

The RTC later denied the Heirs of Yu's motion for reconsideration.

Undaunted, the Heirs of Yu again moved for the issuance of a writ of demolition. The RTC, now under Presiding Judge Jose S. Majaducon, granted the motion, and issued the special order of demolition dated August 22, 2001 **(2001 Demolition Order),**[14] which reads as follows:

SPECIAL ORDER OF DEMOLITION

TO: The Provincial Sheriff of General Santos City or any of his deputies

x x x x x x x x x

WHEREAS, on March 19, 2001, an ORDER was issued by the Court, the dispositive part of which reads as follow (sic):

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[11] See *Heirs of Melencio Yu v. Court of Appeals,* G.R. No. 182371, September 4, 2013, 705 SCRA 84, 88.

[12] *Rollo* (G.R. No. 206765 & G.R. No. 207214, pp. 253-257).

[13] *Id*. at 256.

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

"WHEREFORE, the motion to implement the writ of demolition against the defendants and oppositors is hereby GRANTED."

WHEREAS, on June 20, 2001, an ORDER was issued by the Court, reading as follows:

"Acting on the Motion for Reconsideration on the Order dated [M]arch 19, 2001, granting motion for a special order of demolition and the opposition thereto, the Court having found no cogent reason to reconsider or set aside the Order, hereby DENIES the motion.

The Decision of the Court of Appeals is very clear on the issues raised in the motion. Since oppositors have not shown any right to the land, they should vacate the same. According to the Court of Appeals, it is not necessary for plaintiffs in Civil Case No. 1291 and defendants in Civil Case No. 4647 to file a separate case to eject oppositors.

WHEREFORE, the motion is denied."

NOW THEREFORE, we command you to demolish the improvements erected by the defendants HEIRS OF JOHN Z. SYCIP xxx, in Civil Case No. 1291, and plaintiffs YARD URBAN HOMEOWNERS ASSOCIATION INC., ET AL. in Civil Case No. 4647, on that portion of land belonging to plaintiffs in Civil Case 1291 and defendants Civil Case No. 4647, MELENCIO YU and TALINANAP MATUALAGA, covered by Original Certificate of Title [No.] (V-14496) (P-2331) P-523 in Apopong, General Santos City. (Bold underscoring supplied for emphasis)

By virtue of the **2001 Demolition Order,** the provincial sheriff issued notices to vacate addressed to the Heirs of Sycip, YUHAI, and *"all adverse claimants and actual occupants of the disputed lot,"*[15] including the Heirs of Non Andres.

Prompted by the issuance of the **2001 Demolition Order,** the Heirs of Non Andres and YUHAI separately filed in the RTC complaints for quieting of title docketed as **Civil Case**

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[15] *Heirs of Melencio Yu v. Court of Appeals, supra* note 11, at 89.

No. 7066 (Heirs of Non Andres Quieting Case) and **Special Civil Case No. 562 (YUHAI Quieting Case),** respectively.

In the meantime, the RTC directed the sheriff to proceed with the implementation of the **2001 Demolition Order.** Thereafter, YUHAI filed a petition for *certiorari* in the CA to annul the **2001 Demolition Order** (docketed as CA-G.R. SP No. 69176). Initially, on March 5, 2002, the CA issued a TRO to enjoin the implementation, thereby effectively deferring the demolition for several years.[16] Ultimately, the CA dismissed YUHAI's petition for *certiorari* and denied YUHAI's motion for reconsideration of the dismissal. Thus, YUHAI appealed the dismissal to this Court, which denied the petition for review on *certiorari* on September 16, 2009.[17]

Inasmuch as the implementation of the **2001 Demolition Order** remained pending and incomplete, the Heirs of Yu filed their *Motion to Resume and Complete Demolition.* In its October 9, 2007 order **(2007 Resumption Order),**[18] the RTC (Branch 36) granted the motion and directed the provincial sheriff to proceed with and complete the demolition allowed in **Civil Case No. 1291** and **Civil Case No. 4647,**[19] *viz:*

SPECIAL ORDER TO RESUME AND COMPLETE DEMOLITION

TO: The Provincial Sheriff of General Santos City or any of his deputies

x x x x x x x x x

NOW THEREFORE, we command you to resume and complete the demolition in [Civil Case Nos. 1291 and 4647] **as directed in the Special Order of Demolition, dated August 22, 2001,** issued by then Judge Jose S. Majaducon. (Emphasis Supplied)

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

[17] *Id.* at 90.

[18] *Rollo* (G.R. No. 206765 & G.R. No. 207214), pp. 116-117.

[19] *Heirs of Melencio Yu v. Court of Appeals, supra* note 11, at 90.

Subsequently, on November 12, 2007 and December 4, 2007, the sheriff sent notices to *all occupants* to vacate Lot No. 2.[20]

Two parties assailed the **2007 Resumption Order,** namely: the Heirs of Non Andres and Azucena N. Bayani.

Arguing that they were not even parties in **Civil Case No. 1291** and **Civil Case No. 4647,** the Heirs of Non Andres assailed their inclusion in the implementation through their letter addressed to the provincial sheriff whereby they insisted on their exclusion from the implementation, and by filing therein a *Special Appearance with Ex-Parte Manifestation and Motion.* The provincial sheriff did not act on their letter, while the RTC expressly disallowed their motion through the order dated December 7, 2007.[21] On December 11, 2007,[22] therefore, they brought a petition for *certiorari,* prohibition, and injunction with prayer for the issuance of a TRO and/or writ of preliminary injunction **(CA-G.R. SP No. 02084-MIN)** to set aside the **2007 Resumption Order** and to permanently enjoin the demolition as far as they were concerned.

On her part, Bayani also went to the CA by commencing an action for indirect contempt against Deputy Sheriff Alfredo Pallanan of Branch 36 of the RTC on the ground that the latter had illegally demolished her house **(CA-G.R. SP NO. 02118-MIN).**

It is notable that the two petitions filed in the CA to resist the implementation of the **2007 Resumption Order** paved the way to two cases that separately reached the Court, specifically: (1) **CA-G.R. SP No. 02084-MIN** involving matters that had occurred in the early stages *(i.e.,* the ancilliary prayer for the issuance of writ of preliminary injunction to enjoin the demolition), which led to the **2013 Case;** and (2) after **CA-G.R. SP NO. 02118-MIN** was consolidated with **CA-G.R. SP**

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[20] *Rollo* (G.R. No. 206765 & G.R. No. 207214), p. 45.

[21] *Heirs of Melencio Yu v. Court of Appeals, supra* note 11, at 91.

[22] *Supra* note 20.

No. 02084-MIN, the CA resolved the *main issue* on the propriety of the **2007 Resumption Order** through the decision promulgated on May 20, 2011.

Bayani and the Heirs of Non Andres have separately appealed the decision promulgated on May 20, 2011, and their appeals are now the subjects of the consolidated appeals herein.

B.
2013 Case (G.R. No. 182371)

On December 14, 2007, a few days after the Heirs of Non Andres filed their petition for *certiorari,* prohibition, and injunction **(CA-G.R. SP No. 02084-MIN),** the CA granted their prayer for the TRO "enjoining the Provincial Sheriff of General Santos City xxx from demolishing any improvements and structures over the subject property and from harassing petitioners, their agents and representatives until further notice."[23]

Considering that the RTC stated in its order dated December 20, 2007 that the writ of demolition had already been executed completely on December 13, 2007, the CA, noting said order, lifted the TRO for being moot and academic.[24]

The Heirs of Non Andres moved for the reconsideration of the lifting of the TRO by insisting that the demolition had not yet been completely implemented as to them. Hence, on April 3, 2008, the CA issued: (1) an order granting their motion for reconsideration; and (2) a writ of preliminary mandatory injunction preventing further demolition on the subject property.

Confronted by another impending delay in the clearing of the subject lot of the occupants, the Heirs of Yu moved to reconsider and reverse the grant of the writ of preliminary mandatory injunction, and to dissolve the writ. After their move failed, they came to the Court to seek recourse by petition for *certiorari* **(G.R. No. 182371),** which is the **2013 Case.**

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[23] *Rollo* (G.R. No. 206765 & G.R. No. 207214), pp. 45-46.

[24] *Heirs of Melencio Yu v. Court of Appeals, supra* note 11, at 91.

The main issue in the **2013 Case** was whether or not the CA had properly issued the writ of preliminary mandatory injunction.[25] In striking down the CA's order, the Court opined that the issuance of the writ of preliminary mandatory injunction had been done in undue haste and without the requisite posting of the bond; that an order granting the preliminary mandatory injunction did not automatically entitle the applicant to an immediate enforcement;[26] that the CA had committed grave abuse of discretion in granting the Heirs of Non Andres's prayer for preliminary mandatory injunction,[27] reminding that:

> x x x [A] preliminary mandatory injunction should only be granted "in cases of extreme urgency; **where the right is very clear;** where considerations of relative inconvenience bear strongly in complainant's favor; **where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one;** and where the effect of the mandatory injunction is rather to re -establish and maintain a pre-existing continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation."[28]

and that the Heirs of Non Andres's entitlement to the preliminary mandatory injunction was more doubtful than clear and unmistakable because: (a) the evidence they had presented was weak and inconclusive; (b) the right sought to be protected remained to be disputed;[29] and (c) the damages allegedly sustained did not consist of grave and irreparable injury.[30]

The Court pronounced that the Heirs of Non Andres were bound by the ruling in the **1990 Case,** whereby the *Agreement to Transfer Rights and Deed of Sale* and *Quitclaim Deed* were

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[25] *Id*. at 93.

[26] *Id*. at 94.

[27] *Id*. at 95.

[28] *Id*. at 96.

[29] *Id*. at 97.

[30] *Id*. at 101.

nullified;[31] that said documents could not prove their ownership and possession of Lot No. 2;[32] that although they had presented other public documents, such as the application for free patent of their predecessor-in-interest, Concepcion Non Andres, the existence and due execution of such documents had remained inconclusive and highly disputed; and that, consequently, such documents could not be the source of a clear and unmistakable right.[33]

The Court observed that the parties had continued to disagree on the fact of prior possession of Lot No. 2; that although the Heirs of Non Andres had claimed to be "the actual possessors — open, continuous, and adverse possession in the concept of an owner—and not squatters, of the subject lot for over 50 years," and that they had erected improvements and structures on the lot that would be in danger of being demolished, the CA had nonetheless hastily issued the writ of preliminary mandatory injunction because it had not even ascertained the veracity of the claim.[34]

During the pendency of the **2013 Case,** the CA resolved the consolidated petitions in **CA-G.R. SP No. 02118-MIN** and **CA-G.R. SP No. 02084-MIN** on the merits through the assailed decision promulgated on May 20, 2011, decreeing as follows:

> WHEREFORE, premises considered, the petition in CA G.R. SP No. 02118-MIN is hereby DENIED.
>
> In CA G.R. SP No. 02084-MIN, the petition is likewise DENIED. The assailed Order dated October 9, 2007 of the RTC (Branch 36), General Santos City is hereby AFFIRMED. **We exhort the court of origin to execute the decision with reasonable dispatch.** No costs.
>
> SO ORDERED. (Bold emphasis supplied)

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

[32] *Id*. at 97.

[33] *Id*. at 100-101.

[34] *Id*. at 101.

In the end, the RTC upheld the **2007 Resumption Order.**

In **CA-G.R. SP No. 02084-MIN,** the CA dismissed the petition for *certiorari,* prohibition and injunction filed by the Heirs of Non Andres, and held that the Heirs of Non Andres did not sufficiently establish any right or interest over Lot No. 2 that would justify a stoppage of the demolition; that in the **1990 Case,** the *Agreement to Transfer Rights and Deed of Sale* and the *Quitclaim Deed* had been nullified; that under the doctrine of *res judicata,* the Heirs of Non Andres could not source any right from said documents;[35] that, more importantly, the **1990 Case** conclusively settled the issue of ownership in favor of the Heirs of Yu; that an issue adjudicated on the merits and resolved clearly in favor of a party could no longer be re-litigated;[36] that the Heirs of Non Andres had not presented evidence to sufficiently prove that they had been physically occupying the property;[37] that the argument of the Heirs of Non Andres that they should have been excluded from the coverage of the **2007 Resumption Order** because they had not been parties in the **1990 Case** and its precursor civil cases lacked merit because as early as 1972, their mother, Concepcion, had already known of Melencio Yu's claim over Lot No. 2; that their grandfather, Alfonso Non, had even been mentioned in the **1990 Case** "as the person who acted as middleman in the fraudulent sale of five (5) parcels";[38] that the RTC had issued the **2007 Resumption Order** as a consequence of the finality of the ruling in the **1990 Case;**[39] that "actions seeking to question the propriety of orders issued under and by virtue of a final judgment xxx are schemes calculated to make a mockery of duly promulgated decisions";[40] and that the Heirs of Non Andres

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[35] *Rollo* (G.R. No. 206765 & 207214), p. 50.

[36] *Id.* at 50.

[37] *Id.* at 51.

[38] *Id.* at 52.

[39] *Id.*

[40] *Id.* at 53.

had not shown grave abuse of discretion on the part of the RTC for its issuance of the **2007 Resumption Order** considering that the order was but the necessary consequence of the final judgment rendered in the **1990 Case.**

On the other hand, in **CA-G.R. SP No. 02118-MIN,** the CA dismissed Bayani's petition to cite and punish the deputy sheriff for indirect contempt of court, holding that in the absence of contrary evidence, the deputy sheriff was presumed to have regularly performed his duties; and that there was no reason to cast doubt on the sheriffs final return that clearly indicated that the demolition of the improvements existing on Lot No. 2 had already been completed.[41]

The Heirs of Non Andres and Bayani separately moved for reconsideration but their motions were denied.

Hence, these consolidated appeals.

The Consolidated Appeals

In **G.R. No. 206765** and **G.R. No. 207214,** the Heirs of Non Andres now raise the following as issues for consideration and resolution, to wit:

6.1 THE HONORABLE COURT OF APPEALS ERRED WHEN IT SUSTAINED THE COURT A QUO'S *SPECIAL ORDER DATED 9 OCTOBER 2007*.

6.2 THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT *RES JUDICATA* HAS ALREADY SETTLED IN THIS CASE.

6.3 THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE SOLE BASIS OF PETITIONERS' CLAIM IS THE QUITCLAIM DEED EXECUTED BY MELENCIO YU, SINCE THE PETITIONERS' CLAIM IS PRIMARILY BASED ON THEIR POSSESSION IN THE CONCEPT OF AN OWNER.[42]

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[41] *Id*. at 55-57.

[42] *Id*. at 17.

In the meantime, Sheriff Nasil Palati issued a *Notice to Self-Demolish and Vacate* dated June 29, 2015[43] pursuant to the RTC's Alias Writ of Demolition dated May 14, 2015.[44] The notice was addressed to the several occupants of Lot No. 2, including the Heirs of Non Andres and Bayani.

The issuance of the *Notice to Self-Demolish and Vacate* dated June 29, 2015 prompted the Heirs of Non Andres to file a supplement to their petition for review on *certiorari*[45] and a *Very Urgent Motion to Issue Status Quo Order or Temporary Restraining Order and Writ of Preliminary Injunction.*[46]

On September 2, 2015, the Court resolved to issue a 60-day TRO,[47] thereby enjoining the RTC and the provincial sheriff from implementing the **2001 Demolition Order** and all orders and writs issued pursuant thereto. On December 9, 2015, the Court, upon motion of the Heirs of Non Andres, extended the TRO's effectivity for another 60 days.[48]

On her part, Bayani, the petitioner in **G.R. Nos. 203076-77,** insists herein that Sheriff Pallanan was guilty of indirect contempt of court for making an untruthful statement in the sheriff's return that the demolition had already been completed.

In the main, the Heirs of Non Andres, the petitioners in **G.R. No. 206765** and **G.R. No. 207214,** aver that grave abuse of discretion amounting to lack or excess of jurisdiction attended the following: (a) **2007 Resumption Order** for being issued without the corresponding writ of demolition or writ of possession;[49] and (b) the sheriffs' implementation of the order

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[43] *Id*. at 249-250.

[44] *Id*. at 251-252.

[45] *Id*. at 232-243.

[46] *Id*. at 213-220.

[47] *Rollo* (G.R. Nos. 203076-77), pp. 786-788.

[48] *Id*. at 883-884.

[49] *Rollo* (G.R. No. 206765 & G.R. No. 207214), p. 18.

for including them despite their not being parties in **Civil Case No. 1291** and **Civil Case No. 4647.**

At the onset, we clarify that the present case assails only the RTC's execution of judgment. Thus, our review of the assailed decision and resolutions shall be limited to such issue. Although raised by the Heirs of Non Andres, we shall not dwell on the issue of ownership.

Ruling of the Court

The Court rules that the doctrine of *res judicata* cannot apply to bar the resolution of **G.R. No. 206765** and **G.R. No. 207214** because the judgment rendered in **Civil Case No. 1291** and **Civil Case No. 4647** did not bind the Heirs of Non Andres for not being parties thereto; that the sheriffs improperly implemented the **2007 Resumption Order;** and that the Sheriff's Report enjoyed the presumption of regularity.

We now explain our holding seriatim.

1.
Bar by *res judicata* does not apply

These appeals have factual antecedents common with the **1990 Case** and the **2013 Case.** Even so, we should not lightly brush aside the pleas of the petitions for review on *certiorari* by applying the bar by *res judicata*.[50]

The Heirs of Non Andres hereby claim that the **1990 Case** did not apply to them because they (or their predecessors-in-interest) had not been impleaded in **Civil Case No. 1291,** the precursor case. More than the lack of identity of parties, however, a careful perusal reveals that such previous rulings of the Court dealt with and resolved issues separate and distinct from the question being now raised herein.

In the **1990 Case,** the Court resolved the principal issue of the validity of the sale or transfer from the Spouses Yu to Sycip

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[50] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.,* G.R. Nos. 197945 & 204119, July 9, 2018.

that had been effected through the *Agreement to Transfer Rights and Deed of Sale* and *Quitclaim Deed.* The Court thereby affirmed the CA's decision declaring Melencio and Talinanap "as the registered absolute owners of Lot No. 2," and ordered Sycip to restore the possession to them.[51]

The focus of the **2013 Case** was the propriety of the writ of preliminary mandatory injunction issued by the CA as a relief that was preliminary and ancillary to the main case in **CA-G.R. SP No. 02084-MIN.**

In contrast, the petitioners raise in these consolidated appeals the core controversy concerning the propriety of the **2007 Resumption Order** and its implementation, which was the subject matter of the main case in **CA-G.R. SP No. 02084-MIN** (later on consolidated with **CA-G.R. SP No. 02118-MIN).** Indeed, the ruling in the **1990 Case** affirming the RTC's pronouncement of absolute ownership in favor of Melencio and Talinanap was not conclusive upon the issue raised herein of whether or not the RTC's issuance of the **2007 Resumption Order** was proper, for the determination of such issue was separable and independent from the issue of ownership.

Even granting that the issue of ownership of Lot No. 2 was previously resolved in favor of Melencio and Talinanap, such resolution did not prejudice the rights of the Heirs of Non Andres as persons who had not been parties in the main proceeding.[52] The present controversy stems from the implementation against them of the RTC's judgment rendered in **Civil Case No. 1291** despite their being strangers in the action. The following circumstances show that, indeed, they were strangers to the action. Firstly, the proceedings in **Civil Case No. 1291** – being *in personam* – were exclusively between the spouses Melencio and Talinanap, on one hand, and Sycip and YUHAI, on the other. The mere mention of Alfonso Non in the **1990 Case** did

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[51] *Heirs of Sycip v. Court of Appeals, supra* note 1, at 264.

[52] *Dare Adventure Farm Corp. v. Court of Appeals,* G.R. No. 161122, September 24, 2012, 681 SCRA 580.

not mean that he had participated at the trial, or that he had knowledge of the proceedings, or that he had been duly notified of the case as to bind him to the effects of the judgment therein. Secondly, the character of **Civil Case No. 1291** as an action *in personam* — being an action for the declaration of nullity of document and recovery of possession of real property—was unquestionable. Such character of the action empowered the court "to render personal judgment or to subject the parties in a particular action to the judgment and other rulings rendered in the action" only when it regularly acquired jurisdiction over the parties. As such, the RTC would acquire jurisdiction over the parties only if they had been properly impleaded and personally served with the summons and copies of the complaint.[53]

It is equally worthy to note that Rule 39 of the *Rules of Court* sets the following guidelines to govern the execution of judgments for the delivery or restitution of property, *viz.:*

SECTION 10. Execution of Judgments for Specific Act. — (a) xxx

(c) Delivery or Restitution of Real Property. — The officer shall demand of **the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him** to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

(d) Removal of Improvements on Property Subject of Execution. — When the property subject of the execution contains improvements constructed or planted **by the judgment obligor or his agent,** the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment

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[53] *Regner v. Logarta,* G.R. No. 168747, October 19, 2007, 537 SCRA 277.

obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

Evident from the foregoing is that such guidelines only extend to the judgment obligor or any person claiming rights under him. It is truly doctrinal that the execution of any judgment for a specific act cannot extend to persons who were never parties to the main proceeding.[54] A court process that forcefully imposes its effects on or against a stranger, even if issued by virtue of a final judgment, certainly offends the constitutional guarantee under Section 1, Article III of the 1987 Constitution that no person shall be deprived of life, liberty, or property without due process of law. As explained in *Muñoz v. Yabut, Jr.*:[55]

> The rule is that: (1) a judgment *in rem* is binding upon the whole world, such as a judgment in a land registration case or probate of a will; and (2) **a judgment *in personam* is binding upon the parties and their successors-in-interest but not upon strangers. A judgment directing a party to deliver possession of a property to another is *in personam;* it is binding only against the parties and their successors-in-interest by title subsequent to the commencement of the action. An action for declaration of nullity of title and recovery of ownership of real property, or re-conveyance, is a real action but it is an action *in personam,* for it binds a particular individual only although it concerns the right to a tangible thing.** Any judgment therein is binding only upon the parties properly impleaded.

Since they were not impleaded as parties and given the opportunity to participate in Civil Case No. Q-28580, the final judgment in said case cannot bind BPI Family and the spouses Chan. The effect of the said judgment cannot be extended to BPI Family and the spouses Chan by simply issuing an alias writ of execution against them. No man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by any judgment rendered by the court. **In the same manner, a writ of execution can be issued only against a party and not against one**

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[54] *Fermin v. Esteves,* G.R. No. 147977, March 26, 2008, 549 SCRA 424, 428-429.

[55] G.R. Nos. 142676 & 146718, June 6, 2011, 650 SCRA 344, 367-368.

who did not have his day in court. Only real parties in interest in an action are bound by the judgment therein and by writs of execution issued pursuant thereto. (Bold emphasis supplied)

Considering that the Spouses Melencio and Talinanap sought to nullify two documents (*i.e.,* the *Agreement to Transfer Rights and Deed of Sale* and the *Quitclaim Deed*) to recover Lot No. 2 from Sycip, who was then in possession of the lot's original certificate of title, the judgment rendered thereon was not enforceable against the whole world but only against the defendants thereat (*i.e.,* the Heirs of Sycip).

The Heirs of Non Andres were not impleaded in **Civil Case No. 1291,** much less personally served summons therefor, the RTC did not acquire jurisdiction over any of them. The execution of the judgment rendered therein could not validly include strangers to the case like the Heirs of Non Andres, for the court did not acquire jurisdiction over them and were consequently not given their day in court.[56]

2
Sheriff improperly implemented the 2007 Resumption Order and the 2001 Demolition Order

The **2007 Resumption Order,** as well as the **2001 Demolition Order** on which it was based, directed the demolition of improvements belonging to the Heirs of Sycip and YUHAI. As earlier shown, the **2001 Demolition Order** ostensibly disposed thusly:

xxx we command you to demolish the improvements erected by the defendants HEIRS OF JOHN Z. SYCIP xxx, in Civil Case No. 1291, and plaintiffs YARD URBAN HOMEOWNERS ASSOCIATION INC., ET AL. in Civil Case No. 4647, on that portion of land belonging to plaintiffs in Civil Case 1291 and defendants Civil Case No. 4647, MELENCIO YU and TALINANAP MATUALAGA, covered by Original Certificate of Title [No.] (V-14496) (P-2331) P-523 in Apopong, General Santos City

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[56] *Fermin v. Esteves, supra* note 54.

Said orders were issued by virtue of the Heirs of Sycip and YUHAI being the judgment obligors in **Civil Case No. 1291** and **Civil Case No. 4647,** respectively. The situation became problematic only when the sheriffs tasked to implement said orders served the notices to vacate *to all the occupants of Lot No. 2 without exception.* The notices to vacate thereby *deviated* from the tenor and text of the assailed orders as to cover even the Heirs of Non Andres although they had not been parties in **Civil Case No. 1291** and **Civil Case No. 4647**. Therein lay the prejudice caused to the Heirs of Non Andres.

Such exceeding their authority on the part of the sheriffs cannot be permitted or validated. The sheriffs duty to strictly adhere to the mandate of the orders regularly issued by the court for the execution stage of a judgment cannot be arbitrarily ignored or set aside, but must be faithfully discharged and complied with. The sheriff is bereft of the power or discretion to expand the mandate in any way. As pointed out in *Stilgrove v. Sabas,*[57] to wit:

> The sheriff's duty to execute a judgment is ministerial. He need not look outside the plain meaning of the writ of execution. And when a sheriff is faced with an ambiguous execution order, prudence and reasonableness dictate that he seek clarification from a judge. **However, Sabas took it upon himself to execute the order even if it entails the destruction of a property belonging to a person not a party to the case. By doing so, the sheriff went beyond the terms of the demolition order as it only ordered the demolition to apply only to "defendants x x x as well as all persons claiming rights under them x x x."** To reiterate our pronouncement in the previous administrative case, it is of no moment whether Sabas executed the writ in good faith because he is chargeable with the knowledge of what is the proper action to observe in case there are questions in the writ which need to be clarified and to which he is bound to comply. (Citations omitted and emphasis supplied)

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[57] A.M. No. P-06-2257, March 28, 2008, 550 SCRA 28, 42.

To contest the invalid implementation of the orders by the sheriffs, the Heirs of Non Andres immediately wrote to the latter and also filed their special appearance in the RTC, but their attempt to intervene went for naught. Left with no other plain, speedy, and adequate remedy available to them in the ordinary course of law, they went to the CA for relief. After having satisfied all the requisites laid down in Section 2, Rule 65 of the *Rules of Court,* therefore, the Heirs of Non Andres were entitled to the issuance of the writ of *certiorari* and prohibition.

3.
Sheriff's Report enjoyed the presumption of regularity

We next deal with Bayani's appeal **(G.R. Nos. 203076-77)** assailing the CA's denial of her charge of indirect contempt against Sheriff Pallanan.

Bayani's complaint in **CA-G.R. SP No. 02118-MIN** charged Sheriff Pallanan with proceeding with the demolition of the structures found on Lot No. 2 in direct contravention of the CA's TRO dated December 14, 2007;[58] and claimed that the sheriff had made untruthful statements in his report by making it appear that the turnover of the property and the demolition of the structures thereon had been completed prior to the TRO's issuance.

We agree with the ruling of the RTC that the sheriff was entitled to be presumed to have regularly performed his duties; and with the finding that Bayani had not presented sufficient evidence to overcome the presumption.

Nonetheless, the sheriffs persistence on demolishing the structures erected on Lot No. 2 by strangers to the action clearly exceeded the tenor and coverage of the orders. The sheriff thus acted not only erroneously but also outside the bounds of his authority. However, we have to clarify that the charge brought

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[58] *Supra* note 23.

against him for contempt of court based on such circumstances must be properly brought to and heard by the RTC, conformably with the recognized rule that the court against whose authority the contempt is committed has the preferential right to inquire whether any party has disobeyed its order.[59]

4.

Judge Majaducon could not validly sit as the presiding judge on the case involving the Heirs of Yu, his former clients

The Heirs of Non Andres have averred that **Judge Majaducon had been Melencio's former counsel prior to his appointment as the Presiding Judge.** In substantiation, they presented two correspondences addressed to the members of the Sogod Homeseekers Association that had been signed by one **Atty. Jose S. Majaducon**[60] demanding the association members to refrain from introducing additional improvements on a lot located at Barrio New Society, General Santos City and to vacate therefrom. In this connection, it is relevant to remember that in the 1980s, the Heirs of Yu brought a complaint for forcible entry specifically against the members of the Sogod Homeseekers Association docketed as Civil Case No. 1668-22.

This averment by the Heirs of Non Andres certainly demonstrates a probable conflict of interest committed by Judge Majaducon. He had no right to preside in any case that involved the same interests pertaining to Melencio, the predecessor of the Heirs of Yu, who was his former client. We cannot turn a blind eye to this averment, which must be treated herein as a very serious accusation that impairs and diminishes the good reputation of a judicial officer as well as of the entire Judiciary. It is elementary, indeed, that every judge should administer

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[59] *Angeles v. Court of Appeals,* G.R. No. 178733, September 15, 2014, 735 SCRA 82, 92; *San Luis v. Court of Appeals,* G.R. No. 142649, September 13, 2001, 365 SCRA 279, 288.

[60] *Rollo* (G.R. No. 206765 & G.R. No. 207214), pp. 259-260.

justice impartially.[61] As such, the judge must inhibit himself from any proceeding that may cast doubt over his impartiality, such as having a former client as a party in a case before him.[62] Every judge is duty-bound not only to render a just judgment but also to render it in a manner "completely free from suspicion as to its fairness and as to his integrity."[63]

Under the circumstances, the Court must demand from Judge Majaducon a written explanation why he should not be administratively sanctioned for violating the ethical rules demanding his impartiality and requiring him to shun conflicts of interest in every matter he handled as a judicial officer.

WHEREFORE, the Court **GRANTS** the petitions for review on *certiorari* in **G.R. No. 206765** and **G.R. No. 207214**; **MODIFIES** the decision promulgated on May 20, 2011 by the Court of Appeals, as well as the resolutions promulgated on July 19, 2012 and April 17, 2013 in **CA-G.R. SP No. 02118-MIN** and **CA-G.R. SP No. 02084-MIN** by **PERMANENTLY ENJOINING** the Regional Trial Court, Branch 36, in General Santos City and the Provincial Sheriff from executing or otherwise implementing the judgment rendered in **Civil Case No. 1291** and **Civil Case No. 4647** as against petitioners Heirs of Non Andres, namely, Sergio Andres, Jr., Sofronio Andres, and Gracelda Andres, Azucena Bayani, and all other persons who were not parties therein; **DENIES** the petition for review on *certiorari* in **G.R. Nos. 203076-77**; **AFFIRMS** the assailed decision and resolutions insofar as the charge of indirect contempt filed by Azucena Bayani against Sheriff Alfredo T. Pallanan is concerned, without prejudice to the filing of a petition based on the proper ground and/or an administrative charge against said sheriff; and **ORDERS** the respondents to pay the costs of suit.

The Court further **DIRECTS** Presiding Judge Jose S. Majaducon of the Regional Trial Court in General Santos City

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[61] Rule 1.02, *Code of Judicial Conduct.*

[62] Rule 3.12(b), *Code of Judicial Conduct.*

[63] *Lai v. People,* G.R. No. 175999, July 1, 2015, 761 SCRA 156, 168.

to show cause in writing within 10 days from notice why he should not be disciplined or sanctioned for presiding in **Civil Case No. 1291** and **Civil Case No. 4647** despite some of the parties therein having been his former clients.

SO ORDERED.

Del Castillo, Jardeleza, Gesmundo and *Carandang, JJ.*, concur.

FIRST DIVISION

[G.R. No. 206026. July 10, 2019]

JMA AGRICULTURAL DEVELOPMENT CORPORATION, *petitioner, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); JUST COMPENSATION; IN THE PROCESS OF DETERMINING THE JUST COMPENSATION DUE THE LANDOWNERS, THE SPECIAL AGRARIAN COURT (SAC) MUST TAKE INTO ACCOUNT SEVERAL FACTORS, WHICH HAVE BEEN TRANSLATED INTO A BASIC FORMULA IN DAR AO NO. 5; THE SAC IS AT NO LIBERTY TO DISREGARD THE FORMULA WHICH WAS DEVISED TO IMPLEMENT SECTION 17 OF RA 6657; CASE AT BAR.— In the process of determining the just compensation due the landowners, the SAC must take into account several factors enumerated in Section 17 of RA 6657, x x x These factors have been translated into a basic formula in DAR AO No. 5 which was issued pursuant to the DAR's rule-making power to carry out the object and purposes of RA 6657, as amended.DAR AO No. 5 precisely "filled in the details" of Section 17, RA 6657

by providing a basic formula by which the factors mentioned therein may be taken into account. The SAC was at no liberty to disregard the formula which was devised to implement the said provision.It may be true on the one hand that the SAC may relax the application of the DAR formulas, but this rests on the condition that it clearly explains its reasons for doing so. In this case, by not conforming with the data DAR AO No. 5 provides, the SAC effectively deviated from the formula. x x x Indeed, we allowed the determination of just compensation at the time of payment in *Chico* due to the unique circumstances obtaining in said case. However, those circumstances, such as the failure of the DAR to submit claim folders, are not present in this case. Moreover, we held in the same case that the SAC "took into consideration the important factors enumerated in Section 17 of [RA] 6657 which, in turn, are the very same criteria that make up the DAR formula."In subsequent cases, we continued to uphold the application of the DAR formulas. In particular, in *Land Bank of the Philippines v. Department of Agrarian Reform*, we ruled that the formula for the SP given by the DAR must be followed, x x x Clearly, we have already recognized the soundness of the formula given by the DAR even if not all of its components are taken as of the date of taking. The SAC therefore erred in disregarding the formula. It incorrectly assumed that the DAR, in coming up with the formula, did not take into consideration the fluctuation or differences in the price of sugar.

2. ID.; ID.; ID.; THE DAR FORMULA FOR COMPUTING JUST COMPENSATION SHOULD BE STRICTLY FOLLOWED AND CANNOT BE DISMISSED ON THE GROUND THAT IT IS ONLY AN INITIAL VALUATION OF THE PROPERTY; SUSTAINED.—We reiterate that the DAR formula should have been strictly followed since the deviation from it is unwarranted in this case. It cannot be dismissed on the ground that it is only an initial valuation of the property. Again, as we have stated in *Alfonso v. Land Bank of the Philippines*:**Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties**

covered by the CARP. When faced with situations which do not warrant the formula's strict application, courts may, in the exercise of their judicial discretion, relax the formula's application to fit the factual situations before them, subject only to the condition that they clearly explain in their Decision their reasons (as borne by the evidence on record) for the deviation undertaken.

APPEARANCES OF COUNSEL

Pejo Aquino & Associates for petitioner.
LBP Legal Services Group for respondent.

D E C I S I O N

JARDELEZA, *J.*:

The factors listed under Section 17 of Republic Act No. (RA) 6657[1] and its resulting formulas provide a uniform framework or structure for the computation of just compensation which ensures that the amounts to be paid to affected landowners are not arbitrary, absurd or even contradictory to the objectives of agrarian reform. Until and unless declared invalid in a proper case, the Department of Agrarian Reform (DAR) formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the Comprehensive Agrarian Reform Program (CARP).[2]

Petitioner JMA Agricultural Development Corporation is the owner of a 106.0416 hectare (ha.) parcel of land in Barangay Payao, Binalbagan town, Negros Occidental covered by Transfer Certificate of Title (TCT) No. T-119604. Petitioner voluntarily

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[1] Comprehensive Agrarian Reform Law of 1988.

[2] *Alfonso v. Land Bank of the Philippines*, G.R. Nos. 181912 & 183347, November 29, 2016, 811 SCRA 27.

offered the property for sale for coverage under the CARP for eventual distribution to qualified farmer-beneficiaries.[3]

The government, through the DAR, initially took 97.1232 ha. of the property. Thus, on July 31, 2002, TCT No. T-119604 was cancelled and TCT No. T-218420[4] was issued in the name of the Republic of the Philippines and petitioner. On the same day, the portion of the property in the name of the Republic was issued, TCT No. CLOA-10348, in the name of farmer-beneficiaries.[5]

DAR and respondent Land Bank of the Philippines offered petitioner ₱17,500,914.92, the determined value of the covered portion of the property, as compensation. Petitioner rejected the offer for being too low and for failing to reflect the just compensation for the property. According to petitioner, the property is located three kilometers (km.) away from the national road, about 12 km. from the *poblacion* of Payao, and about 9 ½ km. from the market/trading center. It is a fully-irrigated land devoted to sugarcane production which is accessible by means of tricycle, motorcycle, and cane truck.[6]

Eventually, petitioner withdrew the ₱17,500,914.92 deposited in respondent.[7]

Thereafter, the DAR Adjudication Board (DARAB) conducted summary proceedings for the preliminary determination of just compensation.[8] On February 28, 2005, the DARAB issued a decision fixing the just compensation for the covered portion of the property at ₱21,584,218.06.[9]

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[3] *Rollo*, pp. 23-24.

[4] *Id.* at 24; 97.1232 ha. belongs to the Republic while 8.9184 ha. belongs to petitioner.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Rollo*, p. 25.

[9] *Id.*

In the meantime, the DAR and respondent acquired an additional 6.3480 ha. of the property that was previously classified as an easement. The additional portion was valued at ₱1,258,761.70. Hence, the total area taken by the government from petitioner's property went up to 103.4712 ha.[10]

On April 12, 2005, petitioner filed a petition before Branch 46 of Bacolod City Regional Trial Court, sitting as a Special Agrarian Court (SAC), for the determination and payment of just compensation.[11] Petitioner prayed that: (1) just compensation be fixed at ₱252,218.90 per ha., for a total of ₱26,213,791.26; and (2) respondent and DAR be directed to immediately pay said amount to petitioner, less whatever amount it has already received from respondent as initial valuation of the property, in the same proportion of cash and bonds as previously paid.[12]

Respondent countered that it had complied with the applicable computation of petitioner's property using the relevant formula under existing valuation guidelines:

Land Value (LV) = [Capitalized Net Income (CNI) x 0.90]
+ [Market Value per Tax Declaration (MV) x 0.10][13]

According to respondent, per the tax declaration of the property, its market value is ₱1,350,000.00 while its assessed value is ₱480,600.00. Since petitioner failed to submit its own production data, respondent used the industry-wide data supplied by the Sugar Regulatory Administration (SRA), in accordance with DAR Administrative Order (AO) No. 5, series of 1998[14]

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[10] *Id.*

[11] *Id.*

[12] *Rollo*, p. 27.

[13] *Id.* at 25.

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

and Joint Memorandum Circular (JMC) No. 15, series of 1999[15] issued by DAR and respondent. Pursuant thereto, the average production for sugar[16] should be taken 12 months prior to the date of inspection, which occurred on May 25, 2001.[17]

Respondent argued that in determining just compensation, the loss that "must be approximated, if not ascertained, necessarily depends on the actual production and the income enjoyed by the landowner from the subject landholding at the time of the taking, the reckoning of which is based on the period prescribed by law for the acquisition of the land."[18] Respondent further argued that the value of the land declared by the owner, its assessed value, and market value should not be far off from its equivalent value based on actual state, use, and production, which approximates the actual loss of the landowner.[19] Thus, respondent arrived at the following valuation for the property:

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[15] Valuation Guidelines for Lands Planted to Sugarcane.

[16] DAR AO No. 5, par. II(B), provides in part:

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

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

[17] *Rollo*, p. 26.

[18] *Id.*

[19] *Id.*

Land Use	Area (Ha.)	Price/ Hectare	Land Value
Sugarland	93.0752	₱185,712.85	₱17,285,260.00[20]
Hda. Road	0.3751	185,712.85	69,660.89[21]
Multi-family dwelling	3.6729	₱ 39,748.80	₱ 145,993.[37][22]
[TOTAL]	97.1232		₱17,500,914.[26][23]

The SAC ruled in favor of petitioner in its August 20, 2010 Decision,[24] *viz.*:

WHEREFORE, in the light of the foregoing, and in the interest of justice and equity, Judgment is rendered fixing the just compensation of petitioner's 103.9327-hectare CARP-covered sugarland at ₱252,218.90 per hectare, or a total of ₱26,213,791.26, and directing respondents to pay petitioner the amount of ₱26,213,791.26 minus whatever amount petitioner has already received from respondent Land Bank of the Philippines as initial valuation for its land, in the same proportion of cash and bonds as previously paid.

SO ORDERED.[25]

Citing *Land Bank of the Philippines v. Chico* (*Chico*),[26] the SAC ruled that for the purpose of determining just compensation, what should be considered is the value of the property at the time the title over it was transferred to the government.[27]

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[20] LV = (₱195,306.28 x 0.90) + (₱99,372 x 0.10)= ₱175,775.65 + ₱9,937.20= ₱185,712.85 x 93.0752 ha.= ₱17,285,260.66

[21] LV = ₱185,712.85 x 0.3751 ha.= ₱69,660.89

[22] LV = (MTVD x 2)= ₱19,874.40 x 2= ₱39,748.80 x 3.6729 ha.= ₱145,993.37

[23] *Rollo*, p. 26.

[24] *Id.* at 41-51.

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

[26] G.R. No. 168453, March 13, 2009, 581 SCRA 226.

[27] *Rollo*, p. 46.

Respondent and DAR erred, therefore, in using the valuation of the property at the time of the inspection (May 25, 2001) instead of on July 31, 2002, the date when title over the property was transferred to the farmer-beneficiaries. The SAC found that there was a difference between the price of sugar on May 25, 2001 and on July 31, 2002.[28]

Hence, using the data in the certificate issued by the SRA and Sofronio L. Cordova, Officer-in-Charge, Office of the Manager 1, Sugar Regulation and Enforcement Division,[29] as well as the Negros Occidental Provincial Tax Ordinance No. 02-002 entitled "An Ordinance Enacting a Schedule of Current and Fair Market Value of Agricultural and Urban Lands, etc.,"[30] the SAC made the following computation:

A. CNI Sugar = (Annual Gross Production (AGP) sugar x Selling Price (SP) of sugar x 26%]/12%

= [(128.50 kilograms [kgs.] x 35%) + (96.50 x 65%) x ₱959.33 x 0.26]/0.12

= [(44.9750 + 62.725) x ₱959.33 x 0.26]/0.12

= [107.70 kgs. x ₱959.33 x 0.26]/0.12

= ₱223,859.65

B. AGP for molasses= [107.70 x 32kg/TC]/1.73 (Average Molasses per ton cane)

=1,992.13 tons

C. CNI Molasses= [AGP x SP x 70% (planter's share)]/12%

= [1,992.13 X [₱3,207.50] x 0.70]/0.12

= ₱37,273.58

D. Total capitalized net income for sugar and molasses = CNI sugar + CNI molasses

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[28] *Id.* at 46-47.

[29] *Id.* at 47.

[30] *Id.* at 49.

= ₱223,859.65 + P37,273.58

= ₱261,133.23

E. MVTD = Market Value x Regional Consumer Price Index (RCPI) Adjustment Factor

= ₱130,000.00 x 1.323

= ₱171,990.00

F. LV = (CNI x 0.90) + (MVTD x 0.10)

= (₱261,133.23 x 0.90) + (₱171,990 x 0.10)

= ₱235,019.90 + ₱17,199.00

= ₱252,218.90 per hectare[31]

Using the determined land value per hectare, the SAC held that the total amount that should be paid to petitioner is ₱26,213,791.26.[32]

Respondent filed a petition for review before the Court of Appeals (CA), which the appellate court granted.[33] The CA agreed with the just compensation fixed by respondent at ₱17,776,182.33.[34] The amount covered the 103.9327 ha. portion of the property taken from petitioner, including the value of the legal easement subsequently acquired by the DAR at ₱269,417.36, and the value of the canal at ₱5,849.95.[35]

The CA held that the SAC erred in applying *Chico* because it is not on all fours with this case.[36] The SAC should have applied the formula under DAR AO No. 5. Under the order,

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

[32] *Id.* at 49.

[33] *Id.* at 23-36; penned by Associate Justice Gabriel T. Ingles with the concurrence of Associate Justices Pampio A. Abarintos and Melchor Q.C. Sadang.

[34] *Id.* at 36, 91-92.

[35] *Id.* at 32.

[36] *Id.* at 35.

the AGP should be based on the latest available 12-month's gross production immediately preceding the date of the field inspection. As for the SP, it is the average of the latest available 12-month's selling prices prior to the date of receipt of the claim folder by respondent for processing. Hence, the SAC should have used the figures as of May 25, 2001, the date of inspection, instead of the figures as of July 31, 2002, the date when title was transferred to the farmer-beneficiaries.[37]

Petitioner asked the CA to reconsider its Decision. The CA, however, denied petitioner's motion. Consequently, petitioner filed this petition before us, raising the sole issue of whether the CA correctly determined the amount to be paid to petitioner as just compensation.

We deny the petition.

While both the SAC and the CA applied the formula for computing the LV stated in DAR AO No. 5 and JMC No. 15, they used different data in computing the AGP and the SP, which are factors in determining the CNI. The SAC used the data culled from petitioner's evidence with regard to the date of the transfer of title of the property to respondent, or on July 31, 2002. The SAC explained that it used July 31, 2002 as the reckoning date because it was the time of taking. As for the CA, it agreed with the data used by respondent. For the AGP, the data used was as of the time that the field inspection was conducted, while for the SP, the date of receipt of the claim folder. The CA explained that the reckoning periods for these data are what DAR AO No. 5 and JMC No. 15 prescribe. We agree with the CA.

In the process of determining the just compensation due the landowners, the SAC must take into account several factors enumerated in Section 17 of RA 6657, to wit:[38]

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

[38] *Allied Banking Corporation v. Landbank of the Philippines*, G.R. No. 175422, March 13, 2009, 581 SCRA 301, 310.

Sec. 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.[39]

These factors have been translated into a basic formula in DAR AO No. 5 which was issued pursuant to the DAR's rule-making power to carry out the object and purposes of RA 6657, as amended.[40] DAR AO No. 5 precisely "filled in the details" of Section 17, RA 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. The SAC was at no liberty to disregard the formula which was devised to implement the said provision.[41]

It may be true on the one hand that the SAC may relax the application of the DAR formulas, but this rests on the condition that it clearly explains its reasons for doing so.[42] In this case, by not conforming with the data DAR AO No. 5 provides, the SAC effectively deviated from the formula. The SAC explains its Decision in this wise:

In the recent case of Land Bank of the Philippines, vs. Chico, G.R. No. 168453, March 13, 2009, the Supreme Court found it more equitable to determine just compensation based on the value of the property at the time of payment, not at the time of taking.

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[39] Section 17 of RA 6657 was later amended by RA 9700.

[40] See *Land Bank of the Philippines v. Banal*, G.R. No. 143276, July 20, 2004, 434 SCRA 543, 549-550.

[41] *Landbank of the Philippines v. Celada*, G.R. No. 164876, January 23, 2006, 479 SCRA 495, 507.

[42] *Alfonso v. Land Bank of the Philippines*, *supra* note 1 at 76.

It clearly appears that respondents' valuation of petitioner's subject property was based on their inspection report dated May 25, 2001, and not on the valuation of the subject property as of July 31, 2002 (supra).

The Court so holds that to arrive at the correct and fair valuation of petitioner's subject property, all the inputs and data for the determination of the just compensation of petitioner's land should be those inputs and data existing as of July 31, 2002 when petitioner's ownership of its property was already transferred to the farmer-beneficiaries, thus effectively dispossessing petitioner of its property.

Obviously, there is a whale of a difference between the sugar production, price of sugar and molasses, etc. of petitioner in May, 2001 from its production in July, 2002. It is a known fact in the sugar industry that prices of sugar vary weekly, depending upon the law of supply and demand, whether domestically or in the world market. Consequently, petitioner's average sugar and molasses production should have been computed as of the end of the sugar agricultural crop-year 2001 to 2002, and not twelve (12) months prior to May 12, 2001 as computed by respondents. A sugar agricultural crop-year usually starts in September of the current year and ends in August of the following year. It is likewise a known fact in the sugar industry that millgate prices of sugar increase as the supply of the sugarcane for milling purposes decreases.[43] (Underscoring in the original.)

We are not persuaded by the SAC's explanation. The CA correctly held that *Chico* is not on all fours with the instant case. Indeed, we allowed the determination of just compensation at the time of payment in *Chico* due to the unique circumstances obtaining in said case. However, those circumstances, such as the failure of the DAR to submit claim folders, are not present in this case. Moreover, we held in the same case that the SAC "took into consideration the important factors enumerated in Section 17 of [RAJ 6657 which, in turn, are the very same criteria that make up the DAR formula."[44]

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[43] *Rollo*, pp. 46-47.

[44] *Land Bank of the Philippines v. Chico*, *supra* note 26 at 243.

In subsequent cases, we continued to uphold the application of the DAR formulas. In particular, in *Land Bank of the Philippines v. Department of Agrarian Reform*,[45] we ruled that the formula for the SP given by the DAR must be followed, *viz.*:

> As clearly stated in DAR AO No. 5, the SP for purposes of computing the CNI, must be the *average of the latest available 12-months selling prices prior to the date of receipt of the claim folder by LBP, to be secured from the DA, Bureau of Agricultural Statistics or other appropriate regulatory bodies*. Thus, the selling price of P9.00 submitted by private respondent sourced from the NFA (March-August and September-February without indicating the year) and private buyer (March and October 2001) cannot be used as it was not the average obtained within the period referred to in DAR AO No. 5 (July 2000 to May 2001). x x x
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> We declared in *Land Bank of the Philippines v. Celada* that the DAR was tasked to issue the rules and regulations to carry out the "details" of Section 17 of R.A. No. 6657. It can be safely presumed that the fluctuations in the selling price of *palay* were already taken into consideration since only the *average* of these *available prices* within the 12 months prior to the receipt of the CF, will be used in computing the CNI. x x x[46] (Italics in the original; underscoring supplied; citations omitted.)

Clearly, we have already recognized the soundness of the formula given by the DAR even if not all of its components are taken as of the date of taking. The SAC therefore erred in disregarding the formula. It incorrectly assumed that the DAR, in coming up with the formula, did not take into consideration the fluctuation or differences in the price of sugar.

Notably, in its comment before the CA, petitioner agreed that respondent "adhered [to] and followed the provisions of DAR AO 5 and JMC 15,"[47] while also arguing that LBP's

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[45] G.R. No. 171840, April 4, 2011, 647 SCRA 152.

[46] *Id.* 167-168.

[47] *Rollo*, p. 64.

computation is "only the initial valuation the DAR is mandated to offer"[48] to petitioner and not the just compensation that it is entitled to receive under the law. By its own admission, therefore, petitioner does not appear to contest the verity of the data used by respondent in its computation.

We reiterate that the DAR formula should have been strictly followed since the deviation from it is unwarranted in this case. It cannot be dismissed on the ground that it is only an initial valuation of the property. Again, as we have stated in *Alfonso v. Land Bank of the Philippines*:[49]

> **Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the CARP.** When faced with situations which do not warrant the formula's strict application, courts may, in the exercise of their judicial discretion, relax the formula's application to fit the factual situations before them, subject only to the condition that they clearly explain in their Decision their reasons (as borne by the evidence on record) for the deviation undertaken. It is thus entirely allowable for a court to allow a landowner's claim for an amount higher than what would otherwise have been offered (based on an application of the formula) for as long as there is evidence on record sufficient to support the award.[50]
> (Emphasis supplied; citations omitted.)

Finally, in accordance with our ruling in *Land Bank of the Philippines v. Phil-Agro Industrial Corporation*,[51] legal interest of 12% *per annum* must be imposed on the just compensation due petitioner from the time of taking, or on July 31, 2002. Beginning July 1, 2013, the interest imposed shall be 6% *per annum* until fully paid.

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[48] *Id.* Emphasis omitted.

[49] *Supra* note 2.

[50] *Id.* at 78-79.

[51] G.R. No. 193987, March 13, 2017, 820 SCRA 149.

WHEREFORE, the petition is **DENIED**. The September 7, 2012 Decision and February 19, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 05626 are **AFFIRMED** with the **MODIFICATION** that the just compensation due petitioner JMA Agricultural Development Corporation shall be subject to a legal interest of 12% *per annum* from the time of taking, or on July 31, 2002. Beginning July 1, 2013, the interest imposed shall then be 6% *per annum* until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 208920. July 10, 2019]

JAIME BILAN MONTEALEGRE and CHAMON'TE, INC., *petitioners, vs.* **SPOUSES ABRAHAM AND REMEDIOS DE VERA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A WRIT OF EXECUTION SHOULD NOT VARY THE TERMS OF THE JUDGMENT IT SEEKS TO ENFORCE, NOR MAY IT GO BEYOND THE TERMS OF THE JUDGMENT SOUGHT TO BE EXECUTED, OTHERWISE, IF IT IS IN EXCESS OF OR BEYOND THE ORIGINAL JUDGMENT OR AWARD, THE EXECUTION IS VOID.— As a general rule, a writ of execution must strictly conform to every particular of the judgment to be executed. It should not vary the terms of the judgment it seeks to enforce, nor may it go beyond the terms of the judgment sought to be executed, otherwise, if it is in excess of or beyond the original judgment or award, the execution is void. Furthermore, the power of the

courts in executing judgments extends only to properties unquestionably belonging to the judgment debtor and liability may even be incurred by the sheriff for levying properties not belonging to the judgment debtor.

2. MERCANTILE LAW; CORPORATION CODE; DOCTRINE OF PIERCING THE CORPORATE VEIL; THREE BASIC AREAS WHERE THE DOCTRINE OF PIERCING THE CORPORATE VEIL IS APPLICABLE, ENUMERATED.— [The case of]*Carag v. National Labor Relations Commission* clarified that Article 212 (e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation. It emphasized that the governing law on personal liability of directors or officers for debts of the corporation is still Section 31 of the Corporation Code.Thus, We ruled that the doctrine of piercing the corporate veil applies only in three basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

3. ID.; ID.; ID.; IN THE ABSENCE OF MALICE, BAD FAITH, OR A SPECIFIC PROVISION OF LAW MAKING A CORPORATE OFFICER LIABLE, SUCH CORPORATE OFFICER CANNOT BE MADE PERSONALLY LIABLE FOR CORPORATE LIABILITIES, SUSTAINED.—In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities. In *Lozada v. Mendoza*, We likewise ruled that the general rule is corporate officers are not held solidarily liable with the corporation for separation pay because the corporation is invested by law with a personality separate and distinct from those persons composing it as well as from that of any other legal entity to which it may be related. To hold a director or officer personally liable for corporate obligation is the exception and it only occurs when the following requisites are present: (1) the complaint must allege that the director or officer assented to the patently

unlawful acts of the corporation, or that the director or officer was guilty of gross negligence or bad faith; and (2) there must be proof that the director or officer acted in bad faith.

APPEARANCES OF COUNSEL

The Law Firm of Chan Robles & Associates for petitioners.
The Law Offices of Dangazo Valmoria Lopez & Associates for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] assailing the Decision[2] dated January 18, 2013 and Resolution[3] dated August 30, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 126037 quashing the writ of execution and the alias writ of execution against respondent spouses Abraham and Remedios de Vera (respondents).

Jerson Servandil (Servandil) filed a complaint[4] for illegal dismissal against A. De Vera Corporation (Corporation). The case was referred to the National Labor Relations Commission (NLRC) and raffled to Labor Arbiter (LA) Joel Lustria.[5]

On November 27, 2003, the LA rendered a Decision[6] against the Corporation, finding it guilty of illegal dismissal and holding it liable to Servandil for backwages, separation pay and unpaid salary. The dispositive portion of the LA's Decision reads:

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[1] *Rollo*, pp. 3-37.

[2] *Id*. at 42-50; penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Zenaida T. Galapate-Laguilles concurring.

[3] *Id*. at 51-53.

[4] *Id*. at 118.

[5] *Id*. at 43.

[6] *Id*. at 126-132.

WHEREFORE, premises considered, judgment is hereby rendered finding respondent guilty of illegal dismissal. Consequently, respondent is ordered liable:

1. To pay the complainant the amount of ₱363,293.55, representing his backwages, computed only up to the promulgation of this decision;
2. To pay the complainant the amount of ₱53,300.00, representing his separation pay;
3. To pay complainant the amount of ₱11,890.00, representing his unpaid salary from July 1, 1998 to September 27, 1998.

Other claims are dismissed for lack of merit.

SO ORDERED.[7]

The corporation filed an appeal before the NLRC, which was dismissed for lack of jurisdiction because of the failure to post the appeal bond. The NLRC, in its Resolution[8] dated January 31, 2005, likewise denied the corporation's motion for reconsideration.

The CA likewise denied the petition for *certiorari* filed before it.[9] When the case was elevated to the Supreme Court, the petition was denied on April 23, 2007 for failure to show any reversible error in the CA Decision.[10]

Meanwhile, on March 15, 2005, the NLRC issued an Entry of Judgment[11] declaring that its January 31, 2005 Resolution had become final and executory.

Consequently, a Writ of Execution[12] dated May 22, 2007 was issued commanding the sheriff to proceed against the

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[7] *Id*. at 131-132.

[8] *Id*. at 137-138.

[9] *Id*. at 140-150.

[10] *Id*. at 157.

[11] *Id*. at 158.

[12] *Id*. at 159-164.

movable and immovable properties of the corporation and respondent Abraham De Vera, *viz.*:

NOW THEREFORE, you are hereby commanded to proceed to the premises of the respondents A. DE VERA CORPORATION and ABRAHAM DE VERA, located at 16/F Citibank Tower, Citibank Plaza, 8741 Paseo de Roxas, Valero St., Makati City or wherever they maybe found within the Philippines, to collect the amount of THREE HUNDRED SIXTY THREE THOUSAND TWO HUNDRED NINETY THREE AND 55/100 (₱363,293.55) PESOS, representing complainant's backwages; the sum of FIFTY THREE THOUSAND THREE HUNDRED (₱53,300.00) PESOS, as his separation pay, plus the amount of ELEVEN THOUSAND EIGHT HUNDRED NINETY (₱11,890.00), representing his unpaid salary from July 1, 1998 to September 27, 1998. Any proceeds thereof shall be turned over to the NLRC Cashier for proper disposition to the complainant.

In case you failed to collect sufficient amount in cash, you are hereby further commanded to proceed against the movable and immovable properties of the respondents not exempt from the execution, and all proceeds must be deposited to the NLRC Cashier of this Commission. For further appropriate action.[13]

When the Writ of Execution was returned unsatisfied, Servandil moved for the issuance of an alias writ of execution which was granted. The pertinent portions of the Alias Writ of Execution[14] dated February 11, 2008 read:

NOW THEREFORE, you are hereby commanded to proceed to the premises of the respondents A. DE VERA CORPORATION and ABRAHAM DE VERA, located at 16/F Citibank Tower, Citibank Plaza, 8741 Paseo de Roxas, Valero St., Makati City or wherever they maybe found within the Philippines, to collect the amount of THREE HUNDRED SIXTY THREE THOUSAND TWO HUNDRED NINETY THREE AND 55/100 (₱363,293.55) PESOS, representing complainant's backwages; the sum of FIFTY THREE THOUSAND THREE HUNDRED (₱53,300.00) PESOS, as his separation pay, plus the amount of ELEVEN THOUSAND EIGHT HUNDRED NINETY

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[13] *Id*. at 163.

[14] *Id*. at 165-167.

(₱11,890.00), representing his unpaid salary from July 1, 1998 to September 27, 1998. Any proceeds thereof shall be turned over to the NLRC Cashier for proper disposition to the complainant.

In case you failed to collect sufficient amount in cash, you are hereby further commanded to proceed against the movable and immovable properties of the respondents not exempt from the execution, and all proceeds must be deposited to the NLRC Cashier of this Commission. For further appropriate action.[15]

Pursuant to this writ, a parcel of land (property) registered in the name of respondents was levied upon and sold to petitioners Jaime Bilan Montealegre and Chamon'te, Inc. (petitioners) at a public auction on May 16, 2008.[16] As no redemption was made during the period provided by law, petitioners filed an omnibus motion[17] seeking the issuance of a final deed of sale, cancellation of title in the name of respondents, and the issuance of a new title in their names.

It was during this time that respondents realized that only the corporation was impleaded as party-respondent in Servandil's complaint for illegal dismissal. Thus, respondents filed a verified counter-manifestation with omnibus motion[18] stating that the property sold at auction does not belong to the judgment debtor, the corporation, but to respondents, who were not impleaded as party-respondents in the case for illegal dismissal. They likewise claimed that the property was conjugal and there was no showing that an advantage or benefit accrued to their conjugal partnership.

The LA denied respondents' omnibus motion in an August 25, 2011 Order,[19] the dispositive portion of which reads:

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[15] *Id*. at 166.

[16] *Id*. at 171-173.

[17] *Id*. at 174-183.

[18] *Id*. at 188-202.

[19] *Id*. at 518-528.

WHEREFORE, responsive to the foregoing, judgment is hereby rendered, directing Sheriff Manolito G. Manuel to issue and execute a Final Deed of Conveyance and/or Final Deed of Sale of the subject property in favor of the Purchasers/Appellees, JAIME BILAN MONTEALEGRE and [CHAMON'TE], INC.

Likewise, let the levy effected by the RTC Cebu Court Sheriff Rome C. Asombrado to the subject property be, as it is hereby LIFTED/CANCELLED, on the ground afore-stated.

SO ORDERED.[20]

Aggrieved, respondents filed a petition before the NLRC with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction to enjoin the LA or his representative from enforcing the August 25, 2011 Order.[21]

On October 10, 2011 and November 3, 2011, the NLRC issued a TRO and a writ of preliminary injunction,[22] respectively.

However, on March 29, 2012, it denied respondents' petition, affirming *in toto* the August 25, 2011 Order of the LA.[23] The NLRC noted that respondent Abraham filed an earlier omnibus motion dated May 19, 2008, which sought to annul the Notice of Sheriffs Sales for the levy and public sale of the property, and this omnibus motion was resolved in an Order[24] dated December 8, 2009. The December 8, 2009 Order declared that the levy and sale of the property is valid. Considering that no motion for reconsideration or appeal was filed, the December 8, 2009 Order became final and executory.[25] The NLRC held that respondents are prohibited to question a final and executory December 8, 2009 Order by assailing the August 25, 2011 Order, which merely enforced the earlier Order. More, the NLRC

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[20] *Id*. at 95, 528.

[21] *Id*. at 44.

[22] *Id*.

[23] *Rollo*, p. 113.

[24] *Id*. at 302-320.

[25] *Id*. at 103.

rejected respondent Abraham's argument that the corporation is a distinct entity and therefore, its creditors cannot go after his property. The NLRC reasoned that, although as a rule, the officers and members of a corporation are not personally liable for acts done in performance of their duties, an exceptional circumstance exists in this case, *i.e.*, the corporation is no longer existing and is unable to satisfy the judgment in favor of the employee. Finally, the NLRC declared that the validity of the levy and sale of the property cannot likewise be questioned on the basis that the property levied upon is a conjugal property of respondents. This is because respondent Remedios failed to file a third-party claim within five days from the last day of posting or publication of the notice of execution sale.[26] The NLRC likewise denied respondents' motion for reconsideration.[27]

Aggrieved, respondents filed a petition for *certiorari*[28] before the CA.

On January 18, 2013, the CA granted the petition and reversed the NLRC Resolutions. The decretal portion of the CA Decision[29] states:

WHEREFORE, premises considered, the instant petition is ***GRANTED***. The Resolutions dated 29 March 2012 and 28 May 2012, respectively, of public respondent NLRC are ***REVERSED*** and ***SET ASIDE***. The Order of public respondent Labor Arbiter dated 25 August 2011 is ***ANULLED*** and the Writ of Execution dated 22 May 2007 and Alias Writ of Execution dated 11 February 2008 are ***QUASHED***.

The Labor Arbiter is **DIRECTED** to implement the final and executory Decision of the National Labor Relations Commission dated 27 November 2003 against all the assets of A. De Vera Corporation, in conformity with the terms of the dispositive portion of the said decision.

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[26] *Id*. at 102-109.

[27] *Id*. at 115-117.

[28] *Id*. at 54-93.

[29] *Supra* note 2.

SO ORDERED.[30]

The CA stated that the respondent in the November 27, 2003 LA Decision[31] refers to the corporation and no other party-respondent was impleaded. The LA, however, ordered the execution against "A. De Vera Corporation and Abraham De Vera." Clearly, the writ of execution and the alias writ of execution modified and/or amended the final decision dated November 27, 2003. Respondent Abraham was never impleaded as a party-respondent in the complaint for illegal dismissal against A. De Vera Corporation. Therefore, the LA exceeded his authority and acted without jurisdiction in issuing said writs of execution, which do not conform to the dispositive of the final judgment. Thus, the December 8, 2009[32] and August 25, 2011[33] Orders directing the issuance of a final deed of sale to petitioners cannot validate the void writs of execution and could never attain finality.[34]

On August 30, 2013, the CA denied petitioners' motion for reconsideration.[35] It ruled that, contrary to petitioners' contentions, it is not undisputed that the corporation has ceased to exist. While Servandil alleged this fact before the LA, said closure is not supported by the evidence on record. Furthermore, the ruling in *A.C. Ransom Labor Union- CCLU v. NLRC*,[36] which made corporate officers liable in case of closure of the corporation is inapplicable in this case. Unlike in the present case, the corporate officers in *A.C. Ransom* were impleaded from the very beginning.

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[30] *Rollo*, p. 49.

[31] *Id.* at 126-132.

[32] *Supra* note 24.

[33] *Supra* note 19.

[34] *Rollo*, pp. 46-48.

[35] *Id.* at 51-53.

[36] G.R. No. 69494, June 10, 1986, 142 SCRA 269.

Hence, this petition arguing that the CA gravely erred in ruling that: 1) the Writ of Execution and the Alias Writ of Execution are void because they do not conform to the dispositive portion of the November 17, 2003 Decision holding the corporation liable for illegal dismissal; 2) respondent Abraham De Vera cannot be held liable as responsible officer of the corporation because he is not a party in the case filed against the corporation; 3) the corporation had not ceased to exist when the respondents themselves had not rebutted the same; and 4) the orders of LA Lustria dated December 8, 2009 and August 25, 2011 are null and void on the ground that they are the offshoot of a void writ of execution. Petitioners likewise faulted the CA for giving due course to respondents' petition in violation of the NLRC rules of procedure.[37]

We deny the petition.

The main issue for our resolution is whether the CA correctly declared null the writs of execution issued by the LA and the subsequent orders and resolutions of the LA and NLRC implementing said writs of execution against respondents' property.

We hold that the CA acted correctly.

As a general rule, a writ of execution must strictly conform to every particular of the judgment to be executed. It should not vary the terms of the judgment it seeks to enforce, nor may it go beyond the terms of the judgment sought to be executed, otherwise, if it is in excess of or beyond the original judgment or award, the execution is void.[38] Furthermore, the power of the courts in executing judgments extends only to properties unquestionably belonging to the judgment debtor and liability may even be incurred by the sheriff for levying properties not belonging to the judgment debtor.[39]

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[37] *Rollo*, p. 14.

[38] *Pascual v. Daquioag*, G.R. No. 162063, March 31, 2014, 720 SCRA 230, 240-241.

[39] *Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission*, G.R. No. 170689, March 17, 2009, 581 SCRA 598, 612.

In *Mandaue Dinghow Dimsum House, Co., Inc. v. National Labor Relations Commission-Fourth Division*[40] we ruled:

> The Order and the Alias Writ of Execution issued by the LA are null and void for lack of jurisdiction and for altering the tenor of the NLRC decision dated October 24, 2000 which directed Mandaue Dinghow alone to pay the private respondents' separation pay. The private respondents did not assail this ruling. Thus, the same became final and executory. Even granting that the NLRC committed a mistake in failing to indicate in the dispositive portion that Uytengsu was solidarity liable with Mandaue Dinghow, the correction — which is substantial — can no longer be allowed in this case because the judgment has already become final and executory.[41]

Here, it is undisputed that the final and executory November 27, 2003 LA Decision[42] adjudged the corporation guilty of illegal dismissal and ordered it to pay Servandil separation pay and backwages. It did not mention respondents' liability. Nevertheless, the Writ of Execution dated May 22, 2007 and the Alias Writ of Execution dated February 11, 2008 were directed against the movable and immovable properties of both the corporation and respondent Abraham. Clearly, the writs of execution here exceeded the terms of the final and executory judgment of the LA.

Consequently, the CA correctly set aside the levy and sale of the subject property pursuant to said writs and the August 25, 2011 Order, which directed the issuance of a Final Deed of Sale in favor of petitioners, for being the offshoot of a void execution, as well as the NLRC Resolutions dated March 29, 2012 and May 28, 2012, which affirmed the August 25, 2011 Order.[43]

Petitioners also want us to disregard the corporation's separate personality and hold respondent Abraham De Vera liable.

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[40] G.R. No. 161134, March 3, 2008, 547 SCRA 402.

[41] *Id.* at 413-414.

[42] *Supra* note 6.

[43] *Rollo*, p. 49.

Petitioners allege that the corporation has already ceased to operate and there is no other way by which the LA judgment could have been satisfied other than through the levy and sale of the property belonging to respondent Abraham De Vera. Consequently, they claim that the levy and sale of the property pursuant to the writs of execution and orders of the LA are likewise valid.[44]

Petitioners cite the rulings in *A.C. Ransom Labor Union-CCLU v. NLRC*[45] and *Restaurante Las Conchas v. Llego*[46] to justify their contention that respondent Abraham may be held liable as the corporation's responsible officer.

Contrary to petitioners' assertions, the piercing of the veil of corporate fiction is unwarranted in this case.

In *Zaragoza v. Tan*,[47] We examined the factual milieu of *A.C. Ransom* and the application of the piercing of the veil doctrine. Ransom was found guilty of unfair labor practice and was ordered, together with its officers and agents, to reinstate twenty-two union members to their respective positions with payment of backwages. When the decision became final and executory, the writ of execution could not be implemented against Ransom because it already disposed its leviable assets. The Court found that while the case was still pending, Ransom put up another corporation, Rosario Industrial Corporation, as a ploy to evade Ransom's obligation to its employees. Therein, We allowed the piercing of the corporate fiction by making Ransom's officers personally liable.

We further explained that *Carag v. National Labor Relations Commission*[48] clarified that Article 212(e) of the Labor Code,

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

[45] *Supra* note 36.

[46] G.R. No. 119085, September 9, 1999, 314 SCRA 24.

[47] G.R. No. 225544, December 4, 2017, 847 SCRA 437.

[48] G.R. No. 147590, April 2, 2007, 520 SCRA 28, as cited in *Zaragoza v. Tan, id*. at 452.

by itself, does not make a corporate officer personally liable for the debts of the corporation. It emphasized that the governing law on personal liability of directors or officers for debts of the corporation is still Section 31 of the Corporation Code.[49] Thus, We ruled that the doctrine of piercing the corporate veil applies only in three basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. **In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.**[50]

In *Lozada v. Mendoza*,[51] We likewise ruled that the general rule is corporate officers are not held solidarily liable with the corporation for separation pay because the corporation is invested by law with a personality separate and distinct from those persons composing it as well as from that of any other legal entity to

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[49] Sec. 31. *Liability of Directors, Trustees or Officers.* – Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

[50] *Supra* note 39 at 616.

[51] G.R. No. 196134, October 12, 2016, 805 SCRA 673.

which it may be related. To hold a director or officer personally liable for corporate obligation is the exception and it only occurs when the following requisites are present: (1) the complaint must allege that the director or officer assented to the patently unlawful acts of the corporation, or that the director or officer was guilty of gross negligence or bad faith; and (2) there must be proof that the director or officer acted in bad faith.[52]

Here, the two requisites are wanting. Servandil's complaint failed to allege or impute bad faith or malice on the part of respondent Abraham De Vera. There was likewise nothing in the November 27, 2003 LA Decision that would establish that respondent Abraham De Vera acted in bad faith when Servandil was dismissed from the service. There was likewise no invocation of bad faith on the part of respondent Abraham De Vera to evade any judgment against the corporation.

WHEREFORE, the petition is **DENIED**. The Decision dated January 18, 2013 and Resolution dated August 30, 2013 of the Court of Appeals in CA-G.R. SP No. 126037 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 216574. July 10, 2019]

FACT-FINDING INVESTIGATION BUREAU (FFIB) - OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES, *petitioner, vs.* **RENATO P. MIRANDA,** *respondent.*

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[52] *Id*. at 681.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED IN A PETITION FOR REVIEW ON *CERTIORARI* EXCEPT, WHEN THE CONCLUSION OF THE COURT IS NOT SUPPORTED BY EVIDENCE ON RECORD; CASE AT BAR.—** To begin with, the Court clarifies that only questions of law may be raised in a petition for review on *certiorari*. x x x Jurisprudence, however, has laid down exceptions. The presence of any one of these exceptions compels the Court to review all over again the factual findings of the Court of Appeals. Here, the Court is constrained to take a second look at the factual milieu of the case and re-evaluate if the Court of Appeals committed reversible error in absolving respondent of his administrative liability under the law, in the face of evidence on record supporting a different conclusion.

2. **CRIMINAL LAW; PRINCIPLES; CONSPIRACY; THE ACT OF EVERY CONSPIRATOR MUST BE SHOWN TO HAVE BEEN DONE TO CONTRIBUTE TO THE REALIZATION OF A COMMON UNLAWFUL GOAL; PRESENT IN CASE AT BAR.—** ***Bahilidad v. People*** defines conspiracy, in this wise, *viz*: There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. x x x To prove conspiracy, it is not always necessary that direct evidence be presented to establish its existence. That the conspirators came to an agreement to pursue a common evil design may be inferred from the overt acts of the conspirators themselves. The act of every conspirator must be shown to have been done to contribute to the realization of a common unlawful goal. x x x Here, respondent was accused of being a co-conspirator in an alleged grand design to steal money from government coffers under the guise of supposed disbursements for clothing and equipment of enlisted PMC personnel. Respondent's purported participation in the alleged conspiracy was his act of signing the disbursement vouchers and authorizing the transfer of funds to Maj. Jandayan who was not duly authorized to receive, nay, disburse these funds. x x x Respondent's culpability did not arise solely because he signed the disbursement vouchers.

His culpability rather was hinged on his act of authorizing Maj. Jandayan to receive the CCIE funds, albeit, the latter did not have the requisite authority to receive, much less, disburse these funds. x x x In ***Mangubat v. Sandiganbayan,*** the Court recognized the importance of the individual acts performed by each conspirator which may at first seem to be an independent act but which, if taken together, would demonstrate the common criminal goal of the conspirators. The Court ordained: x x x When the defendants by their acts aimed at the same object, one performing one part, and the other performing another part so as to complete it, with a view to the attainment of the same object, and their acts though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the court will be justified in concluding that said defendants were engaged in a conspiracy x x x."

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; 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; MISCONDUCT IS CONSIDERED GRAVE WHEN THE ELEMENTS OF CORRUPTION AND CLEAR INTENT TO VIOLATE THE LAW OR FLAGRANT DISREGARD OF ESTABLISHED RULE ARE PRESENT.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. As an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. It is considered grave where the elements of corruption and clear intent to violate the law or flagrant disregard of established rule are present.

4. ID.; ID.; ID.; SUBSTANTIAL EVIDENCE IS THE QUANTUM OF PROOF REQUIRED IN ADMINISTRATIVE CASES; SUBSTANTIAL EVIDENCE IS SUCH RELEVANT EVIDENCE WHICH A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION; CASE AT BAR.— In administrative cases, the quantum of proof required is substantial evidence. It is such relevant evidence which a reasonable mind might accept as adequate to support

a conclusion, even if other minds equally reasonable might conceivably opine differently. The evidence adduced here, specifically, the repeated, yet, unexplained authorization extended to Maj. Jandayan to receive and disburse the CCIE funds speak for themselves. Had respondent not done it, public funds would not have been dissipated and lost. What respondent did was truly indispensable to the consummation of the unlawful disbursement of public funds which caused prejudice to the government. The Constitution ordains: "[p]ublic office is a public trust [and] [p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." This Constitutional standard of conduct is not intended to be a mere rhetoric, and should not be taken lightly. For those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from reprimand to the extreme penalty of dismissal from the service.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rogoroso Galindez & Rabino Law Office for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

THE CASE

This Petition for Review on *Certiorari*[1] seeks to reverse and set aside the following issuances of the Court of Appeals[2] in CA-G.R. SP No. 127459 entitled "*Renato P. Miranda v. Office of the Ombudsman-Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices and Fact-Finding Investigation Bureau* (FFIB-OMB-MOLEO)":

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[1] Under Rule 45 of the Revised Rules of Court.

[2] Penned by Associate Justice Elihu A. Ybañez with Associate Justice Japar B. Dimaampao and Associate Justice Carmelita S. Manahan, concurring.

1. Decision[3] dated July 30, 2014 which reversed and set aside respondent's dismissal from the service as decreed by petitioner Office of the Deputy Ombudsman-MOLEO in OMB-P-A-06-0106-A;[4]

2. Resolution[5] dated January 13, 2015 which denied petitioner's motion for reconsideration.[6]

FACTUAL ANTECEDENTS

Sometime in April 2000, the Philippine Marine Corps (PMC) earmarked and released ₱36,768,028.95 as Combat Clothing Allowance and Individual Equipment Allowance (CCIE) for its enlisted personnel for CY 1999. Each enlisted employee was to get ₱8,381.25 as Combat Clothing Allowance and ₱6,337.80 as Individual Equipment Allowance, or a total of ₱14,719.05. The disbursements were released through nineteen (19) checks in various amounts. PMC Commanding Officer and Deputized Disbursing Officer Major Felicisimo C. Millado and PMC Commandant BGen. Percival M. Subala signed the checks payable to Deputized Disbursing Officer Major Millado.[7]

Acting on the records forwarded by the Commission on Audit (COA), FFIB-OMB-MOLEO initiated an investigation of subject disbursements. On basis thereof, FFIB-MOLEO charged respondents MGen. Renato P. Miranda (Formerly Col. Miranda, SG 26), BGen. Percival M. Subala (SG 27), Lt. Col. Jeson P. Cabatbat (SG 25), Maj. Adelo B. Jandayan (SG 24), Capt. Felicisimo C. Millado (SG 23), Capt. Edmundo D. Yurong (SG 23), and Carolyn L. Bontolo (SG 15) with malversation

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[3] *Rollo,* pp. 31-39.

[4] Decision dated February 27, 2009 penned by Graft Investigation and Prosecution Officer Jamila R. Cruz-Sarga, concurred in by Director Eulogio S. Cecilio, and approved by Acting Ombudsman Orlando C. Casimiro, *rollo,* pp. 50-57.

[5] *Id.* at 41-42.

[6] *Id.* at 43-49.

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

of public funds through falsification of public documents, violation of COA Rules and Regulations, and violation of Section 3(e) of Republic Act 3019 (RA 3019) or the Anti-Graft and Corrupt Practices Act. The case was docketed OMB P-A-06-00106-A.[8]

PROCEEDINGS BEFORE THE OFFICE OF THE DEPUTY OMBUDSMAN-MOLEO

In its Affidavit-Complaint[9] dated January 13, 2006, FFIB-OMB-MOLEO alleged that through "random sampling" of liquidation payrolls, COA discovered that some PMC personnel did not receive the ₱14,719.05 CCIE allowance supposedly intended for each of them. These PMC personnel disowned the signatures appearing on the payrolls and even denied authorizing any representative to receive these allowances on their behalf.[10] They also pointed out that the liquidation payrolls were prepared following the payrolls system based on rank. This new payroll system meant that the payroll shall be routed to all marine personnel in different locations all over the country. This sharply deviated from the standard procedure of preparing payrolls according to unit assignment to facilitate its release by the liaison officer to the PMC personnel concerned. The PMC personnel further disclosed that they had already been receiving clothing allowance of ₱200.00 each since long before; but they never received the supposed additional clothing allowance of ₱8,381.25.[11]

As for respondent MGen. Renato Miranda, FFIB-OMB-MOLEO found that he did not have the authority to approve the grant of the CCIE. It was the head of office, PMC Commandant BGen. Subala who had such authority conformably

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[8] *Id.*

[9] CA *rollo,* pp. 40-46.

[10] *Id.* at 40-42.

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

with Section 168, Volume 1 of the Government Accounting and Auditing Manual.[12]

Respondent's Defense

In refutation, respondent argued that it was BGen. Subala who authorized him to approve the corresponding disbursement vouchers. He maintained that when all the conditions and requirements for approval of the disbursement vouchers were present, he had no discretion but to approve the same.[13]

As regards the other respondent officers, they, too, argued that they signed the checks as part of their ministerial duty considering that the requirements for approval of the disbursements were all complied with.[14]

RULING OF THE OFFICE OF THE DEPUTY OMBUDSMAN-MOLEO (ODO-MOLEO)

By Decision[15] dated February 27, 2009, the ODO-MOLEO found five (5) respondent officers, including MGen. Renato P. Miranda, guilty of grave misconduct and dishonesty. They were ordered dismissed from the service. As for Maj. Adelo Jandayan, in view of his retirement from the service, his retirement benefits, except accrued leave credits, were ordered forfeited, with prejudice against re-employment with the government. With respect to BGen. Percival Subala and Carolyn Bontolo, the cases against them were dismissed. The dispositive portion of the decision reads, *viz*:

WHEREFORE, finding substantial evidence, this Office finds respondents **COL. RENATO P. MIRANDA, LT. COL. JESON P. CABATBAT, MAJ. ADELO B. JANDAYAN, CAPT. FELICISIMO C. MILLADO,** and **CAPT. EDMUNDO D.**

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[12] *Id.* at 43.

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

[14] *Id.* at 51-52.

[15] *Rollo,* pp. 50-57.

YURONG GUILTY of Grave Misconduct and Dishonesty pursuant to Section 19 in relation to Section 25, RA 6770 otherwise known as The Ombudsman Act of 1989, and are hereby meted out the penalty of DISMISSAL from the service effective immediately with forfeiture of all the benefits, except accrued leave benefits, if any, with prejudice to re-employment in any branch or service of the government including government owned and controlled corporations.

With respect to respondent **MAJ. ADELO B. JANDAYAN,** since he had already retired from the service, the forfeiture of all his retirement benefits, except accrued leave credits, is hereby **ORDERED,** and his reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations is **PROSCRIBED.**

With respect to respondents **BGEN. PERCIVAL M. SUBALA** and **CAROLYN L. BONTOLO,** this case is hereby **DISMISSED.**

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In its Joint Order[16] dated November 25, 2011, the ODO-MOLEO denied the respective motions for reconsideration of herein respondent MGen. Miranda, (Ret.) Capt. Millado, and Lt. Col. Cabatbat.

PROCEEDINGS BEFORE THE COURT OF APPEALS

On respondent's petition for review, he faulted the ODO-MOLEO for finding him guilty of grave misconduct and dishonesty and ordering his dismissal from the service with all its accessory penalties. He insisted that he approved the CCIE disbursement as part of his ministerial duty. He also rejected the ODO-MOLEO's finding that he conspired with his co-respondents below.

In its Comment[17] dated January 18, 2013, petitioner FFIB-OMB-MOLEO asserted that the ODO-MOLEO did not err

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[16] *Id.* at 58-65, penned by GIPO Kathryn Rose A. Hitalia-Baliatan, and reviewed by Director Dennis L. Garcia and approved by Ombudsman Conchita Carpio Morales.

[17] CA *rollo,* pp. 278-306.

when it found respondent guilty of grave misconduct and dishonesty.[18]

Under Decision[19] dated July 30, 2014, the Court of Appeals reversed, thus:

> **WHEREFORE,** the petition is hereby **GRANTED.** The assailed Decision dated 27 February 2009 and the Joint Order dated 25 November 2011 issued by the Office of the Deputy Ombudsman for Military and Other Law Enforcement Officers are **REVERSED** and **SET ASIDE** with respect to petitioner Renato P. Miranda. Accordingly, Renato P. Miranda is **EXONERATED** from the administrative charges against him for lack of substantial evidence.
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> SO ORDERED.[20]

The Court of Appeals found that no substantial evidence was presented showing that respondent actively participated in the alleged conspiracy to defraud the government. The documents signed by petitioner only showed he approved the release of subject funds upon certification by subordinate officers in charge of evaluating the proposed disbursement that the same was in order and that funds were available for the purpose. The mere fact of signing the documents in question did not make respondent liable for grave misconduct and dishonesty, conformably with the Court's pronouncement in *Albert v. Gangan.*[21]

Under Resolution[22] dated January 13, 2015, FFIB-OMB-MOLEO's motion for reconsideration was denied.

THE PRESENT PETITION

Petitioner FFIB-OMB-MOLEO, through the Office of the Solicitor General, represented by then Acting Solicitor General

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[18] *Id.* at 291.

[19] *Id.* at 463-470.

[20] *Id.* at 470.

[21] 406 Phil. 231, 242 (2001).

[22] *CA rollo,* pp. 509-510.

Florin T. Hilbay, Assistant Solicitor General Marissa Macariag-Guillen, and Senior State Solicitor Karen A. Ong, now implores the Court to exercise its discretionary appellate jurisdiction to reverse and set aside the assailed Decision dated July 30, 2014 and Resolution dated January 13, 2015.

Petitioner faults the Court of Appeals for: (1) ruling that respondent cannot be held administratively liable for grave misconduct and dishonesty in the absence of direct evidence of conspiracy with other PMC officers in the release of more than ₱36 Million in clothing and equipment allowances; and (2) dismissing the complaint in OMB-P-A-06-00106-A on the strength of *Albert v. Gangan*[23] which authorizes officers to rely on the certifications, recommendations, and memoranda of subordinate officers or staff, before giving their own seal of approval on official documents or transactions.

According to petitioner, respondent together with other PMC personnel clearly participated in the web of conspiracy to defraud the government of a substantial amount through the fictitious grant of CCIE allowances to supposed enlisted PMC personnel who vigorously denied having received the same. Respondent performed the following specific acts which are allegedly indispensable to the consummation of the fraud, viz:

ONE. Through a document captioned *Funds Entrusted to Agent Officer/Teller,* he authorized Maj. Jandayan to receive the ₱36,768,028.95 CCIE funds, albeit, the latter was not the duly authorized disbursement officer; and

TWO. Although claiming that the CCIE funds were used to purchase clothing and equipment for PMC enlisted personnel, he submitted payroll copies showing that the supposed beneficiaries received checks, not anything in kind. One hundred forty-five (145) of these supposed beneficiaries, however, attested that they did not receive these funds in full or in part.

Petitioner also rejects respondent's invocation of *Arias* and *Gangan.* Being a mere subordinate officer in the hierarchy of

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[23] *Supra* Note 21.

the PMC, respondent cannot validly excuse himself from the duty of thoroughly reviewing the documents which are routed to him in the regular course of the PMC's operations.

Respondent counters,[24] in the main:

FIRST. No evidence was adduced to prove the elements of corruption nor his clear intent to violate the law and established rules. Neither was it established that he had a disposition to lie, cheat, deceive, or defraud the government.[25] The Court of Appeals was correct in finding that the documents on record did not on their face show any irregularity which could have prompted him to doubt before affixing his signature of approval.[26]

SECOND. He relied on the presumption that the reviewing and approving officers who processed the documents had done so in a regular manner. After all, these officers below had already performed the process of verification, ensuring that the acquisition of supplies or equipment was necessary, the funds therefor were available, and disbursement and distribution of the checks were actually done.[27]

THIRD. The element of corruption is absent in this case. Records do not show that he unlawfully appropriated for himself any amount from the CCIE allowances.[28] He was not even involved in the distribution or safekeeping of these funds.[29] Verily, the extent of his participation in approving the release of the CCIE allowances cannot be equated with grave misconduct and dishonesty.

FOURTH. Lt. Col. Dammang presented evidence showing that payments were actually made to the suppliers of the uniform

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[24] Comment dated July 21, 2015, *rollo,* pp. 85-90.

[25] *Rollo,* p. 85.

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

[27] *Id.* at 86-87.

[28] *Id.* at 88.

[29] *Id.* at 87.

and equipment, means that the CCIE funds were appropriated according to their purpose and no undue injury was suffered by the government. This simply purpose and the government did not suffer any injury by reason thereof.[30]

Petitioner, thus, presents the following issues for our resolution:

1. Did the Court of Appeals err when it ruled that in the absence of direct evidence of conspiracy, respondent cannot be held liable for grave misconduct and dishonesty?

2. Did the Court of Appeals correctly rely on *Gangan* and similar cases to support a decree of exoneration in respondent's favor?

RULING

To begin with, the Court clarifies that only questions of law may be raised in a petition for review on *certiorari*.[31] Rule 45 of the Revised Rules of Court provides, thus:

Section 1. Filing of petition with Supreme Court. A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency. (As amended by A.M. No. 7-12-07-SC)

Jurisprudence, however, has laid down exceptions.[32] The presence of any one of these exceptions compels the Court to

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[30] *Id.* at 89.

[31] Rule 45, Sec. 1, Rules of Court.

[32] The general rule for petitions filed under Rule 45 admits exceptions, to wit: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken,

review all over again the factual findings of the Court of Appeals. Here, the Court is constrained to take a second look at the factual milieu of the case and re-evaluate if the Court of Appeals committed reversible error in absolving respondent of his administrative liability under the law, in the face of evidence on record supporting a different conclusion.

Existence of Conspiracy

Bahilidad v. People defines conspiracy, in this wise, viz:

> There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.
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> It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at

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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. (*Miano v. Manila Electric Company,* 800 Phil. 118, 123 (2016.))

the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.[33]

To prove conspiracy, it is not always necessary that direct evidence be presented to establish its existence. That the conspirators came to an agreement to pursue a common evil design may be inferred from the overt acts of the conspirators themselves. The act of every conspirator must be shown to have been done to contribute to the realization of a common unlawful goal. In ***Macapagal-Arroyo v. People,*** [34] the Court ordained:

> x x x In terms of proving its existence, conspiracy takes two forms. The first is the express form, which requires proof of an actual agreement among all the co-conspirators to commit the crime. However, conspiracies are not always shown to have been expressly agreed upon. Thus, we have the second form, the implied conspiracy. An implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment. Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest. x x x

Here, respondent was accused of being a co-conspirator in an alleged grand design to steal money from government coffers under the guise of supposed disbursements for clothing and equipment of enlisted PMC personnel. Respondent's purported participation in the alleged conspiracy was his act of signing the disbursement vouchers and authorizing the transfer of funds to Maj. Jandayan who was not duly authorized to receive, nay, disburse these funds.

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[33] 629 Phil. 567, 575 (2010).

[34] 790 Phil. 367, 419-420 (2016) (citations omitted).

Respondent asserts that his acts and those of the other accused did not show a concerted effort toward achieving a common criminal goal. For they simply acted in the performance of their ministerial duty of approving the documents relative to the proposed disbursements in light of a clear showing that these documents had already passed the hands of several subordinate officers who had carefully reviewed and certified them to be correct. Respondent also asserts that his only participation in the questioned transaction was signing the disbursement vouchers for the CCIE allowances in his capacity as duly authorized representative of the head of office.

Respondent's argument does not persuade.

Respondent's culpability did not arise solely because he signed the disbursement vouchers. His culpability rather was hinged on his act of authorizing Maj. Jandayan to receive the CCIE funds, albeit, the latter did not have the requisite authority to receive, much less, disburse these funds.

Entrusting funds to an unauthorized officer

Respondent cannot validly claim that signing the disbursement vouchers was part of his ministerial duty. Notably, what gave rise to his liability was his entrusting a large amount of public funds to an officer who did not have the authority to receive, let alone, disburse the funds. And as it turned out, the funds which respondent entrusted to Maj. Jandayan were not disbursed to their supposed beneficiaries. No one could account for these funds anymore, not even Maj. Jandayan himself.

It is indubitable that Maj. Jandayan came into the picture only when respondent out of nowhere and without any valid designation or authority possessed by Maj. Jandayan suddenly brought the latter in as recipient and disburser of the funds. It was truly the final operative act which caused first the release, then the misappropriation, and finally the total loss of the funds which to date, have remained unaccounted for.

In ***Mangubat v. Sandiganbayan,***[35] the Court recognized the importance of the individual acts performed by each conspirator which may at first seem to be an independent act but which, if taken together, would demonstrate the common criminal goal of the conspirators. The Court ordained:

"x x x no doubt the defraudation of the government would not have been possible were it not for the cooperation respectively extended by all the accused, including herein petitioner. The scheme involved both officials and employees from the Regional Office. Some made the falsifications, others worked to cover-up the same to consummate the crime charged. Petitioner's role was indubitably an essential ingredient especially so because it was he who issued the false LAAs, which as previously mentioned, initiated the commission of the crime. When the defendants by their acts aimed at the same object, one performing one part, and the other performing another part so as to complete it, with a view to the attainment of the same object, and their acts though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the court will be justified in concluding that said defendants were engaged in a conspiracy x x x"

The Court keenly notes that from day one up until now, respondent has not produced the authority of Maj. Jandayan, if any, to receive and disburse the funds in question. Too, respondent up until now has not directly or indirectly responded to the core issue against him, albeit, he alleged lot of things in his pleadings before the Office of the Ombudsman, the Court of Appeals and this Court. Nowhere in any of these pleadings did respondent ever give a direct response to, let alone, refutation of, the damaging evidence against him.

Respondent's disturbing silence on the singular cause of his indictment could only be inferred as an implied admission of the veracity of these accusations. *Judge Noel-Bertulfo v. Nuñez* is *apropos:*

The natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is totally against our human

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[35] 231 Phil. 429, 435-436 (1987).

nature to just remain reticent and say nothing in the face of false accusations. Hence, silence in such cases is almost always construed as implied admission of the truth thereof.[36]

Inapplicability of *Gangan*

Respondent invokes the ruling in *Albert v. Gangan* [37] which essentially ordains that a head of office may rely on the certifications, recommendations, and memoranda of his subordinates who have presumably performed their duty of reviewing, examining, evaluating, scrutinizing, inquring, and probing all the documents relative to a transaction, before presenting them to the head of office for approval.

FFIB-OMB-MOLEO rejects the application of *Gangan* here allegedly because respondent was not a department secretary, bureau chief, commission chairman, agency head, department head, or chief of office. Since respondent did not occupy an equivalent post, *Gangan,* according to FFIB-OMB-MOLEO is not available to him as a defense.

The Court opines that this is not the appropriate case for an extended discourse on *Gangan.* For in the first place, *Gangan* is not even applicable herein.

In any event, to emphasize anew, respondent is not faulted for relying, or at least believing that he had the right to rely, on the documents he claims to have already been thoroughly processed and reviewed by his subordinates.

Respondent's liability hinges on this question: Why did he designate Maj. Jandayan as recipient and disburser of the CCIE funds, albeit, the latter was not the duly authorized disbursing officer nor the duly designated official authorized to act in the absence of the regular disbursing officer?

It is clear as day that not a single piece of document routed to him by his subordinates ever named Maj. Jandayan as the

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[36] *Judge Noel-Bertulfo v. Nuñez,* 625 Phil. 111, 121 (2010).

[37] See *Supra* Note 21.

duly authorized person to receive and disburse the funds in question. As stated, it was respondent alone who toward the end of the documents processing brought for the first time named Maj. Jandayan as recipient and disburser of the funds, albeit, the latter was not clothed with the proper authority.

Respondent is guilty of grave misconduct and serious dishonesty

Office of the Ombudsman, et al. v. PS/Supt. Espina defines grave misconduct and serious dishonesty, in this wise:

> Misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. It is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. x x x
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> On the other hand, dishonesty, which is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity," is classified in three (3) gradations, namely: serious, less serious, and simple. **Serious dishonesty** comprises dishonest acts: (*a*) causing serious damage and grave prejudice to the government; (*b*) directly involving property, accountable forms or money for which respondent is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (*c*) exhibiting moral depravity on the part of the respondent; (*d*) involving a Civil Service examination, irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets; (*e*) committed several times or in various occasions; (*f*) committed with grave abuse of authority; (*g*) committed with fraud and/or falsification of official documents relating to respondent's employment; and (*h*) other analogous circumstances.[38] (emphasis supplied)

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[38] *Office of the Ombudsman, et al. v. PS/Supt. Espina,* 807 Phil. 529, 540-542 (2017) (citations omitted).

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. As an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.[39] It is considered grave where the elements of corruption and clear intent to violate the law or flagrant disregard of established rule are present.[40]

To repeat, respondent violated the rule that whoever holds custody of official funds in trust must bear the requisite authority. Respondent was in charge of affirming the grant, release, and disbursement of millions of pesos in PMC funds. It was upon his directive alone through the document captioned *Funds Entrusted to Agent Officer/Teller,* that the funds were ordered released to Maj. Jandayan. Respondent cannot explain why he entrusted the CCIE funds to Maj. Jandayan, albeit, the latter did not have the requisite authority to hold and disburse the same for the PMC.

In addition, respondent knowingly, nay, unlawfully named Maj. Jandayan trustee of the funds at least twelve (12) times[41] in several millions of pesos. As it was, the intended beneficiaries did not receive the funds. Respondent again could not explain why it was so. Verily, he is guilty of grave misconduct.

Respondent's culpability for dishonesty, on the other hand, is rooted in his actions' indicating his predisposition to lie for the purpose of defrauding the government in huge amounts of public funds. He diverted the CCIE allowances of marine personnel, entrusting them to one not duly authorized to receive, let alone, disburse the same to their supposed beneficiaries. As it turned out, the beneficiaries did not receive even a single centavo of these public million funds. And it was respondent's

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[39] See *Office of the Ombudsman-Visayas, et al. v. Mary Ann Castro,* 759 Phil. 68, 79 (2015) (citation omitted).

[40] See *Vertudes v. Buenaflor,* 514 Phil. 399, 424 (2005).

[41] CA *rollo,* pp. 340-358.

irresponsible, nay, unlawful action which directly caused serious damage and prejudice to the government. For public funds were dissipated and lost beyond recovery.

The Court notes that respondent presented receipts supposedly issued by suppliers for clothing and equipment claimed to have been purchased using the CCIE funds and stock cards. He was trying to establish that these supplies were actually delivered to the PMC personnel concerned.

We are not persuaded. The so called receipts were produced too late in the day; only after respondent and the PMC officials had already been charged with ghost disbursement of funds. The lie becomes more evident considering that per official records, the intended beneficiaries were supposed to receive cash and not anything in kind like clothing or equipment supplies.

At any rate, the existence of receipts of purchase is one thing, the actual receipt of the merchandise or items themselves is another. The supposed beneficiaries denied receipt of these items.

In administrative cases, the quantum of proof required is substantial evidence.[42] It is such relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently.[43] The evidence adduced here, specifically, the repeated, yet, unexplained authorization extended to Maj. Jandayan to receive and disburse the CCIE funds speak for themselves. Had respondent not done it, public funds would not have been dissipated and lost. What respondent did was truly indispensable to the consummation of the unlawful disbursement of public funds which caused prejudice to the government.

The Constitution ordains: "[p]ublic office is a public trust [and] [p]ublic officers and employees must at all times be

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[42] *Office of the Court Administrator v. Lopez*, 654 Phil. 602, 604 (2011).

[43] See *Fajardo v. Corral,* G.R. No. 212641, July 5, 2017, 830 SCRA 161, 168 (citation omitted).

accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." This Constitutional standard of conduct is not intended to be a mere rhetoric, and should not be taken lightly. For those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from reprimand to the extreme penalty of dismissal from the service.[44]

All told, the Court of Appeals gravely erred when it exonerated respondent from the charges of grave misconduct and serious dishonesty. There is in fact compelling evidence on record showing that respondent did commit these offenses.

ACCORDINGLY, the petition is **GRANTED** and the Decision dated July 30, 2014 and Resolution dated January 13, 2015 of the Court of Appeals, **REVERSED and SET ASIDE.**

The Decision dated February 27, 2009 and Joint Order dated November 25, 2011 of the Office of the Ombudsman in OMB-P-A-06-0106-A are **REINSTATED.** Major General Renato P. Miranda is found guilty of grave misconduct and serious dishonesty. He is ordered **DISMISSED** from the service with forfeiture of all benefits, except accrued leave benefits, if any. He is perpetually disqualified from re-employment in any branch or service of the government, including government-owned and controlled corporations.

SO ORDERED.

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

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[44] *Field Investigation Office of the Office of the Ombudsman v. Castillo,* 794 Phil. 53, 65 (2016), *Amit vs. Commission on Audit, et al.,* 699 Phil. 9, 25 (2012).

SECOND DIVISION

[G.R. No. 218126. July 10, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANILO GARCIA MIRANDA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE/POSSESSION OF DANGEROUS DRUGS; CHAIN OF CUSTODY RULE; THE PROSECUTION MUST ACCOUNT FOR EACH LINK IN ITS CHAIN OF CUSTODY TO ENSURE THE INTEGRITY OF THE SEIZED DRUG ITEM; THE FOUR LINKS IN THE CHAIN, ENUMERATED.— In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court. 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. *People v. Beran* further emphasized why the integrity of the confiscated illegal drug must be safeguarded, x x x Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing the Comprehensive Dangerous Drugs Act of 2002, defines "chain of custody."

2. ID.; ID.; ID.; ID.; UNDER SECTION 21 OF RA 9165, THE INVENTORY AND PHOTOGRAPHY OF SEIZED ILLICIT DRUGS SHOULD BE DONE IN THE PRESENCE OF THE ACCUSED OR THE PERSON FROM WHOM THE ITEMS WERE SEIZED, AND HIS REPRESENTATIVE OR COUNSEL, AS WELL AS CERTAIN REQUIRED WITNESSES, NAMELY: A REPRESENTATIVE FROM THE MEDIA AND THE DEPARTMENT OF JUSTICE, AND ANY ELECTED PUBLIC OFFICIAL; NOT ESTABLISHED IN CASE AT BAR.— Under Section 21 of RA 9165, the inventory and photography should 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 representative from the media **and** the Department of Justice (DOJ), **and** any elected public official."* x x x It is readily apparent from the [testimonies of prosecution witnesses] that not even one of the three (3) required witnesses, a media representative and a DOJ representative and an elected official, were present during the inventory. A barangay tanod is not one (1) of those witnesses required by law to be present. This is a fatal lapse. Also, the prosecution did not even explain why they were not able to secure the presence of the three (3) witnesses. In *People v. Romy Lim* the accused was acquitted in view of the absence of the three (3) required witnesses and the prosecution's failure to demonstrate that earnest efforts were made to secure their attendance.

3. ID.; ID.; ID.; ID.; STRICT ADHERENCE TO THE CHAIN OF CUSTODY RULE MUST BE STRICTLY OBSERVED; 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; NOT COMPLIED WITH IN CASE AT BAR.— Strict adherence to the chain of custody rule must be observed; the precautionary measures employed in every transfer of the seized drug item, proved to a moral certainty. The sheer ease of planting drug evidence *vis-a-vis* the severity of the imposable penalties in

drugs cases compels strict compliance with the chain of custody rule. 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. Here, the prosecution did not even attempt to justify the absence of the three (3) required witnesses during the inventory. Too, the prosecution failed to concretely establish how the forensic chemist managed, stored, and preserved the seized drugs. Also, the prosecution failed to 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. x x x Suffice it to state that the presumption of regularity in the performance of official functions cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary. And here, the presumption was amply overturned, nay, overthrown by compelling evidence on record of the repeated breach of the chain of custody rule.

APPEARANCES OF COUNSEL

Tec Rodriguez Law Office for accused-appellant.
The Solicitor General for plaintiff-appellee.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Appeal assails the following issuances of the Court of Appeals in CA-G.R. CR-HC No. 05601 entitled *"People of the Philippines v. Danilo Garcia Miranda"*:

1) Decision[1] dated July 25, 2014, affirming the conviction of Danilo Garcia Miranda for violation of Section 5 of Republic Act No. 9165 (RA 9165);[2] and

2) Resolution[3] dated October 24, 2014, denying appellant's motion for reconsideration.

The Proceedings Before the Trial Court

The Charge

By two (2) separate informations, appellant Danilo Garcia Miranda was indicted for violations of Sections 5 and 11 of Article II of RA 9165, *viz*:

Information[4] dated April 15, 2010 in Criminal Case No. 10-0373 for violation of Section 5, Article II of RA 9165:

That on or about the 14th day of April 2010, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfullly, and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport one (1) small heat-sealed transparent plastic sachet weighing 0.14 gram to Police Poseur Buyer PO3 Fenian Acbang, which contents of the said plastic sachet when tested was found positive for Methylamphetamine (sic) Hydrochloride, a dangerous drugs (sic).

CONTRARY TO LAW.

Information[5] dated April 15, 2010 in Criminal Case No. 10-0374 for violation of Section 11, Article II of RA 9165:

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[1] Penned by Associate Justice Sesinando E. Villon with the concurrence of Associate Justices Florito S. Macalino and Pedro B. Corales, members of the Fifteenth Division, *rollo*, pp. 2-12.

[2] Comprehensive Drugs Act of 2002.

[3] CA *rollo*, p. 152.

[4] RTC Record, p. 1.

[5] *Id.* at 2.

That on or about the 14th day of April 2010, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess, did then and there willfully, unlawfully, and feloniously have in his possession and under his control and custody one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.24 gram, which when tested was found positive for Methylamphetamine (sic) Hydrochloride, a dangerous drug.

CONTRARY TO LAW.

Both cases were raffled to Regional Trial Court, Branch 259 of Parañaque City.

On arraignment, appellant pleaded not guilty to both charges.[6]

Prosecution's Evidence

PO3 Fernan Acbang of the Police Community Precinct No. 8, Parañaque City testified that in April 2010, he was assigned at the Station Anti-Illegal Drugs Special Operation Task Force (SAIDSOTF) of the Parañaque City Police Station. One (1) of his duties was to apprehend violators of RA 9165. On April 14, 2010, around 3:45 o 'clock in the afternoon, he went to the police station because a male informant had given a tip that a certain Danilo Miranda was selling illegal drugs in Barangay Baclaran, Parañaque City.[7]

The information was relayed to PSI Marlou Besoña who immediately apprised Police Supt. Alfredo Valdez about it. Police Supt. Valdez, in turn, instructed the team leader to coordinate with the Philippine Drug Enforcement Agency (PDEA).[8] Upon receipt of the PDEA coordination form, the team met for a briefing. He (PO3 Acbang) was designated as poseur-buyer and provided with four (4) marked 500-peso bills with which to buy shabu. PO2 Domingo Julaton III (PO2 Julaton) was

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[6] *Id.* at 19.

[7] TSN, September 2, 2010, pp. 1-9.

[8] *Id.* at 9-11.

designated as his back-up. The planned buy-bust operation was also entered into the blotter.[9]

The team went in two cars to Brgy. Baclaran. They arrived there around 4:50 o'clock in the afternoon. He and the informant were in the same car. They alighted on Bagong Silang Street. They had already walked about 30 steps when the asset pointed to a man wearing a white *sando* and bearing many tattoos. They approached the man and the asset talked to the man. The asset introduced him to the man as a *balikbayan*.[10]

After the introduction, he approached the man and asked "*Tay, mayroon ka bang item diyan i-iscore sana ako* (Sir, do you have an item available)?" The man replied "*Mayroon pa ako ditong dalawang kasa. Gusto mo kunin yung isa* (I have here two shots. Would you like to take one?)." He handed the marked money to the man, who, after counting it, slid it in his right pocket. The man took out a small transparent plastic sachet, containing white crystalline substance from his pocket and handed it to him (PO3 Acbang). After taking the sachet, he scratched his head: the pre-arranged signal.[11]

He held on the man while his back-up PO2 Julaton approached. They both now held the man, who tried to free himself. Together, they walked until they reached appellant's house which was only eight steps away from the road. Inside appellant's house, they directed him to empty his pockets. Appellant produced from his left pocket a plastic sachet containing white crystalline substance.[12]

Someone from their team had called for a barangay official. Romero Cantojas, a barangay tanod of Brgy. Baclaran, arrived at appellant's house around 5:55 in the afternoon. The barangay hall was just close by. The barangay tanod witnessed the marking of the items. They also took photographs of the items. He placed

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[9] *Id.* at 11-19.

[10] *Id.* at 19-23.

[11] *Id.* at 23-25.

[12] *Id.* at 25-28.

his initials "FA" (subject of the sale) and "FA-1" (recovered from appellant's left pocket) on the two plastic sachets which he recovered. Appellant was sitting in the living room while the police chief and other police officers were outside.[13]

He personally prepared the inventory and had it signed by the barangay tanod. After the inventory, they brought appellant and the seized items to their office and prepared the request for laboratory examination of the seized items as well as request for appellant's drug test. He was the one who delivered the request to the crime laboratory in Makati City at 10 o'clock in the evening of April 14, 2010. The plastic sachets tested positive for methamphetamine hydrochloride.[14]

PO2 Julaton confirmed he was PO3 Acbang's back-up. As back-up, he was positioned 100 meters from PO3 Acbang. When appellant got apprehended, he was the one who recovered the buy-bust money and informed appellant of his Miranda rights. He also confirmed that the inventory was conducted in appellant's house. After the inventory, they proceeded to the police station for documentation. The inventory was signed only by PO3 Acbang and witnessed by Barangay Tanod Romuelo Cantojas because appellant refused to sign it.[15] He also prepared a request for laboratory examination and another request for drug test, booking sheet of the arrested person, and spot report. During the inventory, he photographed the seized items and appellant. He had the photographs from his cellphone developed.[16]

Insp. Richard Mangalip was presented in court. The prosecution and the defense stipulated on the qualifications of Insp. Richard Mangalip as the forensic chemist who did laboratory examination on the drug items. He had no personal knowledge about the source of the drug items.[17]

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

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

[15] TSN, April 19, 2010, pp. 1-16.

[16] *Id.* at 16-24.

[17] CA *rollo*, p. 40.

The prosecution also submitted the following object and documentary evidence: a) Letter-Request for Examination of Seized Evidence[18] dated April 14, 2010; b) Physical Science Report No. D-121-10S,[19] indicating that specimens "FA" (0.14 g) and "FA-1" (0.24 g) were positive for "methylamphetamine hydrochloride"; c) Pinagsamang Salaysay (Joint Statement)[20] dated April 15, 2010 executed by PO3 Fernan Acbang and PO2 Domingo Julaton III; d) Affidavit of Attestation[21] dated April 14, 2010 executed by PO2 Domingo Julaton III; e) Pre-Operation Form[22] dated April 14, 2010; f) Coordination Form[23] dated April 14, 2010; f) Receipt/Inventory of Property Seized[24] dated April 14, 2010; g) photographs of the inventory;[25] h) appellant's information sheet;[26] h) Spot Report[27] dated April 14, 2010; and i) reproduction of four pieces of ₱500 bills.[28]

The Defense's Evidence

Appellant Danilo Miranda denied that he ever sold or had been in possession of shabu. On April 14, 2010, around 4 o'clock in the afternoon, he was in his house preparing his hair color. Suddenly, two (2) men entered the house, followed by another man. He was shown two (2) small plastic sachets from a small pouch and told that those items belonged to him. He was told not to move. He later learned that these men were police officers

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[18] RTC Record, p. 188.

[19] *Id.* at 181.

[20] *Id.* at 182-183.

[21] *Id.* at 184.

[22] *Id.* at 185.

[23] *Id.* at 186.

[24] *Id.* at 188.

[25] *Id.* at 189.

[26] *Id.* at 190.

[27] *Id.* at 191.

[28] *Id.* at 192.

PO2 Julaton, PO3 Acbang, and PSI Besoña. They were also followed by two (2) other men.[29]

He was handcuffed and brought out of his house. He was not shown any search warrant. The police authorities called the barangay authorities while fixing the evidence and taking pictures. One barangay official arrived, was asked to sit in front of the table, and made to sign a document. After signing, the barangay official left. A police officer named Ocampo took a silver-plated sword which his son used for ROTC drills.[30] Afterwards, he was taken onboard a green Adventure. His two (2) children, Mellanie[*] Miranda and Estrellito Miranda wanted to join him but they were forbidden from doing so. The police officers boarded the vehicle and he was taken to the police headquarters. They prepared some reports and he was later taken to the crime laboratory around 9 o'clock in the evening.[31] At the crime laboratory, he was asked to urinate but was not allowed to enter the building. He was later detained at the Coastal Special Investigation Division. He had filed counter-charges against the police officers before the People's Law Enforcement Board (PLEB). The real reason why he was arrested was because he was accused of being involved in a grenade-throwing incident in his place.[32]

Estrellito Miranda, appellant's son, denied that his father sold and was in possession of *shabu*. He executed a sworn statement in support of his father's administrative complaint against the police officers.[33] He also recalled that when he was about to enter their house, a man asked him who he was. He in turn asked the man and was told he was a police officer. His father said that the evidence was planted. The police officers

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[29] TSN, June 22, 2011, pp. 2-6.

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

[*] Sometimes spelled as "Melanie."

[31] TSN, June 22, 2011, pp. at 11-13.

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

[33] TSN, August 31, 2011, pp. 1-10.

also told him not to do anything otherwise there would be trouble. A barangay official arrived, signed a document, and left. His father was taken out of the house and put on a vehicle. He followed his father to the police station and he talked to the police officers. He also called his brother Malvin Miranda and informed him about the incident.[34]

Cherrie Peña, the person who was supposed to color appellant's hair, said she was at the gate when four (4) men entered appellant's house. She no longer went back to the house because she was scared. She was standing in the hallway when appellant was brought out handcuffed.[35]

Melanie Miranda, appellant's daughter, recalled she was outside the house, about twenty (20) steps away, helping her sister-in-law sell samurai balls. Four (4) men in civilian clothes entered their house. She followed them and one (1) of the men showed her a blue pouch. Something wrapped in plastic was also shown to her and the man said he bought it from her father. She was surprised because she was not aware that her father was into selling anything. She asked appellant what was happening and he replied that plastic sachets were planted on him. She was instructed by the men to get some clothes for her father, who was only wearing shorts at the time.[36] She saw that the police putting the pouch and plastic sachets on the center table. Her father faced the center table and the police took pictures of the items. A barangay official came and was made to sign a document. Afterwards, her father was taken outside. She and her brothers Melvin, Fernandez, and Estrellito followed their father to the police station. There, she no longer knew what transpired because it was her father who spoke with the police. She also executed an affidavit in support of her father's complaint against the police officers.[37]

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[34] *Id.* at 10-16.

[35] TSN, October 20, 2011, pp. 1-6.

[36] TSN, March 8, 2012, pp. 1-11.

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

The defense submitted the following documentary evidence: 1) Pre-Operation Form[38] dated April 14, 2010; 2) Coordination Form[39] dated April 14, 2010; 3) Pinagsamang Salaysay (Joint Statement)[40] dated April 15, 2010 executed by PO3 Fernan Acbang and PO2 Domingo Julaton III; 4) Spot Report[41] dated April 14, 2010; 5) Joint Counter Affidavit[42] dated May 26, 2010 executed by PSI Marlou Besoña, SPO1 Ricky Macaraeg, PO3 Fernan Acbang, PO2 Domingo Julaton III and PO2 Elbert U. Ocampo submitted to the PLEB; 6) appellant's Sinumpaang Salaysay[43] dated May 13, 2010 submitted to the PLEB; 7) Pinagsamang Sagot sa Kontra-Salaysay[44] dated June 17, 2010 submitted to the PLEB by Danilo Miranda, Antonio Vertudez, and Cesaria Vertudez; 8) Sinumpaang Salaysay[45] dated May 13, 2010 submitted to the PLEB by Nestia Miranda; 9) Sinumpaang Salaysay[46] dated May 13, 2010 submitted to the PLEB by Estrellito Miranda; and 10) Sinumpaang Salaysay[47] dated May 13, 2010 submitted by to the PLEB by Melanie Miranda.

The Trial Court's Ruling

By its Amended Decision[48] dated April 16, 2012, RTC – Branch 259, Parañaque City found appellant guilty of violations of Sections 5 and 11, both of RA 9165. It found appellant's

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[38] RTC Record, p. 392.

[39] *Id.* at 393.

[40] *Id.* at 394-395.

[41] *Id.* at 396.

[42] *Id.* at 397-399.

[43] *Id.* at 400-402.

[44] *Id.* at 403-404.

[45] *Id.* at 405-406.

[46] *Id.* at 407.

[47] *Id.* at 408-409.

[48] *Id.* at 437-448.

imputation of ill-motive on the police officers to be a mere suspicion. It also noted that appellant's witnesses did not truly see the alleged planting of evidence. It disregarded appellant's defenses of denial and frame-up in favor of the prosecution's positive and categorical testimonies. It upheld the presumption of regular performance of the police officers' discharge of their duty. Consequently, it adjudged, thus:

> WHEREFORE, premises considered, the court renders judgment as follows:
>
> 1. In Criminal Case No. 10-0373 for Violation of Sec. 5, Art. II, RA 9165, the court finds accused DANILO GARCIA MIRANDA, GUILTY beyond reasonable doubt and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Php 500,000.00.
>
> 2. In Criminal Case No. 10-0374 for Violation of Sec. 11, Art. II, RA 9165, the court finds accused DANILO GARCIA MIRANDA, GUILTY beyond reasonable doubt and is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum for seventeen (17) years and four (4) months as maximum and to pay a fine of Php 300,000.00.
>
> Further it appearing that the accused DANILO GARCIA MIRANDA is detained at the Parañaque City Jail and considering the penalty imposed, the OIC Branch Clerk of Court is hereby directed to prepare the Mittimus for the immediate transfer of said accused from the Parañaque City Jail to the New Bilibid Prisons, Muntinlupa City.
>
> The specimen are forfeited in favor of the government and the OIC-Branch Clerk of Court is likewise directed to immediately turn over the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to Supreme Court OCA Circular No. 51-2003.
>
> SO ORDERED.[49]

Appellant moved for reconsideration[50] which the trial court denied through Order[51] dated May 25, 2012.

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[49] *Id.* at 448.

[50] *Id.* at 427-434.

[51] *Id.* at 453-454.

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for overlooking the probative weight of his testimonial evidence, especially the testimonies of witnesses who corroborated his defenses of alibi and frame-up. He also faulted the trial court for giving credence to the testimonies of the prosecution witnesses and upholding the presumption that the arresting officers regularly performed their duties.[52]

In refutation, the Office of the Solicitor General (OSG) defended the verdict of conviction. It essentially argued that the prosecution had indubitably proven the charges of illegal sale and illegal possession against appellant through the positive and categorical testimonies of its witnesses, who were not shown to have had any ill-motive in testifying against appellant. A valid warrantless arrest was effected.[53]

The Court of Appeals' Ruling

The Court of Appeals affirmed through its assailed Decision dated July 25, 2014. It deferred to the trial court's assessment on the credibility of the prosecution witnesses. It likewise held that the presumption of the regular performance of official duty by the police officers remained in place. It concluded that the respective elements of the crime of illegal sale of dangerous drugs and illegal possession of dangerous drugs were proven beyond reasonable doubt.

Appellant moved for reconsideration[54] which the Court of Appeals denied through its assailed Resolution dated October 24, 2014.

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[52] CA *rollo*, pp. 14-38.

[53] *Id.* at 65-102.

[54] *Id.* at 138-141.

The Present Appeal

In his Supplemental Brief[55] dated November 16, 2015, appellant essentially argues that the testimonies of his witnesses concerning the circumstances of his arrest already cast reasonable doubt on the prosecution's factual version. His witnesses consistently stated that the police officers just suddenly barged into their house, arrested him, and conducted an inventory therein. Further, his witnesses were subjected to cross-examination, thus, said testimonies are no longer self-serving. Finally, the PLEB, in its Decision[56] dated May 30, 2014, had suspended the police officers involved for sixty (60) days for grave misconduct. They did not observe proper procedures in arresting appellant.

The OSG reiterates its argument that the prosecution had proven the charges of illegal sale and illegal possession against appellant and there was a valid warrantless arrest on him.[57]

Issue

Was the prosecution able to prove beyond reasonable doubt appellant's guilt for illegal sale and illegal possession 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.[58] 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.[59]

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[55] *Rollo*, pp. 25-38.

[56] CA *rollo*, pp. 125-130.

[57] *Id.* at 65-102.

[58] *People v. Barte*, 806 Phil. 533, 542 (2017).

[59] *People v. Balibay*, 742 Phil. 746, 756 (2014).

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.[60]

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.[61] *People v. Beran*[62] 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.

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[60] *People v. Dahil*, 750 Phil. 212, 231 (2015).

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

[62] 724 Phil. 788, 810 (2014) (citations omitted).

Appellant here was allegedly arrested for illegal sale and illegal possession of dangerous drugs on April 15, 2010. The governing law is RA 9165 and its implementing rules. Section 21 of RA 9165 read:

> 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

Section l(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing the Comprehensive Dangerous Drugs Act of 2002, defines "chain of custody," as follows:

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

Under Section 21 of RA 9165, the inventory and photography should 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 representative from the media **and** the Department of Justice (DOJ), **and** any elected public official.*"[63]

PO3 Fernan Acbang testified on how the inventory was conducted in this case:

Q: Now, Mr. Witness, what did you do, if any, with the plastic sachets?
A: **After preparing the inventory, we had witnessed with the Barangay.**

Q: What was your proof in saying there was an inventory made with the witness from Barangay?
A: We prepared an inventory as well as photographs.

Q: And who personally prepared the inventory?
A: I was the one who personally prepared the inventory.

x x x x x x x x x

Q: **Now, Mr. Witness, what is your proof in saying that this inventory was witnessed by Barangay Tanod Romero Cantojas** (sic)?
A: **He signed it.**[64] (Emphasis supplied)

PO2 Domingo Julaton III likewise testified:

Q: What happened next after you were able to recover the buy-bust money?
A: After we recovered the buy-bust money, the inventory was made.

Q: Where was the inventory made?
A: At the house of the arrested person.

Q: You were present during the inventory?
A: Yes ma'am.

x x x x x x x x x

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[63] *People v. Sanchez*, G.R. No. 239000, November 05, 2018.

[64] TSN, September 2, 2010, pp. 32-34.

Q: **Who signed the inventory made at the house of the accused?**
A: **PO2 Acbang and witnessed by Barangay Tanod Romuelo (Cantojas)**.[65] (Emphasis supplied)

Additionally, the parties stipulated on the testimony of forensic chemist Insp. Richard Mangalip, as reflected in the trial court's Order[66] dated May 27, 2010, *viz*:

x x x x x x x x x

In today's hearing, the testimony of Forensic Chemist, Inspector Richard Allan Mangalip, was stipulated by the prosecution and defense counsel, Atty. Elena Tec-Rodriguez. Defense admitted the qualification of the forensic chemist subject to the condition that he has no personal knowledge on the source of the specimen but only conducted laboratory examination.[67] x x x

The foregoing testimonies of prosecution witnesses underscore the following procedural deficiencies in the chain of custody of the drugs in question.

First. It is readily apparent that not even one of the three (3) required witnesses, a media representative and a DOJ representative and an elected official, were present during the inventory. A barangay tanod is not one (1) of those witnesses required by law to be present. This is a fatal lapse. Also, the prosecution did not even explain why they were not able to secure the presence of the three (3) witnesses.

In *People v. Romy Lim*[68] the accused was acquitted in view of the absence of the three (3) required witnesses and the prosecution's failure to demonstrate that earnest efforts were made to secure their attendance, *viz*:

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[65] TSN, April 19, 2010, pp. 14-16.

[66] RTC Record, p. 24.

[67] *Id.*

[68] G.R. No. 231989, September 04, 2018.

Evident, however, is the absence of an elected public official and representatives of the DOJ and the media to witness the physical inventory and photograph of the seized items. In fact, their signatures do not appear in the Inventory Receipt.

The Court stressed in *People v. Vicente Sipin y De Castro*:

> The prosecution bears the burden of proving a 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 trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that 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 items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.

It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

> (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

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 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.

In this case, IO1 Orellan testified that no members of the media and barangay officials arrived at the crime scene because it was late at night and it was raining, making it unsafe for them to wait at Lim's house. IO2 Orcales similarly declared that the inventory was made in the PDEA office considering that it was late in the evening and there were no available media representative and barangay officials despite their effort to contact them. He admitted that there are times when they do not inform the barangay officials prior to their operation as they, might leak the confidential information. We are of the view that these justifications are unacceptable as there was no genuine and sufficient attempt to comply with the law.

So must it be.

Second. Notably, the parties stipulated that Insp. Richard Mangalip was a qualified forensic chemist and that he had no personal knowledge about the source of the drug items but only conducted laboratory examination thereon. By reason of this stipulation, the parties agreed to dispense with his testimony.

People v. Cabuhay[69] 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*. Insp. Mangalip received the seized drugs as marked, properly sealed, and intact; Insp. Mangalip resealed the drug items after examination of the content; and, Insp. Mangalip placed his own marking on the drug items — thus leaving a huge gap in the chain of custody of the seized drugs. *People v. Ubungen*[70] 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

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[69] G.R. No. 225590, July 23, 2018.

[70] G.R. No. 225497, July 23, 2018.

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)

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*,[71] 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 petitioner's right to liberty. Verily, therefore, a verdict of acquittal is in order.

Strict adherence to the chain of custody rule must be observed;[72] the precautionary measures employed in every transfer of the seized drug item, proved to a moral certainty. The sheer ease of planting drug evidence *vis-a-vis* the severity of the imposable penalties in drugs cases compels strict compliance with the chain of custody rule.

We have clarified, though, that a perfect chain of custody may be impossible to obtain at all times because of varying field conditions.[73] In fact, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from

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[71] G.R. No. 212195, February 21, 2018.

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

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

established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.[74]

Here, the prosecution did not even attempt to justify the absence of the three (3) required witnesses during the inventory. Too, the prosecution failed to concretely establish how the forensic chemist managed, stored, and preserved the seized drugs. Also, the prosecution failed to 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 (12) years and one (1) 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.[75]

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, appellant must be unshackled, acquitted, and released from restraint.

Suffice it to state that the presumption of regularity in the performance of official functions[76] cannot substitute for

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

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

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

compliance and mend the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.[77] 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 July 25, 2014 and Resolution dated October 24, 2014 are **REVERSED** and **SET ASIDE.** Appellant **DANILO GARCIA MIRANDA** is **ACQUITTED** of the charge of illegal sale of dangerous drugs in Criminal Case No. 10-0373 and the charge of illegal possession of dangerous drugs in Criminal Case No. 10-0374.

The Director of the Bureau of Corrections, Muntinlupa City, Metro Manila is ordered to immediately **RELEASE DANILO GARCIA MIRANDA** 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.

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[77] See *People v. Cabiles*, 810 Phil. 969, 976 (2017).

FIRST DIVISION

[G.R. No. 218803. July 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JACK MUHAMMAD *y* GUSTAHAM, *a.k.a.* "DANNY ANJAM *y* GUSTAHAM," *a.k.a.* "KUYA DANNY,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE/POSSESSION OF DANGEROUS DRUGS; IN ORDER TO DISCHARGE THE PROSECUTION'S DUTY OF ESTABLISHING THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT IT MUST PROVE THE *CORPUS DELICTI* BY PRESENTING THE DRUG SUBJECT OF THE SALE OR POSSESSION, ACCORDINGLY, THE INTEGRITY AND IDENTITY OF THE SEIZED DRUGS MUST BE SHOWN TO HAVE BEEN DULY PRESERVED BY THE ARRESTING OFFICERS THROUGH THE UNBROKEN CHAIN OF CUSTODY.—In the prosecution under R.A. No. 9165 of the crimes of illegal sale and illegal possession of dangerous drugs like *shabu*, the contraband seized from the accused constitutes the *corpus delicti*. The Prosecution, in order to discharge its duty of establishing the guilt of the accused beyond reasonable doubt, must prove the *corpus delicti* by presenting the drug subject of the sale or possession no less. This is possible only by showing an unbroken chain of custody of the contraband from the moment of the seizure until its presentation as evidence in the trial court. Gaps in the chain of custody of the seized dangerous drugs necessarily raise doubts on the authenticity of the evidence presented in court**.** Accordingly, the integrity and identity of the seized drugs must be shown to have been duly preserved by the arresting officers through its unbroken chain of custody. x x x We should not tire in reiterating that in the prosecution of the crimes of illegal sale and illegal possession of methamphetamine hydrochloride

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 does not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that the State fails in establishing the *corpus delicti* when the substance subject of the prosecution is missing, or when substantial gaps in the chain of custody of the substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; STRICT COMPLIANCE WITH THE PROCEDURAL SAFEGUARDS IS REQUIRED OF THE ARRESTING OFFICERS, YET, THE LAW RECOGNIZES THAT A DEPARTURE FROM THE SAFEGUARDS MAY BECOME NECESSARY, AND HAS INCORPORATED A SAVING CLAUSE; CONDITIONS.—Without doubt, the strict compliance with the procedural safeguards provided by Section 21 is required of the arresting officers. Yet, the law recognizes that a departure from the safeguards, may become necessary, and has incorporated a saving clause ("*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*"). To rely on the saving clause, the Prosecution should prove the concurrence of the twin conditions, namely: (*a*) the existence of justifiable grounds for the departure, and (*b*) the preservation of the integrity and the evidentiary value of the seized items.

3. ID.; ID.; ID.; ID.; FOUR (4) LINKS IN THE CHAIN OF CUSTODY THAT SHOULD BE ESTABLISHED, ENUMERATED; NOT PRESENT IN CASE AT BAR.— There are ostensibly four links in the chain of custody that should be established: *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. x x x The various omissions noted herein were immediately fatal to the success of the criminal prosecution of the accused-appellant. As pointed out in *Malilin v. People*, the chain of custody rule, as a method of authenticating evidence, requires that the admission of an exhibit should be preceded by a sufficient showing to support a finding that the matter in question is what the proponent claims it to be. The records should include testimony about *every* link in the chain of custody, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in said witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The witnesses should 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 taken possession or hold of the same. The many glaring omissions contravened the notion that the chain of custody *ought to be* "the duly recorded authorized movements and custody of seized drugs x x x at each stage, from the time of seizure/confiscation, to receipt in the forensic laboratory, to safekeeping, to presentation in court for destruction." Indeed, any gap in the chain of custody renders the case for the State less than complete in terms of proving the guilt of the accused 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

BERSAMIN, *C.J.*:

Accused-appellant Jack Muhammad y Gustaham (Danny), *a.k.a.* Danny Anjam *y* Gustaham and *a.k.a. Kuya Danny*, hereby seeks the review and reversal of the decision promulgated on

March 16, 2015,[1] whereby the Court of Appeals (CA) affirmed with modification the judgment rendered in Criminal Case No. 6016(22733), Criminal Case No. 6017(22734), and Criminal Case No. 6018(22735) by the Regional Trial Court (RTC), Branch 13, in Zamboanga City on October 28, 2011 finding him guilty beyond reasonable doubt of violating, respectively, Section 5, Section 11 and Section 12 of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).[2]

The CA modified the judgment of the RTC only as to the penalty for the violation of Section 5 in Criminal Case No. 6016(22733) by adding that the accused-appellant would not be eligible for parole.

Antecedents

The accused-appellant was charged under separate informations the accusatory portions of which read:

Criminal Case No. 6016(22733)

That on or about August 2, 2006, in the City of Zamboanga, Philippines and within the jurisdiction of this Honorable Court, the above- named accused , not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug, did then and there willfully, unlawfully and feloniously, delivered to P03 APOLINARIO PANAMOGAN NARAGA, PNP, presently assigned with the Anti-Illegal Drugs Special Operations Task Force of the Intelligence Section, at Police Station 06, Tetuan, this city, who acted as poseur-buyer, one (1) piece heat- sealed transparent plastic sachet containing white crystalline substance weighing 0.0077 gram which when subjected to qualitative examination gave positive result to the test for the presence of methamphetamine hydrochloride (shabu), said accused knowing well that the same is a dangerous drug.[3]

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[1] CA *rollo*, pp. 115-123; penned by Associate Justice Oscar V. Badelles with Associate Justice Romulo V. Borja and Associate Justice Maria Filomena D. Singh concurring.

[2] *Id*. at 54-64; penned by Presiding Judge Eric D. Elumba.

[3] *Rollo*, pp. 3-4.

Criminal Case No. 6017(22734)

That on or about August 2, 2006, in the City of Zamboanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there [willfully,] unlawfully and feloniously, had in his possession and under his control, a cigarette foil wrapper with one (1) piece heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.0115 grams which when subjected to qualitative examination gave positive result to the test for the presence of methamphetamine hydrochloride (shabu), knowing well that the same to be a dangerous drug.[4]

Criminal Case No. 6018(22735)

That on or about August 2, 2006, in the City of Zamboanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there unlawfully and feloniously, possessed or had under his control, two (2) unused plastic sachets, two (2) pink and blue disposable lighters and three (3) unused folded aluminum foils, which are instrument or paraphernalia fit or intended for smoking, consuming or introducing dangerous drugs to the body in flagrant violation of the abovementioned law.[5]

The accused-appellant pleaded *not guilty* to the informations.

Version of the Prosecution

At around 1:45 p.m. on August 2, 2006, P03 Apolinario Naraga of Police Station 6 situated in Tetuan, Zamboanga City received information from a confidential infonnant about a certain Kuya Danny of Alvarez St., Talon-Talon, Zamboanga City being engaged in distributing illegal drugs. P03 Naraga relayed the information to SP03 Nelson Enad, his team leader, who forthwith decided to mount a buy-bust operation against the suspect. In the briefing, P03 Naraga was assigned as the poseur-buyer, and he was given a marked ₱200.00 bill.

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[4] *Id*. at 4.

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

Upon arrival at the target area, the members of the police team spotted a male person seated at the stairway of the house. P03 Naraga and the informant approached the person, and the informant said to him: *Kuya Danny*, *bili kami*. The latter asked: *Magkano*?, to which P03 Naraga replied: *₱200*. The suspect then demanded for the money, and P03 Naraga handed over the marked ₱200 bill. The suspect entered the house, and returned after a few minutes and gave one heat-sealed plastic sachet to P03 Naraga. After P03 Naraga examined the contents of the sachet, he introduced himself as a policeman. Kuya Danny ran towards the area for drying fish, hotly pursued by P03 Naraga and another member of the police team, P03 Raz, until they caught up with him. They placed him under arrest. P03 Raz apprised him of his constitutional rights, frisked him and confiscated from his side pockets another heat-sealed plastic sachet, two pieces of empty plastic sheets, three pieces of folded aluminum foil, and two lighters.[6] The suspect turned out to be the accused-appellant.

The members of the buy-bust team later on brought the accused-appellant from the fish drying area to Alvarez Street, where P03 Naraga put his markings on the items confiscated from the accused-appellant. P03 Naraga turned over the seized items to investigator P02 Tuballa. The officers brought the accused-appellant to Police Station 6 where they recorded the arrest in the complaint assignment sheet. P02 Tuballa filed the charges against the accused-appellant.[7]

The plastic sachets seized from the accused-appellant were referred to the laboratory for qualitative examination. The sachets and their contents were found to be positive for the presence of methamphetamine hydrochloride, or *shabu*, a dangerous drug.[8]

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[6] *Id*. at 5.

[7] *ld*. at 5-6.

[8] *Id*. at 6.

Version of the Accused

At around one o'clock in the afternoon of August 2, 2006, five male persons approached the accused-appellant while he was heading home from the *baluran*, the fish drying area situated on Alvarez Drive, Talon-Talon, in Zamboanga City. They asked if he knew a certain Jack Muhammad, but he replied to them in the negative. He soon overheard them commenting that they had erred about their target. They left, but one of them returned and pointed to him, saying: *This is the very one*. They ordered him to go with them. They brought him to the police station on board a tricycle.

The accused-appellant maintained his innocence before investigator P02 Tuballa, but the latter simply advised him to file a waiver, and to just reveal his boss and to divulge the names of the drug addicts in his area. The police kept on asking him about Jack Muhammad, but he did not know such person.

Judgment of the RTC

On October 28, 2011, the RTC convicted the accused-appellant of the crimes charged, its judgment disposing thus:

WHEREFORE, in light of all the foregoing, this Court finds:

(1) In Criminal Case No. 6016(22733), accused JACK MOHAMMAD y GUSTAHAM a.k.a. "DANNY ANJAM Y GUSTAHAM" and a.k.a. "KUYA DANNY" **GUILTY** beyond reasonable doubt for violating Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165) and sentences him to suffer the penalty of LIFE IMPRISONMENT and pay a fine of FIVE HUNDRED THOUSAND PESOS (₱500,000) without subsidiary imprisonment in case of insolvency ;

(2) In Criminal Case No. 6017(22734), accused JACK MOHAMMAD Y GUSTAHAM a.k.a. "DANNY ANJAM Y GUSTAHAM" and a.k.a. "KUYA DANNY" **GUILTY** beyond reasonable doubt for violating Section 11, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165) and sentences him to suffer the penalty of 12 YEARS

AND 1 DAY TO 14 YEARS OF IMPRISONMENT and pay a fine of THREE HUNDRED THOUSAND PESOS (₱300,000) without subsidiary imprisonment in case of insolvency;

(3) In Criminal Case No. 6018(22735), accused JACK MOHAMMAD Y GUSTAHAM a.k.a. "DANNY ANJAM Y GUSTAHAM" and a.k.a. "KUYA DANNY" **GUILTY** beyond reasonable doubt for violating Section 12, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165) and sentences him to suffer the penalty of 6 MONTHS AND 1 DAY TO 1 YEAR AND 2 MONTHS OF IMPRISONMENT and pay a fine of TEN THOUSAND PESOS (₱10,000) Without subsidiary imprisonment in case of insolvency.

SO ORDERED.[9]

Decision of the CA

On appeal, the accused-appellant claimed that the police officers had committed serious lapses in the handling of the seized *shabu* and paraphernalia; that they had not coordinated with the Philippine Drug Enforcement Agency (PDEA) in violation of Section 86 of R.A. No. 9165; that they had not taken any physical inventory or photograph of the seized items in his presence and that of his counsel, or in the presence of a representative from the media and the Department of Justice (DOJ); that P03 Naraga's testimony had lacked details about how the confiscated items had been handled after his arrest; and that no details had been provided on who had custody of the seized items, who had brought the seized items to the crime laboratory, and who had received the seized items at the crime laboratory.[10]

On March 16, 2015, however, the CA promulgated the assailed decision affirming the convictions with modification, to wit:

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[9] CA *rollo*, pp. 63-64.

[10] *Id*. at 119.

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 28 October 2011 rendered by the Regional Trial Court of Zamboanga City, Branch 13, in *Crim. Case Nos. 6016 (22733); 6017 (22734); and 6018 (22735)* is hereby AFFIRMED with MODIFICATION, in that with respect to the penalty for violation of Section 5, Article II of RA 9165, the accussed-appellant shall not be eligible for parole.

SO ORDERED.[11]

Issue

In this appeal, the accused-appellant urges that the CA erred in affirming his convictions.

Ruling of the Court

We reverse the CA.

In the prosecution under R.A. No. 9165 of the crimes of illegal sale[12] and illegal possession[13] of dangerous drugs like *shabu*, the contraband seized from the accused constitutes the *corpus delicti*. The Prosecution, in order to discharge its duty of establishing the guilt of the accused beyond reasonable doubt, must prove the *corpus delicti* by presenting the drug subject of the sale or possession no less.[14] This is possible only by showing an unbroken chain of custody of the contraband from the moment of the seizure until its presentation as evidence in the trial court. Gaps in the chain of custody of the seized dangerous drugs

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[11] *Rollo*, p. 10.

[12] The elements of the crime of illegal sale of *shabu* are: (1) the identity of the buyer and the seller, the object and the consideration ; and (2) the delivery of the thing sold and the payment therefor.

[13] The elements of the crime of illegal possession of *shabu* requires the concurrence of the following elements, namely: (1) the accused is in possession of an item or object which is identified as *shabu*; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.

[14] *Peopl e v. Montevirgen*, G.R. No. 189840, December 11, 2013, 712 SCRA 459, 468.

necessarily raise doubts on the authenticity of the evidence presented in court. Accordingly, the integrity and identity of the seized drugs must be shown to have been duly preserved by the arresting officers through the unbroken chain of custody.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165, defines chain of custody thusly:

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

As a means of ensuring the establishment of the chain of custody, Section 21(1) of R.A. No. 9165 pertinently states:

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

x x x x x x x x x

Without doubt, the strict compliance with the procedural safeguards provided by Section 21 is required of the arresting officers. Yet, the law recognizes that a departure from the safeguards may become necessary, and has incorporated a saving clause ("*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*"). To rely on the saving clause, the Prosecution should prove the concurrence of the twin conditions, namely: (*a*) the existence of justifiable grounds for the departure, and (*b*) the preservation of the integrity and the evidentiary value of the seized items.[15]

Our judicious review and examination of the records compel us to declare that the chain of custody was not unbroken.

There are ostensibly four links in the chain of custody that should be established: *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.[16]

The first link in the chain of custody would have been established by the testimony of P03 Naraga to the effect that he had placed his markings on the items confiscated from the accused-appellant immediately following the seizure; and that he had then turned over the items to investigator P03 Tuballa right at the crime scene itself.[17] As observed in *People*

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[15] *People v. Ancheta*, G.R. No. 197371, June 13, 2012, 672 SCRA 604, 618.

[16] *People v. Zaragoza*, G.R. No. 223142, January 17, 2018; *People v. Holgado*, G.R. No. 207992, August 11, 2014,732 SCRA 554, 571.

[17] *Rollo*, pp. 15-16.

v. Relato[18] the marking immediately after seizure was the starting point in the custodial link, because succeeding handlers of the prohibited drugs or related items will use the markings as reference; the marking further serves to segregate the marked evidence from the corpus of all other similar and related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, "planting," or contamination of evidence.[19] However, the regularity of the procedures undertaken in the incrimination of the accused-appellant was apparently upended. For one, P03 Raz, himself one of the arresting officers, stated that no physical inventory and photograph had been taken at the crime scene in violation of Section 21, *supra*, and this was because the officers had immediately brought the arrestee with them to the police station.[20] Also, SP03 Enad, the team leader, had supposedly issued a PDEA certification to the effect that a physical inventory of the confiscated items had been taken,[21] the same even bearing the signature of one Leila D. Vicente as a witness representing media, but the veracity of the certification was highly suspect in light of P03 Naraga recalling during the trial that there had been no PDEA operative or representative from the media around in the entire time from the conduct of the briefing on the buy bust operation until the bringing of the accused-appellant to the police station.

Another puzzling circumstance to be noted is that notwithstanding the claim of P03 Naraga of having turned over the seized items to P03 Tuballa at the crime scene itself the latter did not even sign the certification on the turnover. The omission added to the suspiciousness of the operation mounted against the accused-appellant, and raised more doubts about

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[18] GR. No. 173794, January 18, 2012, 663 SCRA 260, 270-271.

[19] See *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 276.

[20] *Rollo*, p. 9.

[21] Exhibit Folder, p. 8.

the sincerity of the lawmen in establishing an unbroken chain of custody. As if compounding the puzzle, the Prosecution did not present P03 Tuballa as a witness despite him being the only person who could have probably shed some light on whatever happened to the seized items following the turnover to him by P03 Naraga.

The third link in the chain of custody, that is, the movement of the dangerous drugs and the turnover by the investigating officer to the forensic chemist who conducted the tests on the subject drugs, was likewise not sufficiently shown. We note that Forensic Chemist Police Chief Inspector Mercedes Delfin Diesto did not testify in court because the Prosecution was content in merely proposing for stipulation what she would have attested to had she actually testified, which was to simply affirm the existence of the seized items, and the existence of the request and the laboratory results. Her non-presentation resulted in denying enlightenment to the trial court on who had actually received the subject drugs when they were brought to the crime laboratory for the qualitative examination. At any rate, the Prosecution confirmed during the trial that it was not the Forensic Chemist who had personally received the drugs when they were brought to the laboratory for the examination, and also that the Forensic Chemist did not have personal knowledge "as to where the items, subject of examination, [had come] from."[22] The gaps in the chain of custody just became much bigger.

Lastly, the fourth link, *i.e.*, the turnover of the seized dangerous drugs by the Forensic Chemist to the trial court, did not arise considering that the Forensic Chemist did not personally appear in court to attest thereto. In the absence of any admission on the part of the accused-appellant, the outcome is that the safekeeping and handling of the seized items from the moment of their turnover to the laboratory until their presentation as evidence in court during the trial were not established.

The various omissions noted herein were immediately fatal to the success of the criminal prosecution of the accused-

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[22] TSN, July 13, 2011, p. 5.

appellant. As pointed out in *Malillin v. People*,[23] the chain of custody rule, as a method of authenticating evidence, requires that the admission of an exhibit should be preceded by a sufficient showing to support a finding that the matter in question is what the proponent claims it to be. The records should include testimony about *every* link in the chain of custody, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in said witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The witnesses should 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 taken possession or hold of the same.[24] The many glaring omissions contravened the notion that the chain of custody *ought to be* "the duly recorded authorized movements and custody of seized drugs xxx at each stage, from the time of seizure/ confiscation, to receipt in the forensic laboratory, to safekeeping, to presentation in court for destruction." Indeed, any gap in the chain of custody renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.[25]

We should not tire in reiterating that in the prosecution of the crimes of illegal sale and illegal possession of methamphetamine hydrochloride 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 does not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that the State fails in establishing the *corpus delicti* when the substance subject of the prosecution is missing, or

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[23] G.R. No. 172953, April 30, 2008, 553 SCRA 619.

[24] *Id.* at 632-633.

[25] *People v. Relato*, *supra*, note 18.

when substantial gaps in the chain of custody of the substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on March 16, 2015 by the Court of Appeals; **ACQUITS** accused-appellant **JACK MUHAMMAD *y* GUSTAHAM, *a.k.a* DANNY ANJAM *y* GUSTAHAM, *a.k.a.* KUYA DANNY;** and **ORDERS** his **IMMEDIATE RELEASE** from confinement unless he is being held for some other lawful cause.

Let the copy of this decision be served on the Superintendent of the San Ramon Prison and Penal Farm in Zamboanga City for implementation. The Superintendent is directed to report the action taken to this Court within five (5) days from receipt of this decision.

SO ORDERED.

Del Castillo, Jardeleza, Gesmundo, and *Carandang, JJ.,* concur.

SECOND DIVISION

[G.R. No. 219614. July 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PONCIANO ESPINA *y* BALASANTOS *alias* "JUN ESPINA and JR,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; TO BE ADMISSIBLE IN EVIDENCE, THERE IS NO NEED FOR A MEDICAL EXPERT TO AUTHENTICATE OR VERIFY

A DEATH CERTIFICATE ISSUED BY THE OFFICE OF THE CIVIL REGISTRY TO PROVE THE DEATH OF THE PERSON NAMED THEREIN.— There is no question that the victim Ernando Reyes, Jr. was killed. The fact of his death was duly established by his Death Certificate. In this jurisdiction, a duly registered death certificate is considered a public document. To be admissible in evidence, there is no need for a medical expert to authenticate or verify. Its issuance by the Office of the Civil Registry concerned is sufficient proof of the death of the person named therein. So must it be.

2. **ID.; CRIMINAL PROCEDURE; APPEAL; A PARTY WHO DELIBERATELY ADOPTS A CERTAIN THEORY UPON WHICH A CASE IS TRIED AND DECIDED BY THE LOWER COURT WILL NOT BE PERMITTED TO CHANGE HIS/HER THEORY ON APPEAL.—** As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change his or her theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court will not be considered by the reviewing court, as these cannot be raised for the first time at such late stage. To allow otherwise would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory. In any event, changing postures of defense betray a guilty mind and sheer lack of credibility.

3. **CRIMINAL LAW; MURDER; INTENT TO KILL, BEING A STATE OF MIND, IS DISCERNED BY THE COURT ONLY THROUGH EXTERNAL MANIFESTATIONS; FACTORS TO CONSIDER; CASE AT BAR.—** Intent to kill, being a state of mind, is discerned by the courts only through external manifestations. In ***Rivera v. People***, We held that intent to kill must be proved by either direct or circumstantial evidence which may consist of: (1) the means used by the malefactor; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactor before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed. We have also considered as determinative factors the motive of the offender and the words he uttered at the time of inflicting the injuries on the victim. The factual circumstances surrounding Ernando's death clearly showed appellant's intent to kill. He

left the drinking spree and shortly after, he came back and showed off his gun to his drinking companions. Then, he pointed it to Ernando posing two (2) queries: "*Ano gusto? Patay buhay?*" And right off, he shot the unarmed victim in the right chest.

4. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY, DEFINED; ELEMENTS.— There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to the offender from the offended party's act of retaliation in self-defense. It is a circumstance that must be proven as indubitably as the crime itself. Treachery has two (2) elements: (1) employment of means of execution which gives the person attacked no opportunity to defend or retaliate, and (2) such means of execution were deliberately or consciously adopted. Its attendance cannot be presumed. Evidence must be as conclusive as the fact of killing itself. The evidence must show that the offender prepared to kill the victim in such a manner as to insure the execution of the crime or to make it impossible or difficult for the person attacked to defend himself. x x x The essence of treachery is the sudden, unexpected, and unforeseen attack on the victim, without the slightest provocation on the latter's part. The victim must not have known the peril he was exposed to at the moment of the attack. What is decisive is the offender launched the attack without the slightest provocation from the victim, making it impossible for the latter to defend himself or retaliate. In fine, treachery or *alevosia* attended Ernando's killing.

5. ID.; MURDER; IMPOSABLE PENALTY.— Under Article 248 of the Revised Penal Code, murder is punishable by *reclusion perpetua* to death. There being no aggravating circumstance proven, both the trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua*. In accordance with A.M. 15-08-02-SC, the phrase "without eligibility for parole" need not be borne in the decision to qualify this penalty as imposed on appellant.

6. ID.; ID.; CIVIL LIABILITY; AWARD OF DAMAGES, PROPER.— We affirm the award of ₱75,000.00 as civil indemnity. In accordance with prevailing jurisprudence, however, the awards of moral and exemplary damages should be increased

to ₱75,000.00 each. We delete the actual damages of ₱25,500.00. When the amount of actual damages proved during the trial is less than the sum allowed by the Court as temperate damages, the latter sum should be awarded. Temperate damages of ₱50,000.00, therefore, should be awarded in lieu of actual damages of ₱25,500.00. Finally, these amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.

APPEARANCES OF COUNSEL

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 November 17, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 06178 affirming with modification the trial court's verdict of conviction[2] for murder against Ponciano Espina *y* Balasantos.

The Proceedings Before the Trial Court

By Information[3] dated September 3, 2007, appellant was charged with murder for the killing of Ernando Reyes, Jr., thus:

That on or about the 26th day of May, 2005, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun and with intent to kill, did

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[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Noel G. Tijam (now a retired member of the Court) and Agnes Reyes-Carpio, CA *rollo*, pp. 73-87.

[2] Decision dated May 10, 2013 penned by Acting Presiding Judge Aida Estrella Macapagal, CA *rollo*, pp. 37-41.

[3] Record, pp. 46-47.

then and there willfully, unlawfully and feloniously attack, assault and shoot one ERNANDO REYES, thereby inflicting upon the latter mortal gunshot wound on the trunk, which eventually caused his death, the said killing having been attended by the qualifying circumstances of treachery and abuse of superior strength, which qualify (sic) the killing to murder and aggravated by nighttime and use of a firearm, which is a deadly weapon, that is, all to the damage and prejudice of the heirs of ERNANDO REYES.

CONTRARY TO LAW.

On arraignment, appellant pleaded "not guilty."[4] During the trial, Russel Michael and Ernando's wife Evelyn Reyes testified for the prosecution. On the other hand, appellant alone testified for the defense.

The Prosecution's Version

On May 26, 2005, around 8:30 in the evening, appellant Ponciano Espina, Ernando Reyes, Jr., Russel, Pio Manjares and a certain Dante were having a drinking spree inside Pio's house in Ibayo, Tipas, Taguig City. While the drinking spree was ongoing, appellant left. When he returned, he showed his drinking companions a .45-caliber gun and asked them to hold it, which they did. He later retrieved the gun and tucked it on his waist.[5]

After a while, appellant pulled out the gun and pointed it close to Ernando's chest, posing these questions "*Ano gusto? Patay buhay?*" Then right off, he shot Ernando in the upper right chest. Everyone else in the group scampered away. But shortly after, Russel came back and helped rush Ernando to the Rizal Medical Center. Ernando later died in the hospital.[6] His wife Evelyn Reyes and his relatives incurred funeral expenses of ₱25,500.00.[7] They sought damages of ₱200,000.00.[8]

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[4] *Id.* at 49.

[5] TSN, November 19, 2008, pp. 18-21.

[6] *Id.* at 21 and 24-26.

[7] Record, pp. 166-167.

[8] TSN, February 11, 2009, pp. 10-13.

The prosecution offered the following documentary evidence:

Exhibit "A" - Affidavit of Evelyn Reyes[9]
Exhibit "B" - Affidavit of Russel Michael[10]
Exhibit "G" - Death Certificate of Ernando Reyes, Jr.[11]
Exhibit "H" - San Roque Parish Receipt[12]

The Defense's Version

Appellant denied the charge and even denied knowing Ernando, Evelyn, Russel, or Pio.[13] According to him, in 2005, he resided in Las Piñas City and had never before been to Taguig City. It was only on August 27, 2006 that he started staying in his cousin's house at DC Clamp Compound, Ibayo Tipas, Taguig City.[14]

On September 14, 2006, he got involved in a stabbing incident in Brgy. Kalawaan, Pasig City. He surrendered to the barangay officials who turned him over to the nearest police station. He was charged with frustrated homicide. Four (4) days later, on September 18, 2006, a warrant of arrest for the present case of murder was served on him. Thus, he only learned of the murder charge in the Pasig City police station where he got detained for the frustrated homicide charge.[15]

On February 6, 2012, the trial court acquitted him in the frustrated homicide case.[16] He, however, remained under custody for the alleged murder of Ernando.

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[9] Record, p. 160.

[10] *Id.* at 161.

[11] *Id.* at 165.

[12] *Id.* at 166.

[13] TSN, September 11, 2012, pp. 10-12.

[14] CA *rollo*, p. 31.

[15] TSN, September 11, 2012, pp. 31-32.

[16] Record, pp. 209-212.

The defense offered copy of the Decision[17] dated February 6, 2012 of Regional Trial Court – Branch 67, Pasig City where appellant was acquitted in the frustrated homicide case.

The Trial Court's Ruling

Appellant was pronounced guilty of murder, qualified by treachery.[18] The trial court found that when appellant shot Ernando in a sudden and unexpected manner, sans any provocation from Ernando, the latter was rendered unable to retaliate or defend himself. It rejected appellant's bare denial and alibi in light of the prosecution's positive and categorical evidence pointing to him as the culprit,[19] thus:

> WHEREFORE, this Court finds accused PONCIANO ESPINA Y BALASANTOS **GUILTY BEYOND REASONABLE DOUBT** of the crime of Murder and hereby sentences him to suffer the penalty of *reclusion perpetua* which carries with it the accessory penalties of civil interdiction for life and that of perpetual absolute disqualification which he shall suffer even though pardoned unless the same shall have been expressly remitted therein.
>
> Accused is hereby ordered to pay the heirs of Ernando Reyes the amount of ₱25,500.00 as actual damages; ₱50,000.00 as civil indemnity ex delicto, ₱40,000.00 as moral damages; and ₱20,000.00 as exemplary damages.
>
> The City Jail Warden of Taguig City is hereby ordered to transfer said accused to the National Penitentiary in Muntinlupa City, immediately upon receipt of this Decision.
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> SO ORDERED.[20]

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[17] *Id.*

[18] CA *rollo*, pp. 37-41.

[19] *Id.*

[20] *Id.* at 41.

The Proceedings Before the Court of Appeals

On appeal,[21] appellant faulted the trial court for convicting him of murder despite the prosecution's alleged failure to prove his guilt beyond reasonable doubt. He averred: (1) the failure of a medical expert to authenticate Ernando's death certificate[22] rendered the same inadmissible in evidence; and (2) there was no competent proof on record to establish intent to kill.[23]

In response, the Office of the Solicitor General (OSG) through Senior State Solicitor Marsha C. Recon and State Solicitor Samantha P. Camitan countered: (1) appellant was positively identified as the one who slayed Ernando; and (2) treachery attended Ernando's killing.[24]

By Decision[25] dated November 17, 2014, the Court of Appeals affirmed with modification, *viz.*:

> WHEREFORE, in view of all the foregoing, the Decision appealed from finding the accused-appellant guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* with all its accessory penalties is hereby **AFFIRMED** with **MODIFICATIONS** in that accused-appellant shall not be eligible for parole and shall be liable to pay to the heirs of Ernando Reyes, Jr. the following: the amount of ₱25,500.00 as actual damages, ₱75,000.00 as civil damages *ex delicto*, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. He is further ordered to pay an interest of at the rate of six percent (6%) per annum on the award of civil indemnity, moral damages, and exemplary damages from the finality of judgment until fully paid.
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> SO ORDERED.[26]

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

[22] Exhibit "G".

[23] CA *rollo*, pp. 26-35.

[24] *Id.* at 47-61.

[25] *Id.* at 73-87.

[26] *Id.* at 86.

The Court of Appeals ruled that the elements of murder were all present. For it was sufficiently proved that appellant fatally shot the unsuspecting victim in the chest with a .45-caliber gun while they were having a drinking spree in Pio's house at Ibayo, Tipas, Taguig. The victim was not shown to have initiated any aggression or provocation.[27]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal.[28] In compliance with Resolution[29] dated October 19, 2015, the OSG and appellant manifested[30] that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

Issue

Did the Court of Appeals err when it affirmed appellant's conviction for murder?

Ruling

The appeal is devoid of merit.

There is no question that the victim Ernando Reyes, Jr. was killed. The fact of his death was duly established by his Death Certificate.[31] In this jurisdiction, a duly registered death certificate is considered a public document.[32] To be admissible in evidence,

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[27] *Id.* at 82.

[28] *Id.* at 92-94.

[29] *Rollo*, pp. 23-24.

[30] *Id.* at 25-27 and 30-31.

[31] Exhibit "G".

[32] *Rule 132, Sec. 19 Rules of Court* – Classes of documents. – For the purpose of their presentation in evidence, documents are either public or private. Public documents are:

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

there is no need for a medical expert to authenticate or verify. Its issuance by the Office of the Civil Registry concerned is sufficient proof of the death of the person named therein.[33] So must it be.

Turning now to appellant's theory of lack of intent to kill, the Court keenly notes that it was not what he pleaded before the trial court and the Court of Appeals.

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change his or her theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court will not be considered by the reviewing court, as these cannot be raised for the first time at such late stage.[34] To allow otherwise would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory.[35] In any event, changing postures of defense betray a guilty mind and sheer lack of credibility.

Intent to kill sufficiently established

Intent to kill, being a state of mind, is discerned by the courts only through external manifestations. In ***Rivera v. People***,[36]

(b) Documents acknowledge before a notary public except last wills and testaments; and
(c) Public records, kept in the Philippines, of private documents required by law to the entered therein.
All other writings are private.

[33] *Rule 132, Sec. 23 Rules of Court* – Public documents as evidence. – Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

[34] *Philippine Veterans Bank v. NLRC*, 631 Phil. 202, 209 (2010).

[35] *Maxicare PCIB CIGNA Healthcare v. Contreras, M.D.*, 702 Phil. 688, 696 (2013).

[36] 515 Phil. 824 (2006).

We held that intent to kill must be proved by either direct or circumstantial evidence which may consist of: (1) the means used by the malefactor; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactor before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed. We have also considered as determinative factors the motive of the offender and the words he uttered at the time of inflicting the injuries on the victim.[37]

The factual circumstances surrounding Ernando's death clearly showed appellant's intent to kill. He left the drinking spree and shortly after, he came back and showed off his gun to his drinking companions. Then, he pointed it to Ernando posing two (2) queries: "*Ano gusto? Patay buhay?*" And right off, he shot the unarmed victim in the right chest.

Appellant's vicious attack was unprovoked. He just shot Ernando in the right chest during the drinking spree. The Medico Legal Report[38] stated that Ernando sustained one (1) gunshot wound, through and through, causing laceration of his right lung, diaphragm, liver, and stomach. The cause of death was: "*Gunshot wound, trunk.*'" It has been settled that if the victim died because of a deliberate act of the malefactor, intent to kill is conclusively presumed.[39] Verily, appellant's intent to kill Ernando was amply established on record.

This brings to fore treachery.

Treachery attended the killing

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to the offender from the offended

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[37] *Fantastico v. Malicse, Sr.,* 750 Phil. 120, 132-133 (2015).

[38] Exhibit "E".

[39] *Etino v. People*, G.R. No. 206632, February 14, 2018.

party's act of retaliation in self-defense.[40] It is a circumstance that must be proven as indubitably as the crime itself.

Treachery has two (2) elements: (1) employment of means of execution which gives the person attacked no opportunity to defend or retaliate, and (2) such means of execution were deliberately or consciously adopted.[41] Its attendance cannot be presumed.[42] Evidence must be as conclusive as the fact of killing itself.[43] The evidence must show that the offender prepared to kill the victim in such a manner as to insure the execution of the crime or to make it impossible or difficult for the person attacked to defend himself.[44]

Here, Russel positively testified that appellant and Ernando had no prior conflict or quarrel when appellant suddenly shot Ernando. Russel vividly recounted that while the drinking spree was ongoing, appellant left and returned shortly. He was already carrying a .45-caliber gun[45] which he showed to his drinking mates, including Ernando. After retrieving it from his drinking mates, appellant tucked it on his waist. But he instantly drew it out and pointed it to Ernando's chest asking "*Ano gusto? Patay buhay?*" And not waiting for Ernando's response, appellant swiftly shot the unarmed victim in the chest. Ernando was left

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[40] Art. 14 (16), Revised Penal Code – Article 14. *Aggravating circumstances*. – The following are aggravating circumstances:

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6. That the act be committed with treachery (alevosia) There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make

x x x x x x x x x

[41] *People v. Kalipayan*, G.R. No. 229829, January 22, 2018.

[42] *Cirera v. People*, 739 Phil. 25, 45 (2014).

[43] *People v. Petalino*. G.R. No. 213222, September 24, 2018.

[44] *People v. Ilo*, 440 Phil. 852, 861 (2002).

[45] TSN, November 19, 2008, pp. 19-20.

without even a bit of a chance to defend himself or run away. Undoubtedly, appellant employed means which ensured the commission of the crime without exposing himself to any risk which may come from Ernando's possible act of retaliation or defense. This is treachery.

The essence of treachery is the sudden, unexpected, and unforeseen attack on the victim, without the slightest provocation on the latter's part. The victim must not have known the peril he was exposed to at the moment of the attack.[46] What is decisive is the offender launched the attack without the slightest provocation from the victim, making it impossible for the latter to defend himself or retaliate.[47] In fine, treachery or *alevosia* attended Ernando's killing.

As for the aggravating circumstances of nighttime and use of firearm, although alleged in the Information, these circumstances were not proved. Consequently, both the trial court and the Court of Appeals correctly ruled them out as attendant aggravating circumstances.

Penalty

Under Article 248 of the Revised Penal Code, murder is punishable by *reclusion perpetua* to death. There being no aggravating circumstance proven, both the trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua*. In accordance with A.M. 15-08-02-SC,[48] the phrase

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[46] *People v. Casas*, 755 Phil. 210, 221 (2015), citing *People v. Se*, 469 Phil. 763, 771-772 (2004).

[47] *People v. Pulgo*, G.R. No. 218205, July 5, 2017, 830 SCRA 220, 234.

[48] A.M. No. 15-08-02-SC – *Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties*:

x x x x x x x x x

The following guidelines shall be observed in the imposition of penalties and in the use of the phrase "without eligibility for parole":

(1) In cases where the death penalty is not warranted, there is no need to use the phrase "without eligibility for parole" to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and

"without eligibility for parole" need not be borne in the decision to qualify this penalty as imposed on appellant.

We affirm the award of ₱75,000.00 as civil indemnity. In accordance with prevailing jurisprudence,[49] however, the awards of moral and exemplary damages should be increased to ₱75,000.00 each. We delete the actual damages of ₱25,500.00.[50] When the amount of actual damages proved during the trial is less than the sum allowed by the Court as temperate damages, the latter sum should be awarded.[51] Temperate damages of ₱50,000.00, therefore, should be awarded in lieu of actual damages of ₱25,500.00.[52] Finally, these amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.

ACCORDINGLY, the appeal is **DENIED**. The Decision dated November 17, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 06178 is **AFFIRMED with MODIFICATION**.

Appellant **PONCIANO ESPINA *y* BALASANTOS** is found **GUILTY** of **MURDER** and sentenced to ***reclusion perpetua***. He is required to pay the heirs of Ernando Reyes, Jr. civil indemnity, moral damages, and exemplary damages of ₱75,000.00 each; and temperate damages of ₱50,000.00 These amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.

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(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346, the qualification of "without eligibility for parole" shall be used in order to emphasize that the accused should not have been sentenced to suffer the death penalty had it not been for R.A. No. 9364.

x x x x x x x x x

[49] *People v. Jugueta*, 783 Phil. 806, 849 (2016).

[50] Record, pp. 166-167.

[51] *People v. Racal*, G.R. No. 224886, September 4, 2017, 838 SCRA 476, 498.

[52] Record, p. 50.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 223036. July 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MIKE OMAMOS *y* PAJO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE/ POSSESSION OF DANGEROUS DRUGS; THE DANGEROUS DRUGS SEIZED FROM THE ACCUSED CONSTITUTES THE *CORPUS DELICTI* OF THE CRIME, IT IS THUS IMPERATIVE THAT THE PROSECUTION ESTABLISH THAT THE IDENTITY AND INTEGRITY OF THE DANGEROUS DRUGS WERE DULY PRESERVED IN ORDER TO SUPPORT THE VERDICT OF CONVICTION.— In drug related cases, the State bears the burden not only of proving the elements of the offense but also the *corpus delicti* itself. The dangerous drugs seized from appellant constitutes such *corpus delicti*. It is thus imperative that the prosecution establish that the identity and integrity of the dangerous drugs were duly preserved in order to support a verdict of conviction. It must prove that the substance seized from appellant is truly the substance offered in court as *corpus delicti* with the same unshakeable accuracy as that required to sustain a finding of guilt.

2. ID.; ID.; SECTION 21 OF RA 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS (IRR); CHAIN OF CUSTODY RULE, DEFINED; FOUR LINKS WHICH MUST BE PROVEN

IN THE CHAIN OF CUSTODY, ENUMERATED.— Here, the Information alleged that the offense was committed on July 16, 2008. The governing law, therefore, is RA 9165, Section 21 (1), x x x Section 21 (a) of the Implementing Rules and Regulations of RA 9165 complements the foregoing provision, x x x These provisions embody the chain of custody rule. It is the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage from the time of seizure/ confiscation to receipt in the forensic laboratory, to safekeeping and their presentation in court for identification and destruction. This record of movements and custody shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when the transfer of custody was made in the course of the item's safekeeping and use in court as evidence, and its final disposition. In ***People v. Hementiza*** reiterated that the following four links in the chain of custody must be proved: **First**, the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer; **Second**, the turnover of the dangerous drug seized by the apprehending officer to the investigating officer; **Third**, the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and **Fourth**, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court. We focus on the first and fourth links.

3. ID.; ID.; ID.; ID.; THE COURT MAY ACQUIT THE ACCUSED WHEN THE PROSECUTION FAILED TO ESTABLISH AS UNBROKEN CHAIN OF CUSTODY BECAUSE THE SEIZED DRUG AND BUY-BUST MONEY WERE NOT MARKED AT THE PLACE WHERE THE ACCUSED WAS ARRESTED; RATIONALE.— "Marking" means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item. 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. Marking after seizure is the starting point in the custodial link. It is vital that the seized contraband be immediately marked because succeeding handlers of the

specimens will use the markings as reference. Marking though should be done in the presence of the apprehended violator immediately upon confiscation to truly ensure that they are the same items which enter the chain of custody. x x x The failure of the arresting officers to immediately mark the seized drugs engendered serious doubts on whether the marijuana leaves bought by the poseur-buyer from appellant were indeed the very same ones indicated in the Chemistry Report. Too, there was no mention of appellant's presence during the marking. In ***People v. Lumaya***, the Court acquitted the accused when the prosecution failed to establish an unbroken chain of custody because the seized drug and buy-bust money were not marked at the place where the accused was arrested. The Court noted that from the time of seizure up until the dangerous drug was brought to the office of the arresting officers, alteration, substitution or contamination of the seized item could have happened.

4. **ID.; ID.; ID.; ID.; FAILURE OF THE ARRESTING OFFICERS TO PREPARE THE REQUIRED INVENTORY AND PHOTOGRAPH OF THE SEIZED DANGEROUS DRUG MILITATE AGAINST THE GUILT OF AN ACCUSED; SUSTAINED.—** The first link also includes compliance with the physical inventory and photograph of the seized dangerous drug. This is done before the dangerous drug is sent to the crime laboratory for testing. x x x Indeed, there is nothing on record showing the required inventory and photography were complied with. The prosecution's formal offer of evidence did not bear them. Nor did the prosecution explain the absence of these requirements or its inability to comply with them. In ***People v. Alagarme*** and ***People v. Arposeple*****,** the Court ruled that the failure of the arresting officers to prepare the required inventory and photograph of the seized dangerous drug militated against the guilt of an accused. For under these circumstances, the integrity and evidentiary value of the *corpus delicti* cannot be deemed to have been preserved.

5. **ID.; ID.; ID.; ID.; APPLIED TO DANGEROUS DRUG CASES, THE PROSECUTION CANNOT RELY ON THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY WHEN THE APPREHENDING OFFICERS UNJUSTIFIABLY FAILED TO COMPLY WITH THE REQUIREMENTS LAID DOWN IN SECTION 21 OF RA 9165**

AND ITS IRR.— The presumption of regularity in the performance of official duty arises only when the records do not indicate any irregularity or flaw in the performance of official duty. Applied to dangerous drugs cases, the prosecution cannot rely on the presumption when there is a clear showing that the apprehending officers unjustifiably failed to comply with the requirements laid down in Section 21 of RA 9165 and its Implementing Rules and Regulations. In any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused. Taken together, the lapses in the procedure laid down in Section 21 of RA 9165 and the Implementing Rules and Regulations and the suspicious handling of the seized drug here had impeached its integrity and evidentiary value. As the dangerous drug presented before the court constitutes the *corpus delicti* of the offense charged, it must be proven with moral certainty that it is the same item seized from Omamos during the buy-bust operation. Since the prosecution miserably failed to discharge this burden, appellant is entitled to a verdict of acquittal on ground of 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

LAZARO-JAVIER, *J.*:

THE CASE

This petition assails the Decision[1] dated August 19, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01124-MIN affirming appellant's conviction for violation of Section 5, Article II of Republic Act 9165 (RA 9165).

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[1] Penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justice Henri Jean Paul B. Inting (now a member of this court) and Rafael Antonio M. Santos. *Rollo*, p. 3.

The Proceedings Before the Trial Court

The Charge

In Criminal Case No. 2008-438, appellant Mike Omamos *y* Pajo was charged under the following Information, *viz*:

> That on July 16, 2008, at about 1:45 o'clock in the afternoon, at Carmen Public Market, Carmen, Cagayan de Oro City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, and feloniously sell, deliver and give away one (1) heat-sealed red plastic bag containing partially dried marijuana fruiting tops, weighing 110.1 grams, a dangerous drug, in consideration of ₱1,020.00, but only one (1) piece of ₱20.00 bill, bearing Serial number UT337396, was used as marked money dusted with ultraviolet fluorscent [sic] powder on a buy bust operation conducted by City Anti-Illegal Drugs Task Force of Cagayan de Oro City Police Office, Cagayan de Oro City.
>
> CONTRARY TO LAW.[2]

On arraignment, petitioner pleaded "not guilty." Trial ensued.

The Prosecution's Evidence

PSI Erma Condino Salvacion, PO3 Manuel Pacampara, PO3 Joel Tabalon, PO3 Jimmy Vicente, and SPO4 Jerry Abella testified for the prosecution. They gave the following factual account:

On July 16, 2008, about 1:45 in the afternoon, a team of police officers conducted a buy-bust operation at Carmen Public Market, Cagayan de Oro City. PO3 Vicente led the team composed of PO2 Pacampara, PO2 Tabalon, PO3 de Oro, and PO3 Tagam. The operation took off from an informant's tip that appellant Mike Omamos *y* Pajo will be bringing in large quantity of dried marijuana leaves from Talakag, Bukidnon.

The team met the informant at the Carmen Public Market. He told his team that appellant had arrived and was standing

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[2] Record, p. 3.

near the office of the City Economic Enterprise Department (CEED). The team assigned the informant as a poseur-buyer. The pre-arranged signal was for the informant to take off his bull cap.

The informant met appellant at the agreed location where they talked. Then, the informant handed appellant marked ₱20.00 bill and fake ₱1,000.00 bill. In turn, appellant handed a bag of dried marijuana leaves to the informant who opened the bag. After confirming it contained marijuana, he took off his bull cap.

As soon as they saw the pre-arranged signal, the police officers, who had positioned themselves about four (4) to eight (8) meters away, closed in, introduced themselves as police officers, and placed appellant under arrest. They informed appellant of his offense and apprised him of his constitutional rights. They recovered from him the marked ₱20.00 bill and the fake ₱1,000.00 bill. They brought him for investigation to the City Anti-Illegal Drugs Task Force (CAIDTF) Office at the Maharlika Police Station.

PO3 Pacampara held the heat-sealed the plastic bag containing the seized item. He marked it "Exhibit-A MPO", affixed his signature to it, and wrote thereon the date of arrest. The seized item went through chemical testing which yielded positive for *cannabis sativa*.

The testimony of PSI Salvacion, Forensic Chemist of the PNP Crime Laboratory, Patag, Cagayan de Oro City was dispensed with after the parties stipulated on the tenor and purpose of her testimony.

Likewise, the testimony of SPO4 Jerry Abella was dispensed with after the parties stipulated that: (1) it was SPO4 Abella who authorized the police officers to conduct the buy-bust operation; (2) he ordered the marking of the specimen and its delivery to the PNP Crime Laboratory for examination; and (3) he did not participate in the actual buy-bust operation.

The prosecution presented in evidence the Letter Request for Laboratory Examination,[3] Chemistry Report No. D-133-2008,[4] Chemistry Report No. C-031-2008,[5] Pre-operation Report dated July 16, 2008,[6] and Coordination Form dated July 16, 2008.[7]

The Defense's Evidence

Appellant invoked denial and frame-up.

He stated that on July 16, 2008, about 10 o'clock in the morning, he was on his way to a fiesta celebration in his grandmother's house near the Coliseum Mabuhay, Carmen, Cagayan de Oro City. While standing on Zayas Street, he got suddenly accosted by two (2) drunk men who dragged and forcibly boarded him into a taxicab.

Inside the taxicab, the men demanded money from him. He told them he had none as he was only a *trisikad* driver. They brought him to the Maharlika Police Station, Carmen, Cagayan de Oro City where he got detained. He was allegedly made to choose – whether they would charge him with robbery or violation of RA 9165. He was then ordered to hold a ₱20.00 bill and marijuana with both his hands while the police took pictures of him. He did as he was told because a police officer was holding him by the neck. He denied that the police informed him of his Constitutional rights.

The Trial Court's Decision

By Decision dated January 31, 2013,[8] the trial court found appellant guilty as charged, sentenced him to life imprisonment and fine of ₱1,000,000.00, *viz*:

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[3] *Id.* at 99-100.

[4] *Id.* at 101.

[5] *Id.* at 103.

[6] *Id.* at 109.

[7] *Id.* at 110.

[8] CA *rollo*, pp. 31-39.

WHEREFORE, premises considered, this Court hereby finds the accused MIKE OMAMOS Y PAJO GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 5, Article II of R.A. 9165 as charged in the Information, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT, and to pay the Fine of One Million Pesos [₱1,000,000.00], without subsidiary imprisonment in case of non-payment of Fine. The period of preventive detention shall be credited in full in favor of the accused for the purpose of the service of his sentence.

SO ORDERED.

According to the trial court, during the buy-bust operation, appellant was caught *in flagrante delicto* selling the illegal drugs. It gave full credence to the testimonies of the arresting police officers because their personal accounts of what transpired during the buy-bust operation appeared to be clear, candid, and straightforward. It was not shown that they were impelled by any ill motive to falsely testify against appellant.

Too, it ruled that in the absence of evidence to the contrary, the presumption that the chain of custody rule was complied with must stay in place.

The Proceedings before the Court of Appeals

Appellant faulted the trial court for finding him guilty of the offense charged despite the prosecution's alleged failure to establish the chain of custody of the *corpus delicti*.[9]

On the other hand, the Office of the Solicitor General (OSG) through then Assistant Solicitor General Sarah Jane T. Fernandez,[10] Senior State Solicitor Henry Gerald P. Ysaas, Jr. and Associate Solicitor Luz Danielle O. Bolong countered: the prosecution had established the elements of illegal sale of dangerous drugs. The testimony of PO3 Pacampara, the pre-operational documentation handled by SPO4 Abella and the chemical findings of SPI Salvacion bolstered the fact that indeed

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[9] CA *rollo*, pp. 19-30.

[10] now Associate Justice of the Sandiganbayan.

appellant sold dangerous drugs to the poseur-buyer in the person of the informant.[11]

Further, the arresting police officers complied with Section 21 of RA 9165. Thus, the integrity and identity of the drug specimen had been duly preserved.[12]

The Court of Appeals' Ruling

By Decision dated August 19, 2015, the Court of Appeals affirmed.

The Present Appeal

Appellant now asks the Court to reverse the assailed dispositions of the Court of Appeals and prays anew for his acquittal.

He faults the Court of Appeals for concluding that he failed to present convincing exculpatory evidence; crediting the arresting officers with the presumption of regularity in the performance of their official duty; and sustaining in evidence the admission of the seized dangerous drugs despite violation of the chain of custody rule.

In refutation, the OSG essentially reiterates its arguments before the trial court.

Issue

Did the arresting police officers comply with the chain of custody rule?

Ruling

In drug related cases, the State bears the burden not only of proving the elements of the offense but also the *corpus delicti* itself.[13] The dangerous drugs seized from appellant

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[11] CA *rollo*, pp. 44-61.

[12] *Id.*

[13] *People v. Calates*, G.R. No. 214759, April 4, 2018.

constitutes such *corpus delicti*. It is thus imperative that the prosecution establish that the identity and integrity of the dangerous drugs were duly preserved in order to support a verdict of conviction.[14] It must prove that the substance seized from appellant is truly the substance offered in court as *corpus delicti* with the same unshakeable accuracy as that required to sustain a finding of guilt.

Here, the Information alleged that the offense was committed on July 16, 2008. The governing law, therefore, is RA 9165, Section 21 (1), *viz*:

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

Section 21 (a) of the Implementing Rules and Regulations of RA 9165 complements the foregoing provision, *viz*:

> (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

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[14] *Calahi v. People*, G.R. No. 195043, November 20, 2017, 845 SCRA 12, 20, *citing People v. Casacop*, 778 Phil. 369, 376 (2016) and *Zafra v. People*, 686 Phil. 1095, 1105-1106 (2012).

integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x x x x x x x

These provisions embody the chain of custody rule. It is the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage from the time of seizure/confiscation to receipt in the forensic laboratory, to safekeeping and their presentation in court for identification and destruction. This record of movements and custody shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when the transfer of custody was made in the course of the item's safekeeping and use in court as evidence, and its final disposition.[15]

People v. Hementiza[16] reiterated that the following four links in the chain of custody must be proved:

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

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

Third, the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.

We focus on the first and fourth links.

The first link refers to seizure and marking. "Marking" means the apprehending officer or the poseur-buyer places his/her

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[15] *People v. Diputado*, G.R. No. 213922, July 5, 2017, 830 SCRA 172, 184.

[16] 807 Phil. 1017, 1030 (2017).

initials and signature on the seized item. 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.[17]

Marking after seizure is the starting point in the custodial link. It is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference.[18] Marking though should be done in the presence of the apprehended violator immediately upon confiscation to truly ensure that they are the same items which enter the chain of custody.[19]

PO3 Manuel Pacampara, Jr. testified that he marked the dangerous drugs in the police station and not at the place of arrest, *viz*:

Q: Why did you say that this is the one?
A: I was the one who heat-sealed this cellophane.

Q: Do you have any marking on this?
A: I was the one who made these markings.

Q: And, what is your marking there?
A: Exhibit A MPO and then signature and also the date of the arrest, Your Honor.[20]

x x x x x x x x x

Q: You stated that after the arrest, you took the marijuana and gave it to your evidence custodian PO3 de Oro?
A: Yes, ma'am.

Q: You brought it to your office after the arrest?
A: We then proceeded to the office.

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[17] *People v. Patricio*, G.R. No. 202129, July 23, 2018.

[18] *People v. Ismael*, 806 Phil. 21, 31 (2017).

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

[20] TSN, February 10, 2009, p. 9.

Q: And, you marked the marijuana there?
A: Yes, Ma'am.[21]

x x x x x x x x x

The failure of the arresting officers to immediately mark the seized drugs engendered serious doubts on whether the marijuana leaves bought by the poseur-buyer from appellant were indeed the very same ones indicated in the Chemistry Report. Too, there was no mention of appellant's presence during the marking.

In ***People v. Lumaya***,[22] the Court acquitted the accused when the prosecution failed to establish an unbroken chain of custody because the seized drug and buy bust money were not marked at the place where the accused was arrested. The Court noted that from the time of seizure up until the dangerous drug was brought to the office of the arresting officers, alteration, substitution or contamination of the seized item could have happened.

Further, in ***People v. Dela Victoria***,[23] the Court acquitted the accused because as in this case, the marking was done without the presence of appellant, his representative or his counsel.

The first link also includes compliance with the physical inventory and photograph of the seized dangerous drug. This is done before the dangerous drug is sent to the crime laboratory for testing.

Here, PO3 Pacampara, was evasive when asked whether an inventory was accomplished, thus:

x x x x x x x x x

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[21] *Id.* at 12.

[22] G.R. No. 231983, March 7, 2018.

[23] G.R. No. 233325, April 16, 2018.

Q: Was there an inventory prepared of the items seized?
A: We prepared a request for laboratory examination of the marijuana that we recovered.

Q: But you prepared an inventory?
A: I think, the custodian officer at that time prepared the inventory.[24]

x x x x x x x x x

On whether photographs of the seized drug were taken, he answered in the affirmative but claimed he was not able to secure their printouts, *viz*:

x x x x x x x x x

Q: How about pictures? Did you take any picture of the accused together with the items seized?
A: Actually, we took pictures; But, I was not able to develop it.[25]

x x x x x x x x x

Indeed, there is nothing on record showing the required inventory and photography were complied with. The prosecution's formal offer of evidence did not bear them. Nor did the prosecution explain the absence of these requirements or its inability to comply with them.

In ***People v. Alagarme***[26] and ***People v. Arposeple***,[27] the Court ruled that the failure of the arresting officers to prepare the required inventory and photograph of the seized dangerous drug militated against the guilt of an accused. For under these circumstances, the integrity and evidentiary value of the *corpus delicti* cannot be deemed to have been preserved.

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[24] CA *rollo*, p. 72.

[25] *Id.*

[26] 754 Phil. 449, 462 (2015).

[27] G.R. No. 205787, November 22, 2017, 846 SCRA 150, 177-178.

In fine, the **first link** had been incipiently broken not once but thrice in view of the omission to comply with ***first***, the required marking at the place of arrest in the presence of appellant during such marking, ***second***, the inventory and ***third***, the photograph of the confiscated dangerous drug.

The **fourth link** refers to the turnover and submission of the dangerous drug from the forensic chemist to the court.[28] In drug related cases, it is of paramount necessity that the forensic chemist testifies on the details pertaining to the handling and analysis of the dangerous drug submitted for examination *i.e.* when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen.[29]

Here, the testimony of PSI Salvacion was dispensed with because the defense admitted her proposed testimony. It appears that the proposed testimony, was contained in her affidavit,[30] only covered her findings on the drug sample submitted by PO3 Pacampara. She did not discuss how she handled the dangerous drug from the time she received it until the time it got presented in court. There was further no description of the method she utilized in analyzing the chemical composition of the drug sample.

In ***People v. Dahil and Castro***,[31] the Court acquitted the accused in view of the absence of the testimony of the forensic chemist on how she handled the dangerous drug submitted to her for laboratory examination, *viz*:

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[28] *Supra* note 16.

[29] Board Regulation No. 1, Series of 2002: Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

[30] Record, p. 106.

[31] 750 Phil. 212, 221-222 (2015).

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. No testimonial or documentary evidence was given whatsoever as to how the drugs were kept while in the custody of the forensic chemist until it was transferred to the court. The forensic chemist should have personally testified on the safekeeping of the drugs but the parties resorted to a general stipulation of her testimony. Although several subpoena were sent to the forensic chemist, only a brown envelope containing the seized drugs arrived in court. Sadly, instead of focusing on the essential links in the chain of custody, the prosecutor propounded questions concerning the location of the misplaced marked money, which was not even indispensable in the criminal case.

In fine, the final link, just like the first one, had also been breached.

Surely, these lapses in the chain of custody rule had cast serious doubts on the identity and the integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly deprived petitioner of his right to liberty.

In another vein, while the chain of custody should ideally be perfect and unbroken, this is almost always impossible to obtain.[32] In this light, the Implementing Rules and Regulations of RA 9165 bears a saving clause allowing leniency whenever compelling reasons exist that would otherwise warrant deviation from the established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.[33]

Here, the arresting police officers did not at all offer any explanation which would have excused their failure to comply with the chain of custody rule. True, marking was done but the same was defective as the required witnesses under Section 21 (1) of RA 9165 were not present. In sum, the condition for the saving clause to become operational was not fulfilled. For this reason, there is no occasion for the proviso "as long as the

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[32] *Largo v. People*, G.R. No. 201293, June 19, 2019.

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

integrity and the evidentiary value of the seized items are properly preserved," to even come into play.

In cases involving sale of dangerous drugs, life imprisonment to death await violators. Thus, to eradicate wrongful arrests and, worse, convictions, safeguards against abuses of power in the conduct of drug-related arrests must strictly be implemented. The pernicious practice of switching, planting or contamination of the *corpus delicti* under the regime of RA 6425, otherwise known as the "Dangerous Drugs Act of 1972," could again be resurrected if the lawful requirements were otherwise lightly brushed aside.[34]

The presumption of regularity in the performance of official duty arises only when the records do not indicate any irregularity or flaw in the performance of official duty. Applied to dangerous drugs cases, the prosecution cannot rely on the presumption when there is a clear showing that the apprehending officers unjustifiably failed to comply with the requirements laid down in Section 21 of RA 9165 and its Implementing Rules and Regulations. In any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused.[35]

Taken together, the lapses in the procedure laid down in Section 21 of RA 9165 and the Implementing Rules and Regulations and the suspicious handling of the seized drug here had impeached its integrity and evidentiary value. As the dangerous drug presented before the court constitutes the *corpus delicti* of the offense charged, it must be proven with moral certainty that it is the same item seized from Omamos during the buy-bust operation. Since the prosecution miserably failed to discharge this burden, appellant is entitled to a verdict of acquittal on ground of reasonable doubt.

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

[35] *Id.*

ACCORDINGLY, the appeal is **GRANTED** and the Decision dated August 19, 2015 in CA-G.R. CR-HC No. 01124-MIN, **REVERSED** and **SET ASIDE**.

Mike Omamos *y* Pajo is **ACQUITTED** of violation of Section 5, Article II of Republic Act 9165. The Court **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City to cause the immediate release of Mike Omamos *y* Pajo from custody unless he is being held for some other lawful cause, and to submit his report on the action taken 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. 225339. July 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **[redacted],** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE, AS AMENDED; RAPE; ELEMENTS.— Rape is defined and penalized under Article 266-A of the Revised Penal Code, as amended by RA 8353, *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; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. x x x The Information charged

appellant with rape under Article 266-A(1)(a), as amended. It requires the following elements: (1) accused had carnal knowledge of a woman; and, (2) he accompanied such act by force, threat, or intimidation.

2. ID.; EVIDENCE; DENIAL, AS A DEFENSE; DENIAL CANNOT PREVAIL OVER THE CATEGORICAL IDENTIFICATION BY THE VICTIM OF THE ACCUSED AS THE ONE WHO RAPED HER; CASE AT BAR.— In this light, appellant's defense of denial cannot prevail over AAA's categorical identification of appellant as the one who raped her. Notably, appellant did not even deny his presence in AAA's room and the fact that BBB saw him there moving the other children. His presence in the *locus criminis vis-à-vis* AAA's testimony that he raped her strongly refutes his theory of denial. All told, the Court of Appeals did not err in affirming appellant's conviction for the rape of his sixteen-year (16-year) old niece AAA.

3. ID.; REVISED PENAL CODE, AS AMENDED; RAPE; IMPOSABLE PENALTY.— Article 266-B of the Revised Penal Code, as amended by RA 8353, prescribes the penalty of *reclusion perpetua* for simple rape. Where the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim, the proper penalty is death. Here, AAA was sixteen (16) years of age when she got raped. The prosecution offered in evidence her birth certificate to prove her minority at the time of the incident. Meanwhile, her blood relation with appellant is undisputed. Appellant took the witness stand and admitted to being AAA's uncle, and brother to BBB. Consequently, the death penalty should have been imposed were it not for the enactment of RA 9346. The Court of Appeals therefore correctly sentenced appellant to *reclusion perpetua* without eligibility for parole. In conformity with prevailing jurisprudence, the award of ₱hp75,000,00 civil indemnity, ₱hp75,000.00 moral damages, and ₱hp30,000.00 exemplary damages should be increased to ₱hp100,000.00 each.

APPEARANCES OF COUNSEL

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 June 4, 2015 of the Court of Appeals (CA) in CA-G.R. CR HC No. 06066, affirming the verdict of conviction against appellant for rape, with modification of the monetary awards and inclusion of the proviso on appellant's ineligibility for parole.

The Proceedings Before the Trial Court

The Charge

Appellant XXX was charged with rape under Article 266-A of Republic Act No. (RA) 8353,[2] in relation to RA 7610,[3] *viz.*:

> That on or about three o'clock in the morning of January 13, 2004 x x x Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the uncle of the private complainant, hence, a relative within the third civil degree of consanguinity, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with AAA, a sixteen-year old minor, against her will, to her damage and prejudice.
>
> ACTS CONTRARY TO LAW.[4]

The case was raffled to the Regional Trial Court - Br. 35, Iriga City. On arraignment, appellant pleaded "not guilty."

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[1] Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Isaias P. Dicdican and Ramon Paul Hernando (now a member of this Court); *Rollo*, pp. 2-15.

[2] Otherwise known as the "*Anti-Rape Law of 1997*"

[3] Otherwise known as the "*Special Protection of Children Against Abuse, Exploitation and Discrimination Act*."

[4] Record, p. c.

During the trial, AAA, her mother BBB, Dr. Marie Anne Ng-Hua, PO2 Andrew Alcomendas, and social worker Guadalupe Bisenio testified for the prosecution. On the other hand, appellant and his sister CCC testified for the defense.

The Prosecution's Version

AAA testified that appellant was her uncle, brother of her mother BBB. He used to live with them in their residence. On January 13, 2004, around 3 o'clock in the morning, AAA was sleeping beside her three younger brothers when she felt a person on top of her. She realized she had already been undressed and the person on top of her, a man, was making a push and pull movement, his penis inside her vagina. She struggled but the man pinned her down. He continued to ravish her for about two (2) more minutes until she eventually managed to kick him off. He stood up and threatened to kill her parents if she reported the incident. She recognized it was appellant's voice. She was sixteen (16) years old at that time.

BBB testified that in the morning of January 13, 2004, she turned on the fluorescent light and saw appellant moving her youngest child then sleeping with AAA on the same bed. She asked what he was doing. He said he was just moving the children so they would not fall off the bed. She became suspicious because he was perspiring despite the cold weather.[5]

She later instructed AAA to come home from school by noontime. When AAA arrived, she asked her what happened earlier. AAA started to cry and admitted she had been raped. They reported the incident to the barangay captain[6] who contacted the police to have the incident blottered. The barangay captain then advised BBB to bring AAA to the hospital for examination.[7]

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[5] TSN, September 1, 2009, pp. 5-7

[6] *Id.* at 7-10.

[7] TSN, July 4, 2006, pp. 4-5.

On January 19, 2004, BBB and AAA went to the Department of Social Welfare and Development (DSWD). There, Bisenio prepared a letter-request for AAA's medical examination. They brought the letter to the Bicol Medical Hospital where Dr. Ng-Hua examined AAA and issued a medical certificate with findings of hymenal lacerations at the 3, 6 and 9 o'clock positions. They returned to Bisenio for assistance in filing a complaint against appellant.[8]

The prosecution offered the following documentary exhibits: AAA's birth certificate, Dr. Ng-Hua's medical certificate, letter-request for medical check-up, and AAA's DSWD data record.[9]

The Defense's Evidence

Appellant denied the charge. He testified that in the early morning of January 13, 2004, he woke up to the cries of one of his nephews who was sleeping in the same room shared by other members of the family including himself. He stood up and realized AAA's leg was draped over her younger brother's stomach. It was the reason why his nephew was crying. He then tapped AAA's leg to prompt her to move.[10]

About the same time, BBB focused light on appellant's designated sleeping area and found it vacant. BBB proceeded to where AAA was sleeping and woke her up. BBB then told AAA to transfer to another room.[11]

The following day, village officials came to fetch him at the *coprasan* of his sibling CCC. They took him to the barangay hall. There, he was informed of the rape charge against him. He denied it, claiming he was falsely charged because of a family dispute concerning a corn plantation.[12]

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[8] TSN, September 1, 2009, pp. 11-14.

[9] Original Record, p. 245.

[10] TSN, May 3, 2011, pp. 4-7.

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

[12] TSN, May 3, 2011, pp. 8-11.

CCC corroborated appellant's testimony regarding his arrest. She said she was present during the confrontation at the barangay hall.[13]

The Trial Court's Ruling

The trial court rendered a verdict of conviction as borne by its Judgment dated January 21, 2013, *viz.*:

> WHEREFORE, finding accused XXX guilty beyond reasonable doubt of rape, defined under Article 266-A and penalized under Article 266-B, all of the [Revised Penal Code], said accused is hereby sentenced to suffer a prison term of reclusion perpetua and to pay unto private complainant [xxx] ₱75,000 as civil indemnity; ₱75,000 as moral damages and; ₱30,000 as exemplary damages.
>
> SO ORDERED. (words in brackets added)[14]

The trial court gave credence to AAA's factual narration and her positive identification of appellant as the man who sexually ravaged her. It rejected appellant's defense of denial.

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction against him despite the alleged leading questions asked of AAA, her inconsistent answers, and the improbable scenario that her three (3) younger brothers were not roused from sleep while rape was being committed in their presence.[15]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Marissa Macaraig-Guillen and State Solicitor Jayrous L. Villanueva defended the verdict of conviction. The OSG maintained that AAA's testimony was firmly corroborated by BBB and Dr. Ng-Hua. The alleged inconsistencies in AAA's

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[13] TSN, October 18, 2011.

[14] CA *rollo*, p. 67.

[15] *Id.* at 38.

testimony did not dwell on the elements of the crime, hence, did not diminish her credibility.[16]

The Court of Appeals' Ruling

The Court of Appeals affirmed with modification, *viz.*:

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed January 21, 2013 Judgment is MODIFIED in that:

(1) Appellant XXX shall not be eligible for parole; and

(2) Appellant XXX is ORDERED to pay interest at the legal rate of six percent (6%) per annum on all monetary awards from the date of finality of this judgment until fully paid.

SO ORDERED.

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution dated August 17, 2019,[17] both appellant and the OSG manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[18]

Issue

Did the Court of Appeals err in affirming appellant's conviction for rape?

Ruling

We affirm.

Rape is defined and penalized under Article 266-A of the Revised Penal Code, as amended by RA 8353, *viz.*:

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[16] *Id.* at 79.

[17] *Rollo*, p. 22.

[18] *Id.* at 24 and 29.

Article 266-A. Rape: When And How Committed. – Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

The Information charged appellant with rape under Article 266-A(1)(a), as amended. It requires the following elements: (1) accused had carnal knowledge of a woman; and, (2) he accompanied such act by force, threat, or intimidation.[19]

AAA narrated in detail her harrowing experience of forced, nay, unwanted sexual congress with appellant, her uncle:

x x x x x x x x x

Q Now, do you recall where were you on January 13, 2004 at around 3:00 o'clock early in the morning?
A Yes, sir.

Q Where were you?
A I was at our house sir.

x x x x x x x x x

Q While there on said date time and place what happened if any?
A I was sleeping sir.

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[19] See *People v. Amoc*, 825 SCRA 608, 615 (2017).

Q That's why while sleeping what unusual incident happened if any?
A I felt that someone on topped (sic) of me.

Q And when you noticed that someone is (sic) on top of you, what was this person doing to you if any?
A He was making sexual intercourse with me.

x x x x x x x x x

THE COURT:

Before that.
What were you wearing at that very moment?

THE WITNESS:

I was wearing short pants and a blouse Your Honor.

THE COURT:

What happened to your short pants and blouse while that person was having secual (sic) intercourse with you?

THE WITNESS:

It was already removed Your Honor. I was already undressed Your Honor.

THE COURT:

Okey.You mean the short pants and blouse were already removed from your body?

THE WITNESS:

Yes, Your Honor.

THE COURT:

Okey.

PROS. RAMOS:

Q How about your panty?
A It was also removed sir.

Q So, sensing or noticing that someone is having sexual intercourse with you, what did you do?
A I was awaken (sic) and he was on topped (sic) of me and I pushed him, sir.

Q What happened to your vagina and to the penis of the accused when you push (sic) him?
A I felt pain, sir.

Q You said that that person was having sexual intercourse with you? Where was his penis at that time?
A It was inside my vagina sir.

Q When you push (sic) that person having sexual intercourse with you what happened to him when you push (sic) him?
A He was able to rise sir.

Q And after that what did he say if any?
A If ever other people will know about the incident he will kill her (sic) parents.

Q Were you able to identify that person who had sexual intercourse with you?
A Yes, sir.

Q Who is that person please tell the court?
A It was XXX sir.

Q What did you feel when the accused XXX threaten (sic) you that if someone knew about this of what happened to you that he will kill your parents, what did you feel?

A I was afraid sir.[20] (emphases added)

x x x x x x x x x

On cross, AAA stuck to her testimony, thus:

x x x x x x x x x

ATTY CABAUATAN:

Q You said that you did not feel that you were being undressed by the accused, correct?
A Yes, ma'am.

Q And you just woke up fully undressed?
A Yes, sir.

Q And the accused was already on top of you, is that correct?
A Yes, sir.

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[20] TSN July 22, 2008, pp. 4-7.

Q Now, when you woke up with the accused on top of you, was he already making sex with you?
A Yes, sir.

COURT:

Q Where was the penis of the accused when you woke up?
A Inside my vagina, sir.

x x x x x x x x x

ATTY. CABAUATAN:

Q So, you mean to tell us that it was already at that point when the penis of the accused was already inside your vagina that you were awaken (sic), is that correct?
A Yes, ma'am.

Q And what was he doing at that time with you while his penis was inside your vagina?
A He was doing the push and pull movement.

Q For how long did that push and pull movement of the accused lasted?
A Probably two minutes, ma'am.

Q You said you pushed the accused, is that correct?
A Yes, ma'am.

x x x x x x x x x

Q Did the accused stop already his sexual acts meaning, the push and pull movement after you pushed him?
A Yes, ma'am.

Q Was there no noise created when you pushed him?
A He told me that if my parents will know he will massacre us, ma'am.

Q What do you mean by the word "massacre"?
A He will kill my father and mother, ma'am.

x x x x x x x x x

Q And nobody among your three (3) brothers were awaken (sic)?
A None, ma'am.

Q When you said the accused was having sex with you, what were his hands doing then?

A He was holding my hands, ma'am.[21] (emphases added)

x x x x x x x x x

AAA was forced to retell the sordid details of the bestial act and relive the rape all over again when she took the witness stand. On January 13, 2004, around 3 o'clock in the morning, she was roused from sleep by the weight of a man on top of her. She realized she was no longer dressed and the man was making a push and pull movement inside her vagina. She struggled to break free from his clutches but he pinned her down. She eventually managed to kick him off around two (2) minutes later when the push and pull movement had finally stopped. The man threatened to kill her family if she reported the incident. She recognized the man's voice as that of appellant, her uncle. From this testimony, the prosecution positively established that appellant, through force and intimidation, succeeded in having carnal knowledge of AAA against her will.

The trial court and the Court of Appeals found AAA persuasive and unwavering in giving her testimony, thus, meriting full weight and credence. Indeed, a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of the assault on her dignity cannot be so easily dismissed as mere concoction.[22] It is highly improbable that a girl would fabricate a story that would expose herself and her family to a lifetime of dishonor,[23] especially when her charge would mean the long-term imprisonment, if not death, of a blood relative.

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[21] TSN, September 29, 2008, pp. 6-9.

[22] CA *rollo*, p. 114, citing *People v. Cadano, Jr.*, 729 Phil. 576, 585 (2014).

[23] See *People v. Barcela*, 652 Phil. 134, 145 (2010).

By itself, AAA's testimony withstands scrutiny sufficient to produce a verdict of conviction. But when corroborated by physical evidence, AAA's testimony assumes even more probative weight. Here, Dr. Ng-Hua's medical examination of AAA revealed that the latter sustained hymenal lacerations at the 3, 6 and 9 o'clock positions. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. And when the consistent and forthright testimony of a rape victim is consistent with medical findings, as in this case, the essential requisites of carnal knowledge are deemed to have been sufficiently established.[24]

Appellant, nevertheless, attempts to discredit AAA because (1) the questions propounded on her were allegedly leading and, consequently, inadmissible along with her answers thereto; (2) her purported inconsistent statements render the same incredible; and (3) the presence of her siblings in the same room appellant supposedly raped her would have made the commission of the rape impossible.

We are not persuaded.

First, the alleged leading questions asked of AAA[25] do not form part of her direct testimony. Rather, these were asked during the preliminary investigation.[26] At any rate, records show that during the trial proceedings, the defense objected only once to the supposed leading questions of the prosecution. The trial court sustained the objection.

Second, the alleged inconsistency in AAA's testimony pertaining to whether slip saw appellant sitting on the side of the bed with his clothes on or lying on top of her naked — is at best misleading. This purported inconsistency does not appear anywhere in the case records.

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[24] See *People v. Sabal*, 734 Phil. 742, 746 (2014), citing *People v. Perez* 595 Phil. 1232, 1258 (2008).

[25] CA *rollo*, pp. 45-52.

[26] Record, p. 14.

In any event, the supposed inconsistency raised refers to a trivial matter and does not affect AAA's credibility.

Third, the presence of AAA's three (3) younger siblings in the same room which they shared with other members of the family including AAA and appellant himself obviously did not deter appellant from sexually ravishing his own niece right in the same room. Appellant's depraved behavior proved that lust is not a respecter of people, time, or place.[27] The Court has encountered far too many instances where rape was committed in plain view. We even took judicial notice of the fact that among poor couples with big families cramped in small quarters, copulation does not seem to be a problem despite the presence of other persons there.[28] Rape could be committed under circumstances as indiscreet as a room full of family members sleeping side by side.[29]

In fine, the trial court and the Court of Appeals correctly gave credence to AAA's testimony. Indeed, the trial court's factual findings on the credibility of witnesses are accorded high respect, if not conclusive effect. This is because the trial court has the unique opportunity to observe the witnesses' demeanor, and is in the best position to discern whether they are telling the truth or not.[30] This rule becomes more compelling when such factual findings carry the full concurrence of the Court of Appeals, as in this case.[31]

In this light, appellant's defense of denial cannot prevail over AAA's categorical identification of appellant as the one who raped her.[32] Notably, appellant did not even deny his presence in AAA's room and the fact that BBB saw him there

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[27] See *People v. Ofemiano*, 625 Phil. 92, 100 (2010).

[28] *Id*.

[29] See *People v. Panes*, 839 SCRA 260, 268 (2017).

[30] See *People v. Nelmida,* 694 Phil. 529, 556 (2012).

[31] See *People v. Regaspi*, 768 Phil. 593, 598 (2015).

[32] See *People v. Gabriel*, 807 Phil. 516, 522 (2017).

moving the other children. His presence in the *locus criminis vis-à-vis* AAA's testimony that he raped her strongly refutes his theory of denial. All told, the Court of Appeals did not err in affirming appellant's conviction for the rape of his sixteen-year (16-year) old niece AAA.

Penalty

Article 266-B of the Revised Penal Code, as amended by RA 8353, prescribes the penalty of *reclusion perpetua* for simple rape. Where the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim, the proper penalty is death.[33]

Here, AAA was sixteen (16) years of age when she got raped. The prosecution offered in evidence her birth certificate[34] to prove her minority at the time of the incident. Meanwhile, her blood relation with appellant is undisputed. Appellant took the witness stand and admitted to being AAA's uncle, and brother to BBB.[35] Consequently, the death penalty should have been imposed were it not for the enactment of RA 9346.[36] The Court of Appeals therefore correctly sentenced appellant to *reclusion perpetua* without eligibility for parole.[37]

In conformity with prevailing jurisprudence,[38] the award of Php75,000,00 civil indemnity, Php75,000.00 moral damages, and Php30,000.00 exemplary damages should be increased to Php 100,000.00 each.

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[33] Article 266-B(1).

[34] Record, p. 248.

[35] TSN, May 3, 2011, p. 3.

[36] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[37] Section 3, RA 9346.

[38] See *People v. Jugueta*, 783 Phil. 806, 846 (2016).

ACCORDINGLY, the appeal is **DENIED**. The Decision of the Court of Appeals dated June 4, 2015 in CA-G.R. HC No. 06066 is **AFFIRMED with MODIFICATION.**

XXX is found **GUILTY** of **Rape**, qualified by minority and relationship. He is sentenced to ***Reclusion Perpetua*** without eligibility for parole. The awards of civil indemnity, moral damages, and exemplary damages are increased to Php 100,000.00 each. These amounts shall earn six percent (6%) 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.

THIRD DIVISION

[G.R. No. 225899. July 10, 2019]

JESSIE C. ESTEVA, *petitioner, vs.* **WILHELMSEN SMITH BELL MANNING, INC. and WILHELMSEN SHIP MANAGEMENT and/or FAUSTO R. PREYSLER, JR.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; POEA STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSATION AND BENEFITS; DISABILITY ASSESSMENT; THE COMPANY-DESIGNATED PHYSICIAN IS RESPONSIBLE FOR DETERMINING A SEAFARER'S FITNESS TO WORK OR THE DEGREE OF DISABILITY; TWO CONDITIONS WHICH MAY TRIGGER THE MANDATORY RULE ON THIRD DOCTOR REFERRAL,

ENUMERATED.— The entitlement of an overseas seafarer to disability benefits is governed by law, the employment contract, and the medical findings. The POEA Standard Employment Contract, which prescribes the procedure in recovering compensation from occupational hazards, is deemed incorporated in every seafarer's employment contract. The POEA Standard Employment Contract provides that the company-designated physician is responsible for determining a seafarer's disability grading or fitness to work. Conformably, it outlines the procedure when the seafarer contests the company-designated physician's findings and assessment. x x x The assessment referred to in [Section 20 of the POEA Standard Employment Contract] is the declaration of fitness to work or the degree of disability. It presupposes that the company-designated physician came up with a valid, final, and definite assessment on the seafarer's fitness to work before the 120-day or 240-day period expires. In *Marlow Navigation Philippines, Inc. v. Osias*, this Court held that the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment made by the company-designated physician; and (2) the seafarer's appointed doctor refuted such assessment. These two (2) conditions must be present to trigger the mandatory rule on third doctor referral.

2. **ID.; ID.; ID.; ID.; SECURING A THIRD DOCTOR'S OPINION IS THE DUTY OF THE EMPLOYEE, WHO ACTIVELY OR EXPRESSLY REQUEST FOR IT; THERE CAN BE NO VALID CHALLENGE TO THE COMPANY-DESIGNATED PHYSICIAN'S FINDINGS WITHOUT THE REFERRAL TO A THIRD DOCTOR.—** [A]s the one contesting the company-designated physician's findings, it is the seafarer's duty to signify the intention to resolve the conflict through the referral to a third doctor. If the seafarer does not contest the findings and fails to refer the assessment to a third doctor, "the company can insist on its disability rating even against a contrary opinion by another physician[.]" Securing a third doctor's opinion is the duty of the employee, who must actively or expressly request for it. This Court has held that despite the wording of the provision in Section 20 of the POEA Standard Employment Contract, the referral of a disputed medical assessment to a third doctor is mandatory. Its significance was explained in *INC Shipmanagement, Inc. v. Rosales*, where this Court emphasized that the procedure is mandatory: x x x

Noncompliance with this procedure militates against the seafarer's claim, particularly in cases where the company-designated physician concluded that there is no permanent total disability. Without the referral to a third doctor, there is no valid challenge to the company-designated physician's findings. Ultimately, the company-designated physician's assessment must be upheld. x x x Absent a final, definite disability assessment from a company-designated physician, the mandatory rule on a third doctor referral will not apply here.

3. ID.; ID.; ID.; ID.; A TEMPORARY TOTAL DISABILITY BECOMES PERMANENT WHEN THE COMPANY-DESIGNATED PHYSICIAN DECLARES IT WITHIN THE PERIODS HE/SHE IS ALLOWED TO DO SO OR UPON THE EXPIRATION OF THE MAXIMUM 240-DAY MEDICAL TREATMENT PERIOD WITHOUT A DECLARATION OF EITHER FITNESS TO WORK OR THE EXISTENCE OF A PERMANENT DISABILITY.— The applicable procedure and periods for a seafarer's medical assessment was explained in *Vergara v. Hammonia Maritime Services, Inc.*: x x x In *Talaroc v. Arpaphil Shipping Corporation*, this Court has outlined the company-designated physician's duty to issue a final medical assessment of seafarers and the significance of the 120-day and 240-day period: x x x The POEA Standard Employment Contract provides that the disability is based on the schedule provided, not on the duration of the seafarer's treatment. Section 20(A)(6) is clear: x x x However, this Court has clarified that this provision does not disregard the seafarer's period of treatment. A presumption that the seafarer is totally and permanently disabled will still arise "if after the lapse of 240 days, the seafarer is still incapacitated to perform his usual sea duties and the company-designated physician has not made any assessment at all (whether the seafarer is fit to work or whether his permanent disability is partial or total)[.]" Further, this Court has held that a temporary total disability becomes permanent when the company-designated physician declares it "within the periods he [or she] is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability." After the 240-day period has lapsed, the disability becomes total and permanent.

4. ID.; ID.; ID.; UNDER THE POEA-SEC, SEAFARERS ONLY NEED TO PROVE THAT AN INJURY IS WORK-RELATED AND IT OCCURRED DURING THE PERIOD INDICATED IN A SEAFARER'S EMPLOYMENT CONTRACT; RATIONALE.— The contract between the manning agency and the seafarer is strictly regulated by the Philippine Overseas Employment Administration due to the unaccounted consequences that these contracts produce, mostly in the form of work-related risks and injuries. x x x In employing seafarers, the manning agency and the shipping company, which have control over the ship, bear the burden of complying with safety regulations. When externalities such as occupational hazards are not accounted for, they escape the burden of shouldering the cost of keeping the vessel safe for their seafarers. Imposing a liability induces the employers and the injured seafarers to be burdened with the cost of the harm when they fail to take precautions. This process of "internalization" means the consequences and costs are accounted for and are attributed to the party who causes the harm. Thus, the occupational hazards are internalized through a claim of damages paid by the employer. Seafarers are compensated for the injuries they suffered. Here, the law intervenes to achieve allocative efficiency between the parties. Allocative efficiency means that both parties reach a mutually beneficial agreement. x x x Allocative efficiency for both employers and seafarers is reached by internalizing the occupational hazards through a seafarer's employment contract and Philippine Overseas Employment Administration regulations. The disability claims internalize the costs of injury and hazards by making employers compensate the seafarers without the need to bargain for the amount and process of compensation. When employers internalize the costs of the harm caused, they are constrained to both comply with legal standards and invest in the seafarers' safety. On the other hand, seafarers are also constrained to internalize the cost of their injuries if they will not take precautions. This policy provides an incentive for the seafarers to work efficiently because the risks to occupational hazards are reduced. By internalizing the externalities through legal standards, both employers and seafarers are encouraged to work at an efficient level. In cases of worker's compensation, no fault is needed to be ascribed to employers for the seafarers to qualify for disability compensation. This no-fault system guarantees injured employees a "relatively swift and certain

compensation for their job-related harms. The system relieves employees and their employers of the costs of demonstrating and challenging fault, respectively." Thus, to be compensated under the POEA Standard Employment Contract, seafarers only need to prove that: (1) an injury is work-related; and (2) it occurred during the period indicated in a seafarer's employment contract.

5. ID.; ID.; ID.; AWARD OF SICKNESS ALLOWANCE ALLOWED IN CASE AT BAR.— Petitioner claims that he is entitled to sickness allowance and reimbursement of medical and transportation expenses under Section 20(A)(3) of the POEA Standard Employment Contract, x x x The Labor Arbiter, the National Labor Relations Commission, and the Court of Appeals uniformly ruled that petitioner is entitled to the award of sickness allowance. In accordance with the POEA Standard Employment Contract, the payment of sickness allowance to petitioner shall not exceed 120 days. Hence, this Court affirms the award. x x x Reimbursement of the medical and transportation expenses, as provided in the POEA Standard Employment Contract, is subject to the condition that the expenses have a corresponding official receipt or other available proof. Here, since petitioner failed to substantiate his expenses by presenting any receipt or proof, this Court cannot award the reimbursement of medical and transportation expenses.

6. CIVIL LAW; DAMAGES; THE COMPANY'S BELATED RELEASE OF ASSESSMENT AND ITS SCHEME TO DISCREDIT THE FINDINGS OF A SEAFARER'S DOCTOR FOR NONCOMPLIANCE WITH THE THIRD DOCTOR RULE IS CONSIDERED ACTS OF BAD FAITH THAT JUSTIFY THE AWARD OF DAMAGES; CASE AT BAR.— In *Sharpe Sea Personnel, Inc. v. Mabunay, Jr.*, this Court awarded damages in favor of the seafarer due to the company's belated release of disability assessment and its scheme to discredit the findings of a seafarer's doctor for noncompliance with the third doctor rule. These were considered as acts of bad faith that justified the award of damages: x x x Similarly, here, petitioner claims to be entitled to moral and exemplary damages because respondents refused to pay their contractual obligations in bad faith. He alleges that they employed a scheme to deceive and escape their liability. The award of moral damages is proper. Respondents insist that petitioner failed to follow

the procedure when they themselves committed a breach by keeping petitioner in the dark about his medical assessment. Despite this, respondents, in bad faith, disregarded the findings of petitioner's chosen physicians as petitioner supposedly failed to consult a third doctor. Due to respondents' delay, petitioner was left on his own after they had stopped supporting his treatment and therapy. In addition, the award of exemplary damages is correct by way of example or correction for the public good. Accordingly, it is also proper to grant attorney's fees.

APPEARANCES OF COUNSEL

Linsangan Linsangan & Linsangan Law Offices for petitioner.
Nolasco & Associates Law Offices for respondents.

D E C I S I O N

LEONEN, *J.*:

When a company-designated physician fails to arrive at a final and definite assessment of a seafarer's fitness to work or level of disability within the prescribed periods, a presumption arises that the seafarer's disability is total and permanent.[1]

This Court resolves a Petition for Review on *Certiorari*[2] assailing the Court of Appeals March 22, 2016 Decision[3] and July 19, 2016 Resolution[4] in CA-G.R. SP No. 137635. The

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[1] *Sharpe Sea Personnel, Inc. v. Mabunay, Jr.*, G.R. No. 206113, November 6, 2017, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63565 > [Per *J.* Leonen, Third Division].

[2] *Rollo*, pp. 3-33. Filed under Rule 45 of the Rules of Court.

[3] *Id*. at 34-44. The Decision was penned by Associate Justice Romeo F. Barza, and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Agnes Reyes-Carpio of the First Division, Court of Appeals, Manila.

[4] *Id*. at 45-46. The Resolution was penned by Associate Justice Romeo F. Barza, and concurred in by Presiding Justice Andres B. Reyes, Jr. (now

Court of Appeals found that Jessie C. Esteva (Esteva) was not entitled to the payment of total and permanent disability benefits.

On January 26, 2012, Wilhelmsen Smith Bell Manning, Inc. (Smith Bell Manning), on behalf of its principal, Wilhelmsen Ship Management, hired Esteva as a seafarer for nine (9) months, with a basic monthly salary of US$675.00.[5]

Esteva was deployed on April 15, 2012.[6] He underwent the prescribed medical examination and was pronounced fit to work. On April 16, 2012, he boarded the vessel Ikan Bagang.[7]

Sometime in June 2012, while he was onboard the vessel, Esteva began to suffer severe back pains. As the vessel arrived in China on June 20, 2012, he asked the Indian Master to refer him to a physician because the back pains were getting worse.[8]

On June 24, 2012, Esteva went to a small clinic where he underwent x-ray and was given oral and topical pain relievers.[9]

On October 5, 2012, while the vessel was at Richards Bay, South Africa, Esteva was diagnosed by Dr. W. Watson (Dr. Watson) with lumbar disc prolapse. According to the Injury/ Illness Report, his condition required a specialist treatment and possible operation. Dr. Watson declared Esteva to have a temporary total disability and unfit for work. The physician further recommended that Esteva undergo immediate repatriation. Wilhelmsen Ship Management also wrote a letter requesting that Esteva be examined by the company-designated physician in the Philippines.[10]

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a member of this Court) and Associate Justice Agnes Reyes-Carpio of the First Division, Court of Appeals, Manila.

[5] *Id*. at 34-35.

[6] *Id*. at 35.

[7] *Id*. at 6.

[8] *Id*.

[9] *Id*.

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

On October 7, 2012, Esteva returned to the Philippines and reported to his employer. He was then referred to the Metropolitan Medical Center, where he underwent several medical examinations. His x-ray results revealed that he had osteodegenerative changes in his lumbar spine.[11]

On April 3, 2013, the company-designated physician, Dr. Mylene Cruz-Balbon (Dr. Cruz-Balbon), issued a Medical Certificate indicating that Esteva was given medications for Pott's disease, a form of tuberculosis of the spine. She prescribed that Esteva take at least one (1) year of treatment. In the Medical Certificate, Esteva's suggested disability grading was Grade 8, with 2/3 loss of lifting power.[12]

On July 19, 2013, Dr. Cruz-Balbon issued another Medical Certificate confirming the finding of both Pott's disease and disc protrusion L2-L5.[13]

On September 13, 2013, Esteva consulted another doctor, Dr. Maricar P. Reyes-Paguia (Dr. Reyes-Paguia), who issued a Medical Certificate indicating that Esteva was suffering from:

Impression:

1. Multilevel lumbar spondylosis
2. Mild retrolisthesis, L2 on L3
3. Grade 1 spondylolisthesis, L4 on L5
4. Disc desiccation, L2-L3, L3-L4 and L4-L5
5. L2-L3 and L3-L4 posterior disc bulge indenting the thecal sac and facet joint hypertrophy with mild neuroforaminal narrowing.
6. L4-L5 circumferential disc bulge, facet joint arthrosis and ligamentum flavum thickening with moderate spinal and neuroforaminal narrowing impinging the exiting nerve roots.[14]

In his Complaint, Esteva also stated that on September 17, 2013, he consulted another doctor, Dr. Alan Leonardo R.

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[11] *Id*. at 35.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 36.

Raymundo (Dr. Raymundo), an orthopedic surgeon.[15] The physician issued a Medical Report, which read in part:

> Physical examination today showed the patient to be ambulatory but walking with a limp. He has pain on bending forward and backwards and on rotation. He has a positive straight leg raising test on the right at 70 degrees and has weakness of both lower leg muscles, the right weaker than the left.
>
> I have explained to Mr. Esteva that his condition will no longer allow him to return to his previous occupation as an able bodied seaman.[16]

Thus, Esteva filed a Complaint for total permanent disability benefits.[17] Esteva sought to recover: (1) disability benefits worth US$90,000.00 under the Collective Bargaining Agreement; (2) sickness[18] allowance; (3) reimbursement of medical, hospital, and transportation expenses; (4) moral and exemplary damages; and (5) attorney's fees.[19]

In its January 29, 2014 Decision,[20] Labor Arbiter Romelita N. Rioflorido granted Esteva's claims for disability compensation, sickness allowance, and attorney's fees. She gave weight to the findings of Esteva's own doctors that his disability was total and permanent over that of the company-designated physician.[21]

The dispositive portion of the Decision read:

> WHEREFORE, a decision is hereby rendered ordering respondents Wilhe[l]msen Smith Bell Manning, Inc. and Wilhe[l]msen Ship

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[15] *Id*. In the *rollo*, Alan was sometimes spelled as "Allan."

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

[17] *Id*. at 36.

[18] In the *rollo*, sickness allowance was at times mistakenly referred to as "sickwage" allowance.

[19] *Rollo*, p. 5.

[20] *Id*. at 10.

[21] *Id*. at 36.

Management jointly and severally liable to pay complainant Jessie C. Esteva, US$90,000.00, in peso equivalent at the time of payment, representing the disability compensation benefit under the CBA, plus US$2,700.00 as and for sickwage allowance and ten (10%) percent of the total money claims as attorney's fees. Other claims are denied.

SO ORDERED.[22]

Thus, Smith Bell Manning filed before the National Labor Relations Commission a Petition for *Certiorari*.

In its June 18, 2014 Decision, the National Labor Relations Commission affirmed the Labor Arbiter's findings and explained that Esteva was "essentially rendered permanently disabled."[23] It highlighted the company-designated physician's assessment that Esteva's treatment would take at least a year, which was beyond the maximum period of 240 days for temporary disability, and that he had lost 2/3 of his lifting power.[24]

Smith Bell Manning filed a Motion for Reconsideration, which was denied in the National Labor Relations Commission July 31, 2014 Resolution.[25]

Thus, Smith Bell Manning filed before the Court of Appeals a Petition for *Certiorari*.

In its March 22, 2016 Decision,[26] the Court of Appeals annulled the judgments of the Labor Arbiter and the National Labor Relations Commission.[27] The dispositive portion of its Decision read:

WHEREFORE, in view of the foregoing premises, the instant petition for certiorari is hereby **GRANTED**. The assailed NLRC

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[22] *Id*. at 11.

[23] *Id*. at 37.

[24] *Id*.

[25] *Id*.

[26] *Id*. at 34-44.

[27] *Id*. at 43.

decision and resolution are hereby **ANNULLED**, and a new judgment is hereby **ENTERED** upholding Dr. Cruz-Balbon's disability rating of Grade 8 for private respondent Jessie C. Esteva. Private respondent is also declared entitled to sickness allowance in the amount of US$2,700. Petitioners are hereby **ORDERED** to make the necessary payment to private respondent.

SO ORDERED.[28] (Emphasis in the original)

The Court of Appeals gave more weight to the assessment of the company-designated physician, Dr. Cruz-Balbon, than that of Esteva's chosen physican, Dr. Raymundo. Per the assessment, the Court of Appeals found that Esteva had a Grade 8 rating, which meant that he was only entitled to partial disability compensation, not total and permanent disability.[29]

According to the Court of Appeals, the dispute must be guided by the 2010 Philippine Overseas Employment Administration Standard Employment Contract (POEA Standard Employment Contract), specifically Section 20-A,[30] which provides:

SECTION 20. *Compensation and 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.

The Court of Appeals found that Esteva did not follow the procedure prescribed in the POEA Standard Employment Contract. Instead of referring the matter to a third doctor agreed by both parties, he immediately filed a Complaint for permanent disability benefits. Failing to observe this procedure, the Court of Appeals gave more credence to the certification issued by the company-designated physician.[31]

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[28] *Id.* at 43-44.

[29] *Id.* at 39.

[30] *Id.*

[31] *Id.*

The Court of Appeals also doubted Dr. Raymundo's certification due to the discrepancy in dates. It found that Esteva had alleged seeing Dr. Raymundo on September 17, 2013, which is a later date than the certificate's date of issuance on July 19, 2013.[32]

Lastly, the Court of Appeals deleted the award of attorney's fees after it found that Smith Bell Manning did not act in gross and evident bad faith in refusing to pay Esteva's disability benefits.[33] However, the Court of Appeals sustained the award of sickness allowance amounting to US$2,700.00.[34]

On August 10, 2016, Esteva filed before this Court a Petition for Review on *Certiorari*.[35]

In its September 21, 2016 Resolution,[36] this Court ordered respondent Smith Bell Manning to file a comment and petitioner to submit a softcopy of his Petition with a verified declaration. In his October 26, 2016 Compliance,[37] Esteva sent electronic copies of the Petition and its annexes.

On November 7, 2016, Smith Bell Manning filed its Comment.[38] On November 24, 2016, Esteva filed his Reply.[39]

Petitioner asserts that the referral to a third doctor is not mandatory and may be agreed upon by both parties under the POEA Standard Employment Contract.[40] This, petitioner points out, is supported by the very provision that the Court of Appeals

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[32] *Id*. at 41.

[33] *Id*. at 42.

[34] *Id*. at 43.

[35] *Id*. at 3-33.

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

[37] *Id*. at 58-62.

[38] *Id*. at 63-84.

[39] *Id*. at 85-93.

[40] *Id*. at 14.

had relied on: that "a third doctor may be agreed jointly between the employer and the seafarer."[41] He avers that respondents have neither offered nor asked him to refer his injuries to a third doctor for an assessment. Thus, he did not breach the provision.[42]

Petitioner adds that respondents failed to inform him that the company-designated physician had already made an assessment of his condition. He claims that he was never furnished copies of the disability assessment, and that he only knew of this after both parties had filed their position papers before the Labor Arbiter.[43]

Moreover, petitioner questions the reliance of the Court of Appeals on the company-designated physician's assessment. He argues that neither the POEA Standard Employment Contract nor the Collective Bargaining Agreement provides that the company-designated physician's assessment would be the lone basis to determine if a seafarer suffers from permanent total disability. Citing jurisprudence, he claims that the company-designated physician's findings may be prone to being biased in the company's favor.[44]

Petitioner stresses that the company-designated physician's assessment that he only required a one (1)-year treatment is inaccurate, as he still underwent medication and therapy due to the injuries.[45]

Petitioner also clarifies that he consulted Dr. Raymundo on July 13, 2013, not September 17, 2013. He claims that the error in dates is immaterial because the relevant facts remain: after respondents cut off the medical assistance when the 240-day

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[41] *Id*. at 15.

[42] *Id*. at 16.

[43] *Id*. at 15.

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

[45] *Id*. at 17.

period lapsed, he consulted Dr. Raymundo, an independent orthopedic surgeon.[46]

Petitioner claims that the Court of Appeals erred in solely relying on the company-physician's disability grading and ignoring that even this assessment had shown that the injury was serious. He argues that his inability to work for more than 120 days or 240 days has rendered his disability permanent.[47]

Since his repatriation, "petitioner has not been able to engage in any meaningful activity . . . and there was no . . . indication that he will recover normalcy."[48] He argues that this makes him more strongly entitled to disability benefits, as his injury occurred during his employment on board the vessel of respondents. For having been incapacitated since October 2012, he claims that he must be awarded disability compensation for permanent and total disability in the amount of US$90,000.00.[49]

Petitioner also argues that the Court of Appeals erred in deciding on respondents' Petition for Certiorari as the issues involved alleged misapprehension of facts and misappreciation of evidence, which are correctable only on appeal. Citing jurisprudence, petitioner asserts that a writ of *certiorari* may not be used to correct a lower tribunal's evaluation of the evidence and factual findings. He argues that since the labor tribunals did not commit any grave abuse of discretion in their judgments, there is no reason to overturn their findings.[50]

Finally, petitioner asserts that he is entitled to sickness allowance worth US$2,700.00 and reimbursement of medical and transportation expenses worth ₱85,000.00. This is since respondents stopped providing medical support since January 2013, leaving petitioner to shoulder the costs. He further claims

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[46] *Id*.

[47] *Id*. at 22.

[48] *Id*. at 18.

[49] *Id*.

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

to be entitled to ₱300,000.00 as moral and exemplary damages, as well as attorney's fees, because respondents' refusal to pay their contractual obligations is tainted with bad faith.[51]

On the other hand, respondents argue that the Court of Appeals is correct in giving more credence to the company-designated physician's assessment than that of petitioner's personal doctor. They argue that the latter's Medical Certificate is riddled with doubt, since the form appears to have been purposely issued only for disability evaluation.[52]

Citing jurisprudence, respondents further claim that the company-designated doctor is in the best position to determine the seafarer's condition.[53] Thus, the assessment of Dr. Cruz-Balbon, the company-designated physician, is more credible.[54]

Moreover, respondents argue that petitioner failed to timely object to his disability assessment and refer his condition to a third doctor per the POEA Standard Employment Contract. His failure, according to respondents, constitutes a breach, which overturns any consideration to favor a medical certificate that appears to be secured only to claim disability benefits.[55]

Petitioner's failure, as well as his premature filing of the Complaint, cost him his right to claim compensation. Respondents emphasize that the referral to a third doctor has been held mandatory. Hence, an employer "can insist on its disability rating even against a contrary opinion by another doctor, unless

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[51] *Id*. at 26-28.

[52] *Id*. at 68.

[53] *Id*. at 70, *citing Silagan v. Southfield Agencies Inc*., 793 Phil. 751 (2016) [Per *J*. Perez, Third Division]. In *Silagan*, the findings of the company-designated physician, who had unfettered opportunity to track the physical condition of the seafarer in a prolonged period of time, were upheld over the Medical Report of the seafarer's personal doctor, who only examined the seafarer once and based his assessment solely on the medical records adduced by his patient.

[54] *Id*. at 71.

[55] *Id*.

the seafarer expresses his disagreement by asking for the referral to a third doctor[.]"[56]

Furthermore, respondents disagree with petitioner's contention that the lapse of 120 or 240 days bolstered his unfitness to work. They point out that the POEA Standard Employment Contract clearly provides that the disability shall not be measured by the number of days a seafarer is under treatment or the number of days when sickness allowance is paid. Instead, it should be based solely on the disability grading provided under his contract.[57]

The issues for this Court's resolution are:

First, whether or not the Court of Appeals erred in making its own factual determination in the special civil action for *certiorari*;

Second, whether or not the Court of Appeals erred in ruling that petitioner Jessie C. Esteva is not entitled to total disability benefits. Subsumed under this issue is whether or not referral to a third doctor is mandatory;

Third, whether or not petitioner is entitled to the award of sickness allowance, medical expenses, and transportation expenses; and

Finally, whether or not petitioner is entitled to moral and exemplary damages and attorney's fees.

I

Petitioner assails the Court of Appeals Decision in substituting its own findings of facts with the labor tribunals' findings. He asserts that a writ of *certiorari* may not be used to correct a lower tribunal's evaluation of the facts and evidence.

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[56] *Id*. at 74.

[57] *Id*. at 76-79.

In a special civil action for *certiorari*, the Court of Appeals has ample authority to conduct its own factual determination when it finds that there was grave abuse of discretion.[58] In *Plastimer Industrial Corporation v. Gopo*:[59]

> In a special civil action for certiorari, the Court of Appeals has ample authority to make its own factual determination. Thus, the Court of Appeals can grant a petition for certiorari when it finds that the NLRC committed grave abuse of discretion by disregarding evidence material to the controversy. To make this finding, the Court of Appeals necessarily has to look at the evidence and make its own factual determination. In the same manner, this Court is not precluded from reviewing the factual issues when there are conflicting findings by the Labor Arbiter, the NLRC and the Court of Appeals.[60] (Citations omitted)

Here, despite the factual and evidentiary issues involved, the Court of Appeals correctly made its own factual determination in resolving respondents' Petition for *Certiorari*. Contrary to petitioner's assertion, the Court of Appeals can have a factual finding, even if it is contrary to the findings of the Labor Arbiter and the National Labor Relations Commission.[61]

Hence, we proceed to resolve the substantial issues of this case.

II

The entitlement of an overseas seafarer to disability benefits is governed by law, the employment contract, and the medical findings.[62]

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[58] *Crispino v. Tansay*, 801 Phil. 711, 725 (2016) [Per J. Leonen, Second Division].

[59] 658 Phil. 627 (2011) [Per J. Carpio, Second Division].

[60] *Id*. at 633.

[61] *Maralit v. Philippine National Bank*, 613 Phil. 270, 288 (2009) [Per J. Carpio, First Division].

[62] *Cutanda v. Marlow Navigation Philippines, Inc*., G.R. No. 219123, September 11, 2017, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63416 > [Per J. Peralta, Second Division].

The POEA Standard Employment Contract, which prescribes the procedure in recovering compensation from occupational hazards, is deemed incorporated in every seafarer's employment contract.[63]

The POEA Standard Employment Contract provides that the company-designated physician is responsible for determining a seafarer's disability grading or fitness to work.[64] Conformably, it outlines the procedure when the seafarer contests the company-designated physician's findings and assessment.

Section 20 of the POEA Standard Employment Contract states:

SECTION 20. *Compensation and Benefits.* —
A. *Compensation and Benefits for Injury or Illness*

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

. . . . . .

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid

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[63] *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 385 (2014) [Per *J.* Brion, Second Division].

[64] *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].

subject to liquidation and submission of official receipts and/or proof of expenses.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis supplied)

The assessment referred to in this provision is the declaration of fitness to work or the degree of disability. It presupposes that the company-designated physician came up with a valid, final, and definite assessment on the seafarer's fitness to work before the 120-day or 240-day period expires.[65]

In *Marlow Navigation Philippines, Inc. v. Osias*,[66] this Court held that the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment made by the company-designated physician; and (2) the seafarer's appointed doctor refuted such assessment. These two (2) conditions must be present to trigger the mandatory rule on third doctor referral.

However, as the one contesting the company-designated physician's findings, it is the seafarer's duty to signify the intention to resolve the conflict through the referral to a third doctor.[67] If the seafarer' does not contest the findings and fails

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[65] *Id*.

[66] 773 Phil. 428 (2015) [Per J. Leonen, Second Division].

[67] *Yialos Manning Services, Inc. v. Borja*, G.R. No. 227216, July 4, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64534 > [Per J. Caguioa, Second Division].

to refer the assessment to a third doctor, "the company can insist on its disability rating even against a contrary opinion by another physician[.]"[68] Securing a third doctor's opinion is the duty of the employee,[69] who must actively or expressly request for it.[70]

This Court has held that despite the wording of the provision in Section 20 of the POEA Standard Employment Contract, the referral of a disputed medical assessment to a third doctor is mandatory. Its significance was explained in *INC Shipmanagement, Inc. v. Rosales*,[71] where this Court emphasized that the procedure is mandatory:

> This referral to a third doctor has been held by this Court to be a mandatory procedure as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties. We have followed this rule in a string of cases, among them, *Philippine Hammonia, Ayungo v. Beamko Shipmanagement Corp., Santiago v. Pacbasin Shipmanagement, Inc., Andrada v. Agemar Manning Agency, and Masangkay v. Trans-Global Maritime Agency, Inc.* Thus, at this point, the matter of referral pursuant to the provision of the POEA-SEC is a settled ruling.[72] (Emphasis in the original, citations omitted)

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[68] *Leonis Navigation Company, Inc. v. Obrero*, 794 Phil. 481, 495 (2016) [Per J. Jardeleza, Third Division].

[69] *Scanmar Maritime Services, Inc. v. Conag*, 784 Phil. 203, 215 (2016) [Per J. Reyes, Third Division].

[70] *Leonis Navigation Company, Inc. v. Obrero*, 794 Phil. 481, 495 (2016) [Per J. Jardeleza, Third Division].

[71] 744 Phil. 774 (2014) [Per J. Brion, Second Division].

[72] *Id*. at 787.

Noncompliance with this procedure militates against the seafarer's claim, particularly in cases where the company-designated physician concluded that there is no permanent total disability.[73] Without the referral to a third doctor, there is no valid challenge to the company-designated physician's findings. Ultimately, the company-designated physician's assessment must be upheld.[74] In *Dionio v. Trans-Global Maritime Agency, Inc.*:[75]

> When there is conflict between the findings of the company-designated doctor and the doctor chosen by the seafarer, the latter is bound to initiate the process of referring the findings to a third-party physician by informing his employer. The referral to a third doctor has been held by the Court to be a mandatory procedure as a consequence of the provision in the POEA-SEC that the company-designated doctor's assessment should prevail in case of non-observance of the third-doctor referral provision in the contract.
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> *Failure to comply with the requirement of referral to a third-party physician is tantamount to violation of the terms under the 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.*[76] (Emphasis supplied, citations omitted)

III

The applicable procedure and periods for a seafarer's medical assessment was explained in *Vergara v. Hammonia Maritime Services, Inc.*:[77]

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[73] *Hernandez v. Magsaysay Maritime Corp.*, G.R. No. 226103, January 24, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63958 > [Per J. Peralta, Second Division].

[74] *Yialos Manning Services, Inc. v. Borja,* G.R. No. 227216, July 4, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64534 > [Per J. Caguioa, Second Division].

[75] G.R. No. 217362, November 19, 2018, < http://library.judiciary.gov.ph/thebookshelf/showdocs/1/64702 > [Per J. J.C. Reyes, Jr., Third Division].

[76] *Id*.

[77] 588 Phil. 895 (2008) [Per J. Brion, Second Division].

[T]he 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.[78] (Citations omitted)

In *Talaroc v. Arpaphil Shipping Corporation*,[79] this Court has outlined the company-designated physician's duty to issue a final medical assessment of seafarers and the significance of the 120-day and 240-day period:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

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[78] *Id*. at 912.

[79] G.R. No. 223731, August 30, 2017, 838 SCRA 402 [Per *J*. Perlas-Bernabe, Second Division].

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[80] (Citation omitted)

The POEA Standard Employment Contract provides that the disability is based on the schedule provided, not on the duration of the seafarer's treatment. Section 20(A)(6) is clear:

> In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.
>
> *The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.* (Emphasis supplied)

However, this Court has clarified that this provision does not disregard the seafarer's period of treatment. A presumption that the seafarer is totally and permanently disabled will still arise "if after the lapse of 240 days, the seafarer is still incapacitated to perform his usual sea duties and the company-designated physician has not made any assessment at all (whether the seafarer is fit to work or whether his permanent disability is partial or total)[.]"[81]

Further, this Court has held that a temporary total disability becomes permanent when the company-designated physician declares it "within the periods he [or she] is allowed to do so, or upon the expiration of the maximum 240-day medical treatment

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[80] *Id*. at 417.

[81] *Yialos Manning Services, Inc. v. Borja*, G.R. No. 227216, July 4, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64534 > [Per *J*. Caguioa, Second Division].

period without a declaration of either fitness to work or the existence of a permanent disability."[82] After the 240-day period has lapsed, the disability becomes total and permanent.

Kestrel Shipping Company, Inc. v. Munar[83] has affirmed this rule:

> A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods. *Alternatively put, absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent.*[84] (Emphasis supplied)

IV

Here, Dr. Cruz-Balbon, the company-designated physician, found that petitioner was suffering from a Grade 8 disability, which is classified as a temporary, partial disability. Skeptical with the findings, petitioner consulted Dr. Reyes-Paguia and, eventually, Dr. Raymundo, who certified that petitioner's condition would no longer allow him to work as a seafarer. Afterward, petitioner filed the Complaint for permanent disability benefits.

Petitioner failed to signify his intention to resolve the conflicting assessments of the company-designated physician and his chosen physicians. After consulting Dr. Raymundo, he did not submit the conflicting findings to a third doctor. Instead, he immediately filed the claim for permanent disability benefits. Clearly, petitioner failed to comply with the mandatory rule on referral to a third doctor.

On the other hand, respondents also failed to discharge their duty. Petitioner claims that they did not inform him that the company-designated physician has already issued an assessment.

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[82] *Id*.

[83] 702 Phil. 717 (2013) [Per *J*. Reyes, First Division].

[84] *Id*. at 737-738.

Respondents did not dispute his contention that he was never furnished copies of the disability assessment, and that only after filing the Complaint did he become aware of it.

Absent a final, definite disability assessment from a company-designated physician, the mandatory rule on a third doctor referral will not apply here.

When petitioner learned of Dr. Cruz-Balbon's assessment during the submission of the position papers before the Labor Arbiter, the prescribed 240-day period had already lapsed. Based on the records, petitioner immediately submitted himself to the company-designated physician's examination on October 7, 2012.[85] He later filed the Complaint after his chosen physician, Dr. Raymundo, had issued the Medical Certificate on July 19, 2013.[86] It is unclear when petitioner filed the Complaint or when the position papers were received. Nonetheless, even if this Court will only consider the date of issuance of the last Medical Certificate, a total of 285 days had already lapsed from October 7, 2012 to July 19, 2013, which is beyond the period allowed by the law.

Hence, petitioner cannot be faulted for not referring the assessment to a third doctor at the time he filed his Complaint. There was no medical assessment from a company-designated physician to contest then as it had not been timely disclosed to him. Not only did respondents not refute that the findings were belatedly disclosed to petitioner, there is also nothing on record showing that they submitted the findings within the prescribed period. Hence, when the period had lapsed, there was a presumption that petitioner's disability is total and permanent.

It was also not contested that petitioner is still incapacitated to perform his usual duties and that his health has not regained normalcy. He has not been able to engage in any meaningful activity since 2012. He could not perform any manual labor, and had to continue undergoing physical therapy.

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[85] *Rollo* p. 35.

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

Thus, petitioner's failure to refer the assessment to a third doctor is not fatal to his disability claim. The mandatory rule on third doctor referral does not apply here. Consequently, the company-designated physician's findings cannot be given credence due to the presumption that petitioner's disability is total and permanent.

Hence, petitioner is entitled to total and permanent disability benefits amounting to US$90,000.00 under the Collective Bargaining Agreement.

Law and economics can provide the policy justification of our existing jurisprudence. The contract between the manning agency and the seafarer is strictly regulated by the Philippine Overseas Employment Administration due to the unaccounted consequences that these contracts produce, mostly in the form of work-related risks and injuries. In economics, these are referred to as "externalities," which are unintended effects or consequences of an activity that affects the parties but are not reflected and imposed as a cost.[87]

In employing seafarers, the manning agency and the shipping company, which have control over the ship, bear the burden of complying with safety regulations. When externalities such as occupational hazards are not accounted for, they escape the burden of shouldering the cost of keeping the vessel safe for their seafarers.[88]

Imposing a liability induces the employers and the injured seafarers to be burdened with the cost of the harm when they fail to take precautions. This process of "internalization" means the consequences and costs are accounted for and are attributed to the party who causes the harm.[89] Thus, the occupational hazards are internalized through a claim of damages paid by the employer. Seafarers are compensated for the injuries they suffered.

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[87] 1 ROBERT COOTER, *LAW AND ECONOMICS* 44 (4th ed., 2003).

[88] *Toquero v. Crossworld Marine Services, Inc.*, G.R. No. 213482, June 26, 2019 [Per J. Leonen, Third Division].

[89] 1 ROBERT COOTER, *LAW AND ECONOMICS* 310 (4th ed., 2003).

Here, the law intervenes to achieve allocative efficiency between the parties. Allocative efficiency means that both parties reach a mutually beneficial agreement. In a strict economic sense, allocative efficiency concerns the satisfaction of individual preferences where an optimal market is producing goods that consumers are willing to pay.[90] A choice or policy increases allocative efficiency only if it makes an individual better off and no one worse off.[91] Hence, allocative efficiency compels the law to help the parties achieve their goals as fully as possible.[92]

Allocative efficiency for both employers and seafarers is reached by internalizing the occupational hazards through a seafarer's employment contract and Philippine Overseas Employment Administration regulations.[93] The disability claims internalize the costs of injury and hazards by making employers compensate the seafarers without the need to bargain for the amount and process of compensation. When employers internalize the costs of the harm caused, they are constrained to both comply with legal standards and invest in the seafarers' safety.[94] On the other hand, seafarers are also constrained to internalize the cost of their injuries if they will not take precautions.[95] This policy provides an incentive for the seafarers to work efficiently because the risks to occupational hazards are reduced. By internalizing the externalities through legal standards, both employers and seafarers are encouraged to work at an efficient level.

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[90] Robert D. Cooter, *Economic Theories of Legal Liability*, 5 THE JOURNAL OF ECONOMIC PERSPECTIVES 11, 16 (1991).

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

[92] 1 ROBERT COOTER, *LAW AND ECONOMICS* 236 (4th ed., 2003).

[93] See *Toquero v. Crossworld Marine Services, Inc*., G.R. No. 213482, June 26, 2019 [Per J. Leonen, Third Division].

[94] *Id*. at 313. 1 ROBERT COOTER, *LAW AND ECONOMICS* 313 (4th ed., 2003).

[95] *Id*. at 324.

In cases of worker's compensation, no fault is needed to be ascribed to employers for the seafarers to qualify for disability compensation. This no-fault system guarantees injured employees a "relatively swift and certain compensation for their job-related harms. The system relieves employees and their employers of the costs of demonstrating and challenging fault, respectively."[96] Thus, to be compensated under the POEA Standard Employment Contract, seafarers only need to prove that: (1) an injury is work-related; and (2) it occurred during the period indicated in a seafarer's employment contract.[97]

V

In *Sharpe Sea Personnel, Inc. v. Mabunay, Jr.*,[98] this Court awarded damages in favor of the seafarer due to the company's belated release of disability assessment and its scheme to discredit the findings of a seafarer's doctor for noncompliance with the third doctor rule. These were considered as acts of bad faith that justified the award of damages:

By not timely releasing Dr. Cruz's interim disability grading, petitioners revealed their intention to leave respondent in the dark regarding his future as a seafarer and forced him to seek diagnosis from private physicians. Petitioners' bad faith was further exacerbated when they tried to invalidate the findings of respondent's private physicians, for his supposed failure to move for the appointment of a third-party physician as required by the POEA-SEC, despite their own deliberate concealment of their physician's interim diagnosis from respondent and the labor tribunals. Thus, this Court concurs with the Court of Appeals when it stated:

> We also grant petitioner's prayer for moral and exemplary damages. Private respondents acted in bad faith when they belatedly submitted petitioner's Grade 8 disability rating only via their motion for reconsideration before the NLRC. By

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[96] *Id*. at 386.

[97] *Quizora v. Denholm Crew Management (Philippines), Inc*., 676 Phil. 313, 327 (2011) [Per *J*. Mendoza, Third Division].

[98] G.R. No. 206113, November 6, 2017, <http://elibrary.judiciary.gov.ph/the bookshelf/showdocs/1/635657>[Per *J*. Leonen, Third Division].

> withholding such disability rating from petitioner, the latter was compelled to seek out opinion from his private doctors thereby causing him mental anguish, serious anxiety, and wounded feelings, thus, entitling him to moral damages of ₱50,000.00. Too, by way of example or correction for the public good, exemplary damages of ₱50,000.00 is awarded.[99] (Citation omitted)

Similarly, here, petitioner claims to be entitled to moral and exemplary damages because respondents refused to pay their contractual obligations in bad faith. He alleges that they employed a scheme to deceive and escape their liability.

The award of moral damages is proper. Respondents insist that petitioner failed to follow the procedure when they themselves committed a breach by keeping petitioner in the dark about his medical assessment. Despite this, respondents, in bad faith, disregarded the findings of petitioner's chosen physicians as petitioner supposedly failed to consult a third doctor. Due to respondents' delay, petitioner was left on his own after they had stopped supporting his treatment and therapy.

In addition, the award of exemplary damages is correct by way of example or correction for the public good. Accordingly, it is also proper to grant attorney's fees.

VI

Petitioner claims that he is entitled to sickness allowance and reimbursement of medical and transportation expenses under Section 20(A)(3) of the POEA Standard Employment Contract, which states:

> 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

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[99] *Id*.

his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

The Labor Arbiter, the National Labor Relations Commission, and the Court of Appeals uniformly ruled that petitioner is entitled to the award of sickness allowance. In accordance with the POEA Standard Employment Contract, the payment of sickness allowance to petitioner shall not exceed 120 days. Hence, this Court affirms the award.

On the reimbursement of medical and transportation expenses amounting to ₱85,000.00, petitioner claims that he incurred expenses because respondents had stopped providing financial support since January 2013. He also alleges that he incurred transportation expenses because he had to travel from Iloilo to be treated in Manila.

Reimbursement of the medical and transportation expenses, as provided in the POEA Standard Employment Contract, is subject to the condition that the expenses have a corresponding official receipt or other available proof. Here, since petitioner failed to substantiate his expenses by presenting any receipt or proof, this Court cannot award the reimbursement of medical and transportation expenses.

WHEREFORE, the Petition is **GRANTED**. The March 22, 2016 Decision and July 19, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 137635 are **REVERSED** and **SET ASIDE**. Respondents Wilhelmsen Smith Bell Manning, Inc. and Wilhelmsen Ship Management and/or Fausto R. Preysler, Jr. are jointly and severally liable to pay petitioner Jessie C. Esteva the following:

1. Total and permanent disability benefits in the amount of Ninety Thousand US Dollars (US$90,000.00) or its equivalent in Philippine Peso at the time of payment, plus ten percent (10%) of it as attorney's fees;
2. Sickness allowance amounting to Two Thousand Seven Hundred US Dollars (US$2,700.00) or its equivalent in Philippine Peso at the time of payment;
3. Moral damages amounting to One Hundred Thousand Pesos (₱100,000.00); and
4. Exemplary damages amounting to One Hundred Thousand Pesos (₱100,000.00).

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until its full satisfaction.[100]

SO ORDERED.

Peralta (*Chairperson*), *Caguioa,*[*] *Hernando*, and *Inting, JJ.*, concur.

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

[*] Designated additional Member per Raffle dated July 1, 2019.

THIRD DIVISION

[G.R. No. 227899. July 10, 2019]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **COURT OF APPEALS, P/SUPT. DIONICIO BORROMEO *y* CARBONEL and SPO1 JOEY ABANG *y* ARCE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; AS A RULE, THE PROSECUTION IS PRECLUDED FROM CHALLENGING OR QUESTIONING JUDGMENTS OF ACQUITTAL OR ANY JUDGMENT RENDERED IN FAVOR OF THE DEFENDANT IN A CRIMINAL CASE; AN EXCEPTION IS WHEN THE LOWER COURT, IN ACQUITTING THE ACCUSED, COMMITTED NOT MERELY REVERSIBLE ERRORS OF JUDGMENT, BUT ALSO EXERCISED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, OR A DENIAL OF DUE PROCESS, THEREBY RENDERING THE ASSAILED JUDGMENT NULL AND VOID.— Generally, the prosecution is precluded from challenging or questioning judgments of acquittal or any judgment rendered in favor of a defendant in a criminal case. This is based on the constitutional prohibition against double jeopardy found in Section 21, Article III of the 1987 Constitution which states that "[no] person shall be twice put in jeopardy of punishment for the same offense." There is, however, a recognized exception to this rule as discussed in the case of *People, et al. v. Court of Appeals, et al.*, *viz.*: As a general rule, the prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case. The reason is that a judgment of acquittal is immediately final and executory, and the prosecution is barred from appealing lest the constitutional prohibition against double jeopardy be violated. x x x **Despite acquittal, however, either the offended party or the accused may appeal, but only with respect to the civil aspect of the decision. Or, said judgment of acquittal may be assailed through a petition for *certiorari* under Rule 65 of the Rules of Court showing that the lower court, in acquitting the accused, committed not merely**

reversible errors of judgment, but also exercised grave abuse of discretion amounting to lack or excess of jurisdiction, or a denial of due process, thereby rendering the assailed judgment null and void. If there is grave abuse of discretion, granting petitioner's prayer is not tantamount to putting private respondents in double jeopardy. Here, the CA undoubtedly exercised grave abuse of discretion amounting to lack or excess of jurisdiction, when it downgraded the penalty imposed on private respondents. As such, any correction or modification in the penalty previously imposed will not violate the prohibition against double jeopardy.

2. CRIMINAL LAW; REVISED PENAL CODE; CONSPIRACY; IT IS NECESSARY THAT A CONSPIRATOR SHOULD HAVE PERFORMED SOME OVERT ACT AS A DIRECT OR INDIRECT CONTRIBUTION TO THE EXECUTION OF THE CRIME COMMITTED; LIKE THE PHYSICAL ACTS CONSTITUTING THE CRIME ITSELF, THE ELEMENTS OF CONSPIRACY MUST BE PROVEN BEYOND REASONABLE DOUBT; CASE AT BAR.— [T]he Court's ruling in *Bahilidad v. People* is instructive: There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. **While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts. It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators.** x x x A finding of conspiracy requires the same degree of proof required to establish the crime—proof beyond reasonable doubt. x x x On the basis of x x x the evidence adduced by the

prosecution, there is no iota of doubt that Borromeo is a co-conspirator under the provisions of Section 8, in relation to Section 26(d), Article II of R.A. No. 9165. It, likewise, bears stressing that although the prosecution, at the time of the filing of the Information, used the words "protector" or "coddler" to specify Borromeo's participation in the conspiracy, the Court considers the terminology as immaterial there being a clear finding of conspiracy. The use of the words "protector" or "coddler" should not be taken to mean that his liability as co-conspirator is automatically negated or reduced.

3. ID.; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ANY PERSON CONVICTED UNDER R.A. NO. 9165, REGARDLESS OF THE PENALTY IMPOSED, CANNOT AVAIL OF THE GRADUATIONS UNDER ARTICLE 65 OF THE REVISED PENAL CODE AS THE FORMER IS A SPECIAL LAW.— As to the penalty imposed, it was erroneous for the CA to apply Article 65 of the Revised Penal Code (RPC) as this is not applicable to R. A. No. 9165. Section 98 of R.A. No. 9165 clearly states: **Section 98.** *Limited Applicability of the Revised Penal Code.* – Notwithstanding any law, rule or regulation to the contrary, the provisions of the Revised Penal Code (Act No. 3814), as amended, shall not apply to the provisions of this Act, except in the case of minor offenders. Where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided herein shall be *reclusion perpetua* to death. x x x The Court reiterates that R.A. No. 9165 is clear and leaves no room for interpretation. Any person convicted under the said law, regardless of the penalty imposed, cannot avail of the graduations under Article 65 of the RPC as R.A. No. 9165 is a special law. The penalty imposed is life imprisonment, which is an indivisible penalty.

4. STATUTORY CONSTRUCTION; STATUTES; INTERPRETATION OF; WHEN THE WORDS AND PHRASES OF THE STATUTE ARE CLEAR AND UNEQUIVOCAL, THEIR MEANING MUST BE DETERMINED FROM THE LANGUAGE EMPLOYED AND THE STATUTE MUST BE TAKEN TO MEAN EXACTLY WHAT IT SAYS.— The elementary rule in statutory construction is that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean

exactly what it says. If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is expressed in the Latin maxims "*index animi sermo*" (speech is the index of intention) and "*verba legis non est recedendum*" which translates to "from the words of a statute there should be no departure."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Ramirez Lazaro Bello Rico-Sabado & Associates Law Office for respondent Dionicio Borromeo.

Raul A. Bo for respondent Joey Abang.

D E C I S I O N

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

Before the Court is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court assailing the Decision[2] dated June 29, 2016 and Amended Decision[3] dated August 25, 2016 of the Court of Appeals (CA) in CA-G.R. CR HC No. 06271, finding Police Superintendent Dionicio Borromeo *y* Carbonel (P/Supt. Borromeo) and Senior Police Officer 1 Joey Abang *y* Arce (SPO1 Abang) (private respondents) guilty of acting as protectors or coddlers under Section 8, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The present petition seeks to reverse and set aside these decisions, insofar as the penalties are concerned, for having been issued with grave abuse of discretion. Further, it prays for the imposition of the penalty of life imprisonment and a fine ranging from ₱500,000.00 to ₱10,000,000.00 on private respondents for being liable as co-conspirators.

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

[2] Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba, concurring; *id*. at 46-90.

[3] *Id*. at 92-97.

The Facts

The private respondents were charged with violation of Section 8, Article II of R.A. No. 9165, in relation to Section 26(d), Article II of the same Act, to wit:

Section 8. *Manufacture of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall engage in the manufacture of any dangerous drug.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall manufacture any controlled precursor and essential chemical.

The presence of any controlled precursor and essential chemical or laboratory equipment in the clandestine laboratory is a *prima facie* proof of manufacture of any dangerous drug. It shall be considered an aggravating circumstance if the clandestine laboratory is undertaken or established under the following circumstances:

1. Any phase of the manufacturing process was conducted in the presence or with the help of minor/s:
2. Any phase of the manufacturing process was established or undertaken within one hundred (100) meters of a residential, business, church or school premises;
3. Any clandestine laboratory was secured or protected with booby traps;
4. Any clandestine laboratory was concealed with legitimate business operations; or
5. Any employment of a practitioner, chemical engineer, public official or foreigner.

The maximum penalty provided for under this Section shall be imposed upon any person, who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos

(₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

x x x x x x x x x

Section 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:

1. Importation of any dangerous drug and/or controlled precursor and essential chemical;
2. Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;
3. Maintenance of a den, dive or resort where any dangerous drug is used in any form;
4. **Manufacture of any dangerous drug and/or controlled precursor and essential chemical; and**
5. Cultivation or culture of plants which are sources of dangerous drugs. (Emphasis Ours)

On July 9, 2008, combined forces from the Naguilian Police Station, La Union Police Provincial Office, Philippine Drug Enforcement Agency and barangay officials, raided the house and piggery owned by one Eusebio Tangalin (Eusebio) in Barangay Upper Bimmotobot, Naguilian, La Union. The day before, local government officials, upon the instructions of Naguilian Mayor Abraham Rimando (Mayor Rimando), conducted a surprise inspection of the said property. Reports reached Mayor Rimando that the aforesaid place was reeking with a foul odor detrimental to the welfare of residents living near the property.[4]

On the strength of a search warrant issued, authorities combed the property and confirmed their initial suspicion – that it was a clandestine *shabu* laboratory. Seized from the compound were truckloads of dangerous drugs (*shabu*), controlled precursors, essential chemicals, equipment and paraphernalia utilized for

[4] *Id*. at 50-51, 59.

the manufacture of *shabu*. Police authorities, likewise, arrested on the spot Dante Palaganas (Dante) and Andy Tangalin (Andy), the alleged caretakers of the property.[5]

On July 11, 2008, another raid was made on the same property. The property held so many prohibited drug equipment and paraphernalia that the police had to procure a second search warrant to confiscate other materials, this time hidden, they discovered, from plain view.[6]

Dante testified that the private respondents were heavily involved in the operations of the *shabu* laboratory.[7] The private respondents were then members of the Philippine National Police (PNP) Regional Mobile Group (RMG) in La Union, with P/Supt. Borromeo serving as Regional Head.[8] Dante testified that he was instructed by P/Supt. Borromeo to find a lot suitable for a piggery business.[9]

Through the intervention of Andy, Dante eventually found a secluded lot in Upper Bimmotobot. Apprised of this find, P/Supt. Borromeo told Dante to immediately relay the information to Joselito Artuz (Joselito). Dante met with Joselito and three unnamed Chinese nationals, and together they drove to the site. Joselito was pleased with the location and told Dante to negotiate with the landowner. Subsequently, Joselito, as represented by Dante, leased the property from Eusebio. P/Supt. Borromeo told Dante to omit his name from any transaction.[10]

As it turned out, there was no piggery business, but a clandestine *shabu* laboratory. Joselito and his Chinese associates systematically transformed the bare land into a thriving hotbed

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[5] *Id*. at 52-53, 59.

[6] *Id*. at 54-55, 60.

[7] *Id*. at 55-56, 60.

[8] *Id*. at 52, 56-57.

[9] *Id*. at 57.

[10] *Id*. at 57-58, 205.

of *shabu*. Dante stood watch as the laboratory efficiently yielded gallons and gallons of *shabu*. The end products were transported to Cesmin Beach Resort in Bauang, La Union and shipped later on to Manila. Dante dutifully reported the day's produce to P/Supt. Borromeo. SPO1 Abang, on the other hand, closely monitored Dante. Every time they would meet in the RMG headquarters, SPO1 Abang always inquired about the activities of Dante as caretaker of the Upper Bimmotobot laboratory. He once remarked to Dante that his job was easy and he will kill him if he does not do his job. SPO1 Abang had once visited the laboratory himself.[11]

During the surprise inspection on July 8, Dante, after taking some phone calls, approached Police Chief Inspector Erwin Dayag (PC/Insp. Dayag) and SPO1 Alan S. Banana and offered them ₱20,000,000.00 to instantly desist from the inspection. When PC/Insp. Dayag asked Dante to produce a firearm the latter claimed to possess, Dante talked first with someone on the phone, and then remarked to PC/Insp. Dayag that he knew a Colonel Borromeo. He then told the caller that his gun was being seized from him by police officers. The police officers traced the numbers Dante called on that day to P/Supt. Borromeo.[12]

When the police returned with a search warrant on July 9, Dante again called P/Supt. Borromeo and asked him what he should do. P/Supt. Borromeo advised Dante to make a run for it.[13]

In an Information dated July 10, 2008, Dante, Andy and several John Does, were accused of violating Section 8, Article II of R.A. No. 9165, in relation to Section 26(d), Article II of the same law.[14] The accusatory portion of the Information reads:

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[11] *Id*. at 205-206.

[12] *Id*. at 206.

[13] *Id*. at 206-207.

[14] *Id*. at 47.

The undersigned Provincial Prosecutor accuses DANTE TOMAS PALAGANAS, ANDY TANGALIN, and several JOHN DOES of the offense of *Violation of Section 8 of Article II of Republic Act 9165 in relation to Sec. 26(d)*[,] *Article II of the same law*, committed as follows:

That on or about the 9th day of July, 2008 and for sometime prior thereto, in the Municipality of Naguilian, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without authority of law, conspiring, confederating and helping one another, did then and there willfully, unlawfully, and feloniously manufacture, produce, prepare or process methamphetamine hydrochloride or *shabu*, a dangerous drug of still undetermined volume, directly by means of chemical synthesis.

CONTRARY TO LAW.[15] (Italics in the original)

The Information was later amended to include the name of P/Supt. Borromeo, among others. The Amended Information dated February 18, 2009 reads:

The undersigned Provincial Prosecutor accuses DANTE TOMAS PALAGANAS, ANDY TANGALIN, P/SUPT. DIONICIO C. BORROMEO, JOSELITO ARTUZ y ADEA @ GEORGE CORDERO and OTHER JOHN DOES of the offense of VIOLATION OF SECTION 8[,] ARTICLE II OF REPUBLIC ACT NO. 9165 IN RELATION TO SEC, 26(d), ARTICLE II OF SAME LAW, committed as follows:

That on or about the 9th day of July 2008 and for sometime prior thereto, in the Municipality of Naguilian, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, conspiring, confederating and helping one another under the following manner to wit: accused DANTE TOMAS PALAGANAS and ANDY TANGALIN acted as caretakers, accused JOSELITO ARTUZ y ADEA @ GEORGE CORDERO, as financier. P/SUPT. DIONICIO BORROMEO, **acted as protector/coddler** and the JOHN DOES who are foreigners, as chemists, and did then and there willfully, unlawfully, and feloniously manufacture, produce, prepare or process methamphetamine hydrochloride or *shabu*, a dangerous drug, directly by means of chemical synthesis in a parcel of land located at Barangay

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[15] *Id*.

Bimmotobot, Naguilian, La Union by camouflaging their unlawful activity by making it appear that they are engaged in piggery business.

The crime is attended by the following aggravating circumstances:

1.) The manufacturing, producing, preparing and processing activities are undertaken in a place within one hundred meters from residential premises;
2.) The manufacturing, producing, preparing and processing activities are concealed under the guise of a legitimate business operation;
3.) The manufacturing, producing, preparing and processing activities employed a public official. A police officer who acted as a protector/coddler of the aforesaid illegal activities;
4.) Accused John Does are foreigners; and
5.) An unlicensed firearm is confiscated from the accused Dante Palaganas.

ACTS CONTRARY TO LAW.[16] (Emphases and underscoring in the original)

Dante, Andy, P/Supt. Borromeo, and Joselito entered a plea of "Not Guilty" during their arraignment.[17]

This Amended Information was amended anew to include the names of other accused, including SPO1 Abang. The Second Amended Information dated July 3, 2009 reads:

The undersigned Provincial Prosecutor accuses DANTE TOMAS PALAGANAS, ANDY TANGALIN, P/SUPT. DIONICIO C. BORROMEO, JOSELITO A. ARTUZ aka George Cordero; [SPO1] JOEY A. ABANG[,] PO1 RODOLFO S. DAMIAN, JR., PO2 WARLITO BANAN, JR., EUSEBIO TANGALIN and OTHER JOHN DOES of the offense of VIOLATION OF SECTION 8[.] ARTICLE II OF REPUBLIC ACT NO. 9165 IN RELATION TO SECTION 26(d), ARTICLE II OF [THE] SAME LAW, committed as follows:

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[16] *Id*. at 48.

[17] *Id*. at 99.

That on or about the 9th day of July 2008 and for sometime prior thereto, in the Municipality of Naguilian, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, conspiring, confederating and helping one another[,] did then and there willfully, unlawfully, and feloniously manufacture, produce, prepare or process methamphetamine hydrochloride or *shabu*, a dangerous drug, directly by means of chemical synthesis in a parcel of land located at Barangay Bimmotobot, Naguilian, La Union by camouflaging their unlawful activity by making it appear that they are engaged in piggery business.

The crime is attended by the following aggravating circumstances:

1. The manufacturing, producing, preparing and processing activities are undertaken in a place within one hundred meters from residential premises;
2. The manufacturing, producing, preparing and processing activities are concealed under the guise of a legitimate business operation;
3. The manufacturing, producing, preparing and processing activities employed a public official[. A] police [officer] who acted as a protector/coddler of the aforesaid illegal activities;
4. Accused John Does are foreigners; and
5. An unlicensed firearm is confiscated from the accused Dante Palaganas.

CONTRARY TO LAW.[18] (Emphasis and underlining in the original)

On July 12, 2008, Dante released a voluntary confession in the form of a Sworn Statement and assisted by counsels from the Public Attorney's Office. Ten days after, or on July 22, 2008, Dante executed a supplemental statement relative to his confession on July 12, 2008. In both sworn statements, he admitted that he was the caretaker of the Bimmotobot *shabu* laboratory and admitted to the major participation of P/Supt. Borromeo as co-operator thereof.[19]

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[18] *Id*. at 49.

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

Dante was qualified as a state witness.[20] His testimony was corroborated on its material points by the testimony of the other witnesses for the prosecution, namely: Anastacio Marquez, Dominador Huligario, SPO4 Ambrosio Sayson, Mayor Rimando, Teresita Abellera, PO1 Jose Bucasas, Reynalyn Valdez, PC/Insp. Marlon Bankey Canam and PO3 Mervin R. Reyes.[21]

The private respondents vehemently denied the accusations against them and alleged that Dante had an axe to grind against them.[22]

P/Supt. Borromeo denied the accusations of Dante against him as follows: that he provided Dante defense lawyers; that he was providing Dante and his wife money for their support; that he used the Provincial Jail Warden to deliver support to Dante; that he looked for a site for the establishment of a *shabu* laboratory; that he has been to Bimmotobot, Naguilian, La Union; that Dante acted as caretaker of the *shabu* laboratory under his instructions; that he sent text messages to Dante in the course of the latter's work as caretaker; that he dealt with Dante during the construction stage and as regards maintenance of the laboratory; and that he knew Joselito. P/Supt. Borromeo, likewise, claimed that since there is no evidence to prove his guilt, Dante is being used to falsely testify against him.[23]

SPO1 Abang, for his part, denied that he had been communicating with Dante. Upon inquiry as to why Dante would falsely testify against him, he guessed that it was probably because they got into a fight sometime in the last week of August 2007.[24]

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[20] *Id*. at 62.

[21] *Id*. at 61.

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

[23] *Id*.

[24] *Id*. at 114.

In its Decision[25] dated June 5, 2013, the Regional Trial Court (RTC) of Bauang, La Union, Branch 67, in Crim. Case No. 3662-BG, found the private respondents guilty beyond reasonable doubt of the crime charged. P/Supt. Borromeo was held liable as a co-conspirator, while SPO1 Abang, a protector or coddler. The dispositive portion of the decision reads:

> **WHEREFORE**, judgment is hereby rendered finding accused **P/Supt. DIONICIO BORROMEO y CARBONEL**, **GUILTY** beyond reasonable doubt of the crime of Violation of Section 8 of Article II of Republic Act No. 9165[,] in relation to Section 26(d), Article II of the Same Law[,] and is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Ten Million Pesos (Php 10,000,000.00); accused **SPO1 JOEY ABANG y ARCE, GUILTY** beyond reasonable doubt of Violation of Section 8 of Article II of Republic Act 9165 and is hereby sentenced an Indeterminate Sentence of Twelve (12) years and One (1) day[,] as Minimum[,] to Twenty (20) years[,] as Maximum[,] of Imprisonment and to pay a fine of Five Hundred Thousand Pesos (Php 500,000.00), respectively.
>
> Cost of suit to be paid by accused.
>
> SO ORDERED.[26] (Emphases in the original)

On appeal, the CA sustained the private respondents' conviction, but modified the penalty imposed on P/Supt. Borromeo. The appellate court held that the trial court wrongly sentenced P/Supt. Borromeo when it imposed upon the latter the maximum penalty of life imprisonment with the corresponding fine of ₱10,000,000.00 – the penalty imposed upon those who organize, manage or act as a "financier." The CA ratiocinated that since P/Supt. Borromeo was charged and arraigned as a protector or coddler under Section 8,[27] Article II of R.A. No. 9165, the

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[25] Rendered by Judge Ferdinand A. Fe; *id.* at 98-128.

[26] *Id.* at 128.

[27] **Section 8.** *Manufacture of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – x x x

x x x x x x x x x

corresponding penalty for protectors or coddlers should be imposed upon him.

In its Decision[28] dated June 29, 2016, the CA disposed as follows:

WHEREFORE, premises considered, the appeal is DISMISSED. The assailed Decision dated 5 June 2013 of the [RTC] of Bauang, La Union. Branch 67 in Criminal Case No. 3662-BG is **MODIFIED**. The Accused-Appellants P/Supt. Dionicio Borromeo and PO3 Joey Abang are hereby sentenced to an indeterminate sentence of twelve (12) years and one (1) day[,] as minimum[,] to twenty (20) years[,] as maximum[.] of imprisonment and to pay a fine of five hundred thousand pesos (Php500.000.00).

SO ORDERED.[29] (Emphases in the original)

On August 25, 2016, the CA rendered an Amended Decision[30] whereby it corrected itself. It further amended the dispositive portion to conform with Section 28,[31] Article II of R.A. No. 9165. Section 28 imposes the maximum penalty when the unlawful act is committed by a government official or employee. The CA disposed as follows:

WHEREFORE, premises considered, the appeal is **DISMISSED**. The assailed Decision dated 5 June 2013 of the [RTC] of Bauang, La Union, Branch 67 in Criminal Case No. 3662-BG is **MODIFIED**. The

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The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[28] *Rollo*, pp. 46-90.

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

[30] *Id*. at 92-97.

[31] **Section 28.** – *Criminal Liability of Government Officials and Employees*. – The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees.

Accused-Appellants are hereby sentenced to suffer the penalty of imprisonment for **seventeen (17) years, four (4) months and one (1) day to twenty (20) years** and to pay a fine of five hundred thousand pesos (Php500,000.00). **The penalty of absolute perpetual disqualification from any public office is also imposed upon Accused-Appellants P/Supt. Dionicio Borromeo and PO3 Joey Abang.**

SO ORDERED.[32] (Emphases in the original)

Hence, the present petition.

The Issues

I. WHETHER OR NOT THE CA ERRED WHEN IT REDUCED THE PENALTY TO BE IMPOSED ON P/SUPT. BORROMEO, IN PATENT VIOLATION OF LAW AND JURISPRUDENCE;

II. WHETHER OR NOT THE PENALTY OF LIFE IMPRISONMENT SHOULD LIKEWISE BE IMPOSED ON SPO1 ABANG; and

III. WHETHER OR NOT THE CA ERRED IN APPLYING ARTICLE 65 OF THE REVISED PENAL CODE (RPC) AS BASIS FOR MODIFYING THE PENALTIES IMPOSED ON THE PRIVATE RESPONDENTS.[33]

Ruling of the Court

The petition is meritorious.

Generally, the prosecution is precluded from challenging or questioning judgments of acquittal or any judgment rendered in favor of a defendant in a criminal case. This is based on the constitutional prohibition against double jeopardy found in Section 21, Article III of the 1987 Constitution which states that "[no] person shall be twice put in jeopardy of punishment for the same offense." There is, however, a recognized exception to this rule as discussed in the case of *People, et al. v. Court of Appeals, et al.*,[34] *viz.*:

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[32] *Rollo*, p. 96.

[33] *Id*. at 13.

[34] 755 Phil. 80 (2015).

As a general rule, the prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case. The reason is that a judgment of acquittal is immediately final and executory, and the prosecution is barred from appealing lest the constitutional prohibition against double jeopardy be violated. Section 21, Article III of the Constitution provides:

> Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Despite acquittal, however, either the offended party or the accused may appeal, but only with respect to the civil aspect of the decision. Or, said judgment of acquittal may be assailed through a petition for *certiorari* under Rule 65 of the Rules of Court showing that the lower court, in acquitting the accused, committed not merely reversible errors of judgment, but also exercised grave abuse of discretion amounting to lack or excess of jurisdiction, or a denial of due process, thereby rendering the assailed judgment null and void. If there is grave abuse of discretion, granting petitioner's prayer is not tantamount to putting private respondents in double jeopardy.[35] (Citations omitted and emphasis Ours)

Here, the CA undoubtedly exercised grave abuse of discretion amounting to lack or excess of jurisdiction, when it downgraded the penalty imposed on private respondents. As such, any correction or modification in the penalty previously imposed will not violate the prohibition against double jeopardy.

To recapitulate, the private respondents were charged and found guilty by the trial court for violation of Section 8, Article II of R.A. No. 9165, in relation to Section 26(d), Article II of same law. The pertinent sections provide:

Section 8. *Manufacture of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – **The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall**

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[35] *Id*. at 97-98.

be imposed upon any person, who, unless authorized by law, shall engage in the manufacture of any dangerous drug.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall manufacture any controlled precursor and essential chemical.

The presence of any controlled precursor and essential chemical or laboratory equipment in the clandestine laboratory is a *prima facie* proof of manufacture of any dangerous drug. It shall be considered an aggravating circumstance if the clandestine laboratory is undertaken or established under the following circumstances:

(a) Any phase of the manufacturing process was conducted in the presence or with the help of minor/s:
(b) Any phase of the manufacturing process was established or undertaken within one hundred (100) meters of a residential, business, church or school premises;
(c) Any clandestine laboratory was secured or protected with booby traps;
(d) Any clandestine laboratory was concealed with legitimate business operations; or
(e) Any employment of a practitioner, chemical engineer, public official or foreigner.

The maximum penalty provided for under this Section shall be imposed upon any person, who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

x x x x x x x x x

Section 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:

(a) Importation of any dangerous drug and/or controlled precursor and essential chemical;
(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;
(c) Maintenance of a den, dive or resort where any dangerous drug is used in any form;
(d) Manufacture of any dangerous drug and/or controlled precursor and essential chemical; and
(e) Cultivation or culture of plants which are sources of dangerous drugs. (Emphases and underlining Ours)

The RTC held that the prosecution proved beyond reasonable doubt the existence of conspiracy to manufacture dangerous drugs. That P/Supt. Borromeo, as co-conspirator, played a key role based on the evidence adduced by the prosecution. As to SPO1 Abang, the trial court held him liable as protector or coddler as he was merely acting on orders given to him by his superior, P/Supt. Borromeo, in furtherance of the latter's role and interest in the conspiracy. When the case was appealed to the CA, the findings of the RTC were affirmed, but the CA modified the penalty insofar as P/Supt. Borromeo was concerned. In so doing, the CA ratiocinated that the corresponding penalty for protectors or coddlers should be imposed upon P/Supt. Borromeo since the latter was charged and arraigned under the Second Amended Information dated July 3, 2009 for merely acting as a protector or coddler under Section 8, Article II of R.A. No. 9165.

The undersigned Provincial Prosecutor accuses DANTE TOMAS PALAGANAS, ANDY TANGALIN, P/SUPT. DIONICIO C. BORROMEO, JOSELITO A. ARTUZ aka George Cordero; [SPO1] JOEY A. ABANG, PO1 RODOLFO S. DAMIAN, JR., PO2 WARLITO BANAN, JR., EUSEBIO TANGALIN and OTHER JOHN DOES of the offense of VIOLATION OF SECTION 8[,] ARTICLE II OF REPUBLIC ACT NO. 9165 IN RELATION TO SECTION 26(d), ARTICLE II OF [THE] SAME LAW, committed as follows:

That on or about the 9th day of July 2008 and for sometime prior thereto, in the Municipality of Naguilian, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the

above-named accused, without authority of law, conspiring, confederating and helping one another[,] did then and there[,] willfully, unlawfully, and feloniously manufacture, produce, prepare or process methamphetamine hydrochloride or *shabu*, a dangerous drug, directly by means of chemical synthesis in a parcel of land located at Barangay Bimmotobot, Naguilian, La Union by camouflaging their unlawful activity by making it appear that they are engaged in piggery business.

The crime is attended by the following aggravating circumstances:

a. The manufacturing, producing, preparing, and processing activities are undertaken in a place within one hundred meters from residential premises;
b. The manufacturing, producing, preparing and processing activities are concealed under the guise of a legitimate business operation;
c. The manufacturing, producing, preparing and processing activities employed a public official [. A] police [officer] who acted as a protector/coddler of the aforesaid illegal activities;
d. Accused John Does are foreigners; and
e. An unlicensed firearm is confiscated from the accused Dante Palaganas.

CONTRARY TO LAW.[36] (Emphases and underlining in the original)

Interestingly, in said decision, the CA itself opined that P/Supt. Borromeo may not have merely acted as protector or coddler but may have actually participated in the conspiracy to manufacture dangerous drugs. The pertinent portion of the CA decision reads:

The prosecution presented in evidence, among others, the written extrajudicial confession of Palaganas, where he disclosed that [P/Supt. Borromeo] initially ordered him to scout for a lot where they could construct a piggery. He would then personally inspect the lots that he suggested. When he thought that one of the lots that was suggested would be ideal for their piggery, he instructed Palaganas to coordinate with accused Artuz so that he could likewise inspect

[36] *Rollo*, p. 49.

it. When both [P/Supt. Borromeo] and accused Artuz agreed that the lot found on Upper Bimmotobot, Naguilian, La Union was to their liking, [P/Supt. Borromeo] monitored the construction of the piggery through Palaganas. [P/Supt. Borromeo] also monitored the manufacture of *shabu* through Palaganas. He even berated him when he wanted to stop working as a caretaker of the clandestine *shabu* laboratory because of the foul odor. Evidently, [P/Supt. Borromeo] provided both moral assistance to and moral ascendancy over Palaganas.

Palaganas also recounted that Accused-Appellant SPO1 Abang dissuaded him from leaving the piggery. He would regularly check on him and kept him in line whenever Palaganas would drop by Camp Oscar Florendo, Parian, San Fernando City, La Union. He would threaten to kill him whenever the latter would falter in his duties as caretaker of the clandestine *shabu* laboratory. He even personally visited the clandestine *shabu* laboratory on Upper Bimmotobot, Naguilian, La Union sometime in July 2005.

Evidently, Accused-Appellant P/Supt. Borromeo may not be merely acting as protector or coddler but may have actually participated in the conspiracy to manufacture *shabu* in their clandestine laboratory. Although Palaganas testified in court that unidentified Chinese nationals were the ones who cooked *shabu* on four (4) separate occasions, he also testified that Accused-Appellant P/Supt. Borromeo used his influence, power and position to preserve the clandestine nature of the conduct of manufacturing of *shabu*.

It follows then that Accused-Appellant P/Supt. Borromeo's liability may be that of a principal. Then again, P/Supt. Borromeo was specifically charged and arraigned under the Amended Information for acting as protector or coddler. As such, his participation in the commission of the offense is akin to that of an accomplice or even an accessory. Clearly, there is a variance in the participation or complicity of Accused-Appellant P/Supt. Borromeo. Convicting Accused/Appellant P/Supt. Borromeo as a principal under an information charging him as an accomplice or accessory would be in contravention of his constitutional right to be informed of the nature and cause of the accusation against him under Section 14, Article III of the 1987 Constitution because a lesser responsibility does not necessarily include a greater responsibility.

We find and so hold that the trial court wrongly sentenced the Accused Appellant P/Supt. Borromeo with the maximum penalty of life imprisonment and to pay a fine of Ten Million Pesos, Philippine

Currency (Php 10,000,000.00). The said penalty is imposed upon those who were found to be guilty beyond reasonable doubt of manufacturing dangerous drugs and upon those who organize, manage or act as a "financier." x x x.[37] (Citations omitted)

The foregoing clearly shows P/Supt. Borromeo's active contribution and participation in the conspiracy which undoubtedly makes him a co-conspirator. In this regard, the Court's ruling in *Bahilidad v. People*[38] is instructive:

> There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. **While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.**
>
> **It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators.** Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.[39] (Citations omitted and emphasis Ours)

A finding of conspiracy requires the same degree of proof required to establish the crime—proof beyond reasonable doubt.[40]

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[37] *Id*. at 79-80, 89.

[38] 629 Phil. 567 (2010).

[39] *Id*. at 575.

[40] *People v. De Chavez, et al*., 633 Phil. 468, 482 (2010).

This was clearly evaluated and discussed by the RTC in its decision, *viz*.:

From the evidence adduced by the prosecution, the Court is convinced that P/Supt. Dionicio Borromeo is part of the conspiracy that established and operated the clandestine *shabu* laboratory in Barangay Bimmotobot, Naguilian, La Union.

Borromeo played a key role in the conspiracy. It was him who initially ordered Palaganas to scout for a lot where a piggery could be put up. He personally checked the places found by Palaganas and rejected those that were earlier shown by Palaganas for being near to populated areas. He also directed Palaganas to contact Artuz so that the latter could inspect the places that were scouted. Artuz arrived on two separate occasions to inspect the scouted places. The first was when the (sic) inspected the lot found by Palaganas near the cockpit arena of Naguilian in the company of Chinese nationals which he eventually rejected because there were houses nearby. The second when Palaganas found the lot in Upper Bimmotobot which he described as "beautiful" and Artuz with Chinese companions arrived for an ocular inspection. The lot at Upper Bimmotobot was finally approved by Artuz and after the execution of a Memorandum of Agreement between the owner Eusebio Tangalin and Palaganas who represented Artuz. The lot was improved and constructions were introduced thereon with the money provided by Artuz. Later, the place became the site of the Bimmotobot Clandestine *Shabu* Laboratory. **All these activities were monitored by Borromeo, through Palaganas who was reporting to him regularly.**

When the *Shabu* laboratory was already operating, Palaganas regularly reported to Borromeo about the operation. The results of the cooking sessions of the chemicals by the Chinese men particularly the number of containers of cooked chemicals were **reported periodically by Palaganas to Borromeo**. After each cooking session, the cooked chemicals placed inside the containers were brought to Cesmin Beach Resort and eventually to Manila, by the men of Artuz. Thereafter, Artuz paid Palaganas fat sums of money as reward.

When the inspection of the place was conducted by the team from the municipal government of Naguilian, Palaganas was in contact with Borromeo through cellphone and even namedropped him, when PCI Dayag asked him where his firearm was. Likewise, **when Search**

Warrant No. 2008-08 was being implemented, Palaganas also talked with Borromeo through cellphone. The cellphone conversations were registered in the simpacks of the cellphone of Palaganas which were later transcripted (Exhibit "MMM") by PCI Lizardo and IO3 Azurin and the CIDG, which showed the telephone number of Borromeo – 09209180208 as confirmed by the Telephone Directory of PNP PRO 1 (Exhibit "BBB" and sub-markings). Incidentally, when Borromeo testified in Court, he admitted that the aforesaid number (09209180208) belongs to him.[41] (Emphases and underlining Ours)

On the basis of the foregoing and the evidence adduced by the prosecution, there is no iota of doubt that Borromeo is a co-conspirator under the provisions of Section 8, in relation to Section 26(d), Article II of R.A. No. 9165. It, likewise, bears stressing that although the prosecution, at the time of the filing of the Information, used the words "protector" or "coddler" to specify Borromeo's participation in the conspiracy, the Court considers the terminology as immaterial there being a clear finding of conspiracy. The use of the words "protector" or "coddler" should not be taken to mean that his liability as co-conspirator is automatically negated or reduced.

Here, both the First and Second Amended Informations charged all the accused with violation of Section 26(d), Article II of R.A. No. 9165 in relation to Section 8, Article II of the same law, or conspiracy to manufacture dangerous drugs. The first amendment was made to include the name of P/Supt. Borromeo, among others, and specified his participation in the said conspiracy, *i.e.*, as protector or coddler. The Information was later further amended to include the name of SPO1 Abang as co-conspirator. It must be emphasized, however, that although the final amendment no longer specified the role or participation of each accused in the conspiracy, it does not alter the fact that P/Supt. Borromeo's participation as co-conspirator, specifically as protector or coddler, was proven beyond reasonable doubt.

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[41] *Rollo*, p. 121.

The evidence on record clearly showed that the participation of P/Supt. Borromeo, who at that time occupied a position in the government moreso the PNP, was diabolical in all respects as he used his power and influence and had a major participation as co-operator in the maintenance of the clandestine *shabu* laboratory.

P/Supt. Borromeo's participation was not limited to merely protecting the violators nor facilitating their escape. His co-respondent and co-conspirators regularly reported to and updated him of the operations in the *shabu* laboratory. He monitored all the illegal activities through Dante, who acted under his control and carried out specific instructions coming from him. These acts sufficiently established his pivotal role in the conspiracy. Thus, there was no logical reason for the CA to downgrade his liability from that of a co-conspirator to a mere coddler or protector.

As to the participation and liability of SPO1 Abang, the Court is convinced that he is also a co-conspirator. Contrary to the RTC's findings, SPO1 Abang was not just acting on orders of his boss, P/Supt. Borromeo. SPO1 Abang was, in fact, ensuring the regular and orderly operations of the Bimmotobot *shabu* factory. Moreover, the evidence adduced by the prosecution sufficiently established his knowledge of and active participation in the conspiracy, to wit: (1) SPO1 Abang was the recruiter and handler of Dante; (2) Dante reported to both private respondents; (3) SPO1 Abang regularly checked and inquired about Dante's work at Upper Bimmotobot. On one occasion, Dante attempted to leave his job in the *shabu* laboratory, but SPO1 Abang employed force and threatened his life. He allegedly told Dante, "Just stay in your work because that is an easy job, you just watch over the place, if you will not do it, I will kill you";[42] (4) SPO1 Abang was also the bodyguard of P/Supt. Borromeo.

SPO1 Abang's participation ensured the success of the operations of the clandestine *shabu* laboratory. As such, he

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[42] *Id*. at 122.

cannot be considered a mere accessory to the involvement of P/Supt. Borromeo.

As to the penalty imposed, it was erroneous for the CA to apply Article 65 of the Revised Penal Code (RPC) as this is not applicable to R.A. No. 9165. Section 98 of R.A. No. 9165 clearly states:

> **Section 98.** *Limited Applicability of the Revised Penal Code.* – Notwithstanding any law, rule or regulation to the contrary, the provisions of the Revised Penal Code (Act No. 3814), as amended, shall not apply to the provisions of this Act, except in the case of minor offenders. Where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided herein shall be *reclusion perpetua* to death.

The CA, likewise, incorrectly applied the doctrine in *People v. Mantalaba*,[43] which is diametrically opposed and not on all fours with the case at bar, with Mantalaba pertaining to minor offenders, and the accused in this case being police officers.

> Generally, it is erroneous to designate the penalty imposed under a special penal law with the terms provided for in the [RPC]. The only exception in such case is when the special penal law imposed penalties that were actually taken from the [RPC] in its technical nomenclature. In such exceptional cases, the duration, correlation and legal effects of the penalties under the [RPC] would also be observed.[44] (Citations omitted)

The elementary rule in statutory construction is that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says.[45] If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is expressed in the Latin maxims "*index*

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[43] 660 Phil. 461 (2011).

[44] *Rollo*, p. 95.

[45] *Padua v. People*, 581 Phil. 489, 500-501 (2008).

animi sermo" (speech is the index of intention) and "*verba legis non est recedendum*" which translates to "from the words of a statute there should be no departure."[46]

The Court reiterates that R.A. No. 9165 is clear and leaves no room for interpretation. Any person convicted under the said law, regardless of the penalty imposed, cannot avail of the graduations under Article 65 of the RPC as R.A. No. 9165 is a special law. The penalty imposed is life imprisonment, which is an indivisible penalty.

Finally, it cannot be gainsaid that the mandate of the PNP is to enforce the law, prevent and control crimes, maintain peace and order, and ensure public safety and internal security with the active support of the community.[47] Police officers, like the private respondents, in the guise of law protecting officials, are conspicuous examples of wolves in sheep's clothing. As members of the police force, it is their topmost priority to protect the people and uphold the law, but instead, they took advantage of their power and position to satisfy their own greed.

WHEREFORE, premises considered, the petition is hereby **GRANTED.** The Decision dated June 29, 2016 and Amended Decision dated August 25, 2016 of the Court of Appeals, in CA-G.R. CR HC No. 06271, are hereby **REVERSED** and **SET ASIDE** for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Judgment is hereby rendered finding private respondent **P/SUPT. DIONICIO BORROMEO *y* CARBONEL GUILTY** beyond reasonable doubt of the crime of Violation of Section 8, Article II of Republic Act No. 9165, in relation to Section 26(d), Article II of the same law and is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Ten Million Pesos (₱10,000,000.00). Private respondent

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[46] Agpalo, Ruben, *Statutory Construction*, 3rd Edition.

[47] PNP Mission and Vision, <www.pnp.gov.ph> visited last March 4, 2019.

SPO1 JOEY ABANG *y* ARCE is also found **GUILTY** beyond reasonable doubt of the crime of Violation of Section 8, Article II of Republic Act No. 9165, in relation to Section 26(d), Article II of the same law and is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Ten Million Pesos (₱10,000,000.00).

The penalty of absolute perpetual disqualification from any public office is also imposed upon the private respondents.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 228000. July 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONALD PALEMA *y* VARGAS, RUFEL PALMEA *y* BAUTISTA, LYNDON SALDUA *y* QUEZON, and VIRGO GRENGIA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; A SPECIAL COMPLEX CRIME PERPETRATED WHEN, BY REASON OR ON THE OCCASION OF ROBBERY, HOMICIDE IS COMMITTED; ELEMENTS; IF THE OFFENDER'S ORIGINAL CRIMINAL DESIGN DOES NOT CLEARLY COMPREHEND ROBBERY, BUT ROBBERY FOLLOWS THE HOMICIDE AS AN AFTERTHOUGHT OR AS A MINOR INCIDENT OF THE HOMICIDE, THE CRIMINAL ACTS SHOULD BE VIEWED AS CONSTITUTIVE OF TWO OFFENSES

AND NOT OF A SINGLE COMPLEX OFFENSE.— Robbery with homicide is a special complex crime punished under Article 294 of the Revised Penal Code. It is perpetrated when, by reason or on the occasion of robbery, homicide is committed. x x x To hold a person liable for this crime, the prosecution must establish the following elements with proof beyond reasonable doubt: (1) the taking of personal property with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking was done with *animo lucrandi*; and (4) on the occasion of the robbery or by reason thereof, homicide was committed. Nevertheless, it must be stressed that in robbery with homicide, the offender's original intent must be the commission of robbery. The killing is merely incidental and subsidiary. However, when the offender's "original criminal design does not clearly comprehend robbery, but robbery follows the homicide as an afterthought or as a minor incident of the homicide, the criminal acts should be viewed as constitutive of two offenses and not of a single complex offense."

2. ID.; ID.; ID.; ALL THOSE WHO CONSPIRE TO COMMIT ROBBERY WITH HOMICIDE ARE GUILTY AS PRINCIPALS OF SUCH CRIME, ALTHOUGH NOT ALL PROFITED AND GAINED FROM THE ROBBERY; IF A ROBBER TRIES TO PREVENT THE COMMISSION OF HOMICIDE AFTER THE COMMISSION OF THE ROBBERY, HE IS GUILTY ONLY OF ROBBERY AND NOT OF ROBBERY WITH HOMICIDE.— *When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.* If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY; THE MATTER OF ASSIGNING VALUES TO DECLARATIONS

ON THE WITNESS STAND IS BEST AND MOST COMPETENTLY PERFORMED BY THE TRIAL COURT JUDGE, WHO HAS THE UNMATCHED OPPORTUNITY TO OBSERVE THE WITNESSES AND TO ASSESS THEIR CREDIBILITY BY THE VARIOUS INDICIA AVAILABLE BUT NOT REFLECTED ON THE RECORD; CASE AT BAR.— [W]hile accused-appellants argued that the Regional Trial Court erred in giving weight to the prosecution witnesses' testimonies, they failed to present evidence to the contrary. Settled is the rule that "the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial [court] judge," who has "the unmatched opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected on the record." As such, this Court gives great weight and respect to the judge's assessment of the witnesses' credibility.

4. **CRIMINAL LAW; REVISED PENAL CODE; CONSPIRACY; LIKE ANY OTHER ELEMENT OF THE CRIME, THE EXISTENCE OF CONSPIRACY MUST BE ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT.—** Article 8 of the Revised Penal Code provides that "conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Like any other element of a crime, the existence of conspiracy must be established by proof beyond reasonable doubt. Here, the Court of Appeals correctly affirmed the Regional Trial Court's finding of conspiracy. It found that accused-appellants' acts were coordinated and complementary with each other, demonstrating the existence of conspiracy. It ruled that the prosecution was able to establish that accused-appellants came in two (2) groups. The first group—accused-appellants Palema and Palmea, along with Manzanero—attacked Enicasio and took his cellphone. The second group—accused-appellants Grengia and Saldua, along with Ladra—joined the fray when they saw Enicasio fighting back. Notably, while accused-appellants denied participating in the crime, they all admitted that they were at the Calamba Town Plaza during the incident. Moreover, their claim that they did not come as a group, but were with other people, remains a bare allegation after they failed to present the testimonies of the individuals who were supposedly with them that night. As the Regional Trial Court correctly ruled: Granting that they were merely present during the robbery, his

inaction does not exculpate him. To exempt himself from criminal liability, a conspirator must have performed an overt act to dissociate or detach himself from the conspiracy to commit the felony and prevent the commission thereof. Accused offered no evidence that they performed an overt act neither to escape from the company of the assailants or to prevent the assault from taking place.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; ONCE AN APPEAL IS ACCEPTED BY THE SUPREME COURT, IT WILL HAVE THE AUTHORITY TO REVIEW MATTERS NOT SPECIFICALLY RAISED OR ASSIGNED AS ERRORS BY THE PARTIES, IF THEIR CONSIDERATION IS NECESSARY IN ARRIVING AT A JUST RESOLUTION OF THE CASE.— It is a basic principle in criminal law that a notice of appeal throws the entire case open for review. Once an appeal is accepted by this Court, it will have "the authority to review matters not specifically raised or assigned as errors by the parties, if their consideration is necessary in arriving at a just resolution of the case." In *Ramos v. People*: At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

6. ID.; ID.; ARRAIGNMENT; DEFINED AS THE FORMAL MODE AND MANNER OF IMPLEMENTING THE CONSTITUTIONAL RIGHT OF AN ACCUSED TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM; CASE AT BAR.— Arraignment is defined as "the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him." Its purpose is to notify the accused of "the reason for his indictment, the specific charges he is bound to face, and the corresponding penalty that could be possibly meted against him." It is not an idle ceremony that can be brushed aside peremptorily, but an indispensable requirement of due process, the absence of which renders the proceedings against the accused void. In *Borja v. Mendoza*, this Court stressed that an arraignment

not only satisfies the due process clause of the Constitution, but also affords an accused an opportunity to know the precise charge that confronts him or her. Through arraignment, the accused is placed in a position to enter his or her plea with full knowledge of the consequences. It is a vital aspect of any criminal prosecution, demanded by no less than the Constitution itself. In *People v. Verra*, this Court held that "just as an accused is accorded this constitutional protection, so is the State entitled to due process in criminal prosecutions. It must similarly be given the chance to present its evidence in support of a charge." There is no proof of Marqueses' arraignment here. After the Warrant of Arrest issued against him was returned, his name appeared again only in the Regional Trial Court's April 1, 2013 Order. There, the Regional Trial Court did not state if he was belatedly arraigned or if he made a voluntary appearance. It merely granted the prosecution's Motion to correct the names of Saldua and Palmea. Without evidence of Marqueses' arraignment, the Regional Trial Court had no authority to order his acquittal. All proceedings against him before the Regional Trial Court are deemed void.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

LEONEN, *J.*:

In the prosecution of robbery with homicide, the State must prove that the offender's original intent was to commit the crime of robbery. The killing of the victim must only be incidental. Nevertheless, the act of taking the victim's life may occur before, during, or even after the robbery. So long as the homicide was committed by reason of or on the occasion of the robbery, the offense committed is the special complex crime of robbery with homicide.[1]

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[1] *People v. De Jesus*, 473 Phil. 405, 427-428 (2004) [*Per Curiam*, *En Banc*].

For this Court's resolution is a Notice of Appeal[2] challenging the May 18, 2016 Decision[3] of the Court of Appeals in CA-G.R. CR HC No. 06250. The Court of Appeals affirmed the Regional Trial Court's April 15, 2013 Decision[4] convicting Ronald Palema y Vargas (Palema), Rufel Palmea *y* Bautista (Palmea), Lyndon Saldua *y* Quezon (Saldua), and Virgo Grengia (Grengia) of the crime of robbery with homicide.

Palema, Palmea, Saldua, Grengia, along with Lester Ladra *y* Palema (Ladra), Edwin Manzanero *y* Bautista (Manzanero), and Marvin Marqueses (Marqueses), were charged with the crime of robbery with homicide in an Information[5] dated November 26, 2007, which read:

> That on or about 11:05 p.m. of 10 November 2007, at the Calamba Town Plaza at Brgy. 6, Calamba City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating, and with the accused minor Lester Ladra y Palema acting with discernment, with intent to gain, by means [of] violence against and intimidation of persons, did then and there willfully, unlawfully and feloniously take and steal the Nokia N70 cellular phone worth Php 13,000.00 of Enicasio Depante y Rosales against the consent of the said Enicasio Depante y Rosales and on the occasion and by reason of the robbery, with intent to kill, abuse of superior strength [and] cruelty, did then and there willfully and feloniously assault, maul and stab to death Enicasio Depante y Rosales the damage and prejudice of the heirs of the said victim.
>
> Contrary to law.[6]

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[2] *Rollo*, pp. 15-19.

[3] *Id*. at 2-14. The Decision was penned by Associate Justice Nina G. Antonio-Valenzuela, and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion of the Sixth Division, Court of Appeals, Manila.

[4] CA *rollo*, pp. 14-23. The Decision, in RTC Criminal Case No. 15363-2007-C, was penned by Acting Judge Louis P. Acosta of Branch 36, Regional Trial Court, Calamba City.

[5] RTC records, pp. 1-2.

[6] *Id*. at 1.

On arraignment, Ladra, Saldua, Palema, Palmea, Manzanero, and Grengia pleaded not guilty to the crime charged. Marvin, meanwhile, remained at large.[7]

After pre-trial, trial on the merits ensued.[8]

The evidence for the prosecution revealed that at around 11:00 p.m. on November 10, 2007, Enicasio Depante (Enicasio), his common-law spouse, his son Erickson Depante (Erickson), and his stepdaughter Jamie Rose Baya (Jamie) were sitting on the benches at the Calamba Town Plaza. That was when three (3) men, who were later identified as Palema, Palmea, and Manzanero, approached Enicasio.[9]

Suddenly, Palmea threw a punch at Enicasio in an attempt to grab his phone. Palema simultaneously pulled out a knife and tried to stab him in the abdomen, but was warded off by Jamie, making him drop his knife. Once he retrieved his knife, Palema stabbed Enicasio on the right thigh, causing him to fall on the ground. Then, Grengia and Saldua arrived at the scene and joined in beating Enicasio.[10]

Seated on the bench near Enicasio, Erickson stood and tried to help his father, but Ladra stopped him. When he resisted, Ladra attempted to stab him, but he was able to evade the attack and immediately look for a weapon. Upon reaching his father, however, he saw that Enicasio had already collapsed from the stab wounds. Erickson brought his father to the Calamba Medical Center, but he later died from blood loss.[11]

Enicasio's family testified that they incurred medical expenses in the amount of ₱20,000.00, although they were only able to

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[7] *Rollo*, p. 3.

[8] *Id*. at 4.

[9] *Id*.

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

[11] *Id*. at 5.

keep ₱3,751.00 worth of receipts.[12] They, likewise, testified that they had incurred funeral expenses worth ₱120,000.00, as evidenced by a receipt[13] they submitted.[14]

During the case's pendency, Manzanero died as shown in his Death Certificate.[15] Thus, the Regional Trial Court dismissed the case against him.[16]

Meanwhile, Saldua, Palema, Palmea, and Grengia denied the accusations against them. They insisted that while all of them were at the Plaza during the incident, they were not there as a group, but with different people. They maintained that the police officers mistook them for the men who attacked Enicasio.[17]

Ladra, for his part, changed his plea to guilty after the prosecution had presented its evidence. The Regional Trial Court then directed him to take the witness stand to answer some clarificatory questions.[18]

Ladra testified that he was with Palema, Palmea, Saldua, Marqueses, and Manzanero at the night of the incident. All of them drunk, they decided to eat gruel at the Plaza. Later, Palema's girlfriend approached them and complained that a man in a red shirt had acted indecently toward her.[19] Believing that the man was Enicasio, the group attacked and mugged him. When he saw Enicasio fighting back, he took Marqueses' knife and stabbed Enicasio twice.[20]

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[12] RTC records, p. 145. The RTC Decision stated only ₱3,000.00 as hospital expenses. This Court modifies it to ₱3,751.00, the actual amount stated in the receipt based on the records.

[13] *Id*. at 144.

[14] *Rollo*, p. 5.

[15] RTC records, pp. 99-99A.

[16] *Rollo*, p. 4.

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

[18] *Id*. at 6.

[19] *Id*.

[20] *Id*. at 7.

Ladra added that Grengia was not with them and did not participate in the attack.[21]

In its March 6, 2012 Decision,[22] the Regional Trial Court found Ladra guilty beyond reasonable doubt:

> WHEREFORE, the Court finds the accused minor LESTER LADRA GUILTY of "Robbery with Homicide" and in consideration with the privileged mitigating circumstance of minority and voluntary plea of GUILTY, sentenced (*sic*) him to the 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 and ordered (*sic*) to pay the heirs of the victim the following sums of money:
>
> 1. Fifty Thousand Pesos (₱50,000.00) for civil indemnity;
> 2. Fifty Thousand Pesos (₱50,000.00) for moral damages; and,
> 3. Fifty Thousand Pesos (₱50,000.00) for exemplary damages.
>
> In accordance with the provisions of the Juvenile Justice and Welfare Act of 2006 (R.A. No. 9344) and jurisprudence thereto, the service of sentence is suspended and the accused is remanded to the custody of The National Training School for Boys (NTSB) for proper disposition. The NTSB has thirty (30) days from receipt of this Decision to comply with the post sentenced procedure of the law and submit to this Court their recommendation for disposition.
>
> SO ORDERED.[23]

In its March 31, 2012 Progress Report,[24] the National Training School for Boys recommended to the trial court that the case against Ladra be dismissed and that he be discharged to his parents.[25]

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[21] *Id*.

[22] RTC records, pp. 230-231.

[23] *Id*.

[24] *Id*. at 235-237.

[25] *Id*. at 239.

On March 5, 2013, the Regional Trial Court granted the National Training School for Boys' recommendation and ordered that the case against Ladra be dismissed. Similarly, it ordered that Ladra be discharged to his parents' custody.[26]

On April 15, 2013, the Regional Trial Court rendered another Decision,[27] convicting Palema, Palmea, Saldua, and Grengia of the crime of robbery with homicide. The dispositive portion of the Decision read:

> WHEREFORE, the Court finds the accused Ronald Palema, Rufel Palmea, Lyndon Saldua, and Virgo Grengia guilty beyond reasonable doubt of the crime of Robbery with Homicide and sentenced (*sic*) to suffer the penalty of *Reclusion Perpetua* in view of the absence of any mitigating or aggravating circumstance.
>
> Accused Ronald Palema, Rufel Palmea, Lyndon Saldua, and Virgo Grengia are also ordered to pay the heirs of the victim, the following:
>
> (a) ₱3,000.00 as hospital expenses;
> (b) ₱120,000.00 for funeral expenses;
> (c) ₱75,000.00 as moral damages[.]
>
> The Court hereby acquits Marvin Marqueses of the crime charged.
>
> SO ORDERED.[28]

The Regional Trial Court found that the four (4) men conspired in committing the crime charged. It brushed aside their defense of denial and decreed that they failed to offer any evidence showing that they performed an overt act that would have prevented the assault from happening.[29]

The Regional Trial Court acquitted Marqueses for the prosecution's failure to present evidence that he participated in committing the crime.[30]

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[26] *Id*. at 252.

[27] CA *rollo*, pp. 14-23. The Decision was penned by Acting Judge Louis P. Acosta of Branch 36, Regional Trial Court, Calamba City.

[28] *Id*. at 23.

[29] *Id*. at 22.

[30] *Id*.

On appeal,[31] Saldua, Palema, Palmea, and Grengia argued that the Regional Trial Court erred in giving credence to the prosecution witnesses' testimonies. They maintained that while Jamie testified that her stepfather was stabbed in the right thigh,[32] the post-mortem examination revealed that the sole stab wound sustained by the victim was on the right side of his buttocks.[33] They also questioned Erickson's ability to testify, alleging that he was not fully focused on the incident since he was texting before the crime happened.[34]

Moreover, assuming that the prosecution sufficiently identified the assailants, the men contended that it still failed to establish the existence of conspiracy in committing the offense. They insisted that while they allegedly attacked the victim, there was no community of interest among them.[35]

In its assailed May 18, 2016 Decision,[36] the Court of Appeals dismissed the group's appeal and affirmed the Regional Trial Court Decision. It ruled that the trial court's appreciation of the witnesses' credibility is entitled to great respect and would not be disturbed on appeal absent any showing that it overlooked the material facts that could have affected the results of the case.[37]

The Court of Appeals further declared that while Erickson was using his phone when the incident occurred, this did not affect the value of his testimony. It noted that since he was seated near Enicasio at the time of the assault, it was impossible for him not to witness the events that transpired.[38]

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[31] *Id*. at 44-61.

[32] *Id*. at 54.

[33] *Id*. at 53.

[34] *Id*. at 56.

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

[36] *Rollo*, pp. 2-14.

[37] *Id*. at 12.

[38] *Id*.

The Court of Appeals dispelled the group's claim that there was no conspiracy, ruling that the prosecution has proved that the men acted in unison in committing the offense. It further noted that in his confession, Ladra himself admitted the existence of conspiracy.[39]

Aggrieved, the group filed a Notice of Appeal,[40] which the Court of Appeals gave due course in its June 15, 2016 Resolution.[41]

In its January 11, 2017 Resolution,[42] this Court required the parties to file their supplemental briefs. However, both accused-appellants[43] and plaintiff-appellee People of the Philippines,[44] through the Office of the Solicitor General, manifested that they would no longer file a supplemental brief and instead adopt all the arguments they raised in their Briefs filed before the Court of Appeals.

The issues to be resolved here are:

First, whether or not the Court of Appeals erred in affirming the conviction of accused-appellants Ronald Palema *y* Vargas, Rufel Palmea *y* Bautista, Lyndon Saldua *y* Quezon, and Virgo Grengia for the crime of robbery with homicide; and

Second, whether or not the acquittal of accused Marvin Marqueses is proper.

I

Robbery with homicide is a special complex crime punished under Article 294 of the Revised Penal Code. It is perpetrated

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[39] *Id*. at 13.

[40] *Id*. at 15-18.

[41] *Id*. at 19.

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

[43] *Id*. at 23-25.

[44] *Id*. at 36-39.

when, by reason or on the occasion of robbery, homicide is committed.[45] Article 294(1) states:

> ARTICLE 294. *Robbery with Violence Against or Intimidation of Persons — Penalties*. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> 1. The penalty of *reclusión perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.

To hold a person liable for this crime, the prosecution must establish the following elements with proof beyond reasonable doubt:

> (1) the taking of personal property with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking was done with *animo lucrandi*; and (4) on the occasion of the robbery or by reason thereof, homicide was committed.[46] (Citation omitted)

Nevertheless, it must be stressed that in robbery with homicide, the offender's original intent must be the commission of robbery. The killing is merely incidental and subsidiary.[47] However, when the offender's "original criminal design does not clearly comprehend robbery, but robbery follows the homicide as an afterthought or as a minor incident of the homicide, the criminal acts should be viewed as constitutive of two offenses and not of a single complex offense."[48]

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[45] *People v. Algarme*, 598 Phil. 423, 446 (2009) [Per J. Brion, Second Division].

[46] *People v. Domacyong*, 463 Phil. 447, 459 (2003) [Per J. Puno, Second Division].

[47] *People v. Algarme*, 598 Phil. 423, 446 (2009) [Per J. Brion, Second Division].

[48] *Id*. at 447 *citing People v. Salazar*, 342 Phil. 745 (1997) [Per J. Panganiban, Third Division].

In *People v. De Jesus*,[49] this Court had the opportunity to comprehensively discuss the nature of the crime of robbery with homicide:

> In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery. The intent to commit robbery must precede the taking of human life. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery and homicide, must be consummated.
>
> It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.
>
> Intent to rob is an internal act but may be inferred from proof of violent unlawful taking of personal property. When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified even if the property subject of the robbery is not presented in court. After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner. The prosecution is not burdened to prove the actual value of the property stolen or amount stolen from the victim. Whether the robber knew the actual amount in the possession of the victim is of no moment because the motive for robbery can exist regardless of the exact amount or value involved.

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[49] *People v. De Jesus*, 473 Phil. 405 (2004) [*Per Curiam*, *En Banc*].

When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.

If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.[50] (Emphasis supplied, citations omitted)

In convicting accused-appellants, the Regional Trial Court gave credence to the testimonies of the prosecution witnesses, who recounted that the accused men were the ones who had simultaneously assaulted Enicasio. Based on their testimonies, Manzanero and accused-appellants Palema and Palmea all approached Enicasio and took his cellphone. When Enicasio tried to fight back, Palema stabbed him, causing him to fall. Immediately after, the other accused joined the fray and beat Enicasio.[51]

It is clear that accused-appellants' primary objective was to rob Enicasio. But, by reason or on the occasion of the robbery, Enicasio was stabbed and died as a result.

Finally, while accused-appellants argued that the Regional Trial Court erred in giving weight to the prosecution witnesses' testimonies, they failed to present evidence to the contrary.

Settled is the rule that "the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial [court] judge,"[52] who has "the unmatched

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[50] *Id.* at 427-428.

[51] CA *rollo*, pp. 15-16.

[52] *People v. Dejillo*, 700 Phil. 643, 660-661 (2012) [Per J. Leonardo-De Castro, First Division].

opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected on the record."[53] As such, this Court gives great weight and respect to the judge's assessment of the witnesses' credibility.[54]

II

Insisting on their innocence, accused-appellants argue that the prosecution failed to prove that they conspired in committing the crime charged.[55] They insist that while they acted simultaneously, the prosecution failed to show that there was a unity of purpose among them.[56]

Accused-appellants' argument deserves scant consideration.

Article 8 of the Revised Penal Code provides that "conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Like any other element of a crime, the existence of conspiracy must be established by proof beyond reasonable doubt.[57]

Here, the Court of Appeals correctly affirmed the Regional Trial Court's finding of conspiracy. It found that accused-appellants' acts were coordinated and complementary with each other, demonstrating the existence of conspiracy. It ruled that the prosecution was able to establish that accused-appellants came in two (2) groups. The first group—accused-appellants Palema and Palmea, along with Manzanero—attacked Enicasio and took his cellphone. The second group—accused-appellants Grengia and Saldua, along with Ladra—joined the fray when they saw Enicasio fighting back.[58]

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[53] *Id*. at 661.

[54] *Id*. at 660.

[55] CA *rollo*, p. 57.

[56] *Id*. at 58.

[57] *Benito v. People*, 600 Phil. 616, 619 (2015) [Per *J*. Leonen, Second Division].

[58] *Rollo*, p. 13.

Notably, while accused-appellants denied participating in the crime, they all admitted that they were at the Calamba Town Plaza during the incident. Moreover, their claim that they did not come as a group, but were with other people, remains a bare allegation after they failed to present the testimonies of the individuals who were supposedly with them that night.

As the Regional Trial Court correctly ruled:

> Granting that they were merely present during the robbery, his inaction does not exculpate him. To exempt himself from criminal liability, a conspirator must have performed an overt act to dissociate or detach himself from the conspiracy to commit the felony and prevent the commission thereof. Accused offered no evidence that they performed an overt act neither to escape from the company of the assailants or to prevent the assault from taking place. Their denial, therefore, is of no value. Courts generally view the defenses of denial and alibi with disfavor on account of the facility with which an accused can concoct them to suit his defense. As both evidence are negative and self-serving, they cannot attain more credibility than the testimonies of prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed.[59] (Citations omitted)

III

It is a basic principle in criminal law that a notice of appeal throws the entire case open for review. Once an appeal is accepted by this Court, it will have "the authority to review matters not specifically raised or assigned as errors by the parties, if their consideration is necessary in arriving at a just resolution of the case."[60] In *Ramos v. People*:[61]

> At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and it is the duty of the reviewing

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[59] CA *rollo*, p. 22.

[60] *People v. Pirame*, 384 Phil. 286, 300 (2000) [Per *J.* Quisumbing, Second Division].

[61] G.R. No. 226454, November 20, 2017, <http://elibrary.judiciary.gov.ph/the bookshelf/showdocs/1/63754>[Per *J.* Perlas-Bernabe, Second Division].

tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[62] (Citations omitted)

Here, the Regional Trial Court acquitted Marqueses after having found no evidence of his participation in the crime charged.[63] However, a perusal of the records shows that Marqueses was never arraigned. While the Regional Trial Court, in its January 8, 2008 Order,[64] noted that all the accused were present on arraignment and that they all pleaded not guilty to the crime charged, only the names of accused-appellants Palema, Palmea, Saldua, and Grengia, as with Ladra and Manzanero, were shown in the Certificate of Arraignment.[65] Marqueses' name is nowhere to be found.

Even during the January 17, 2008 pre-trial, Marqueses was absent.[66]

It bears noting that Marqueses was never arrested and remained at large. On March 12, 2008, the Warrant of Arrest[67] issued against him was returned to the trial court as he could not be located at the given address despite effort exerted.[68]

Arraignment is defined as "the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him."[69]

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[62] *Id*.

[63] CA *rollo*, p. 22.

[64] RTC records, p. 29.

[65] *Id*. at 26.

[66] *Id*. at 35-37.

[67] *Id*. at 25.

[68] *Id*. at 43.

[69] *People v. Pangilinan*, 547 Phil. 260, 274 (2007) [Per J. Chico-Nazario, *En Banc*].

Its purpose is to notify the accused of "the reason for his indictment, the specific charges he is bound to face, and the corresponding penalty that could be possibly meted against him."[70] It is not an idle ceremony that can be brushed aside peremptorily, but an indispensable requirement of due process, the absence of which renders the proceedings against the accused void.[71]

In *Borja v. Mendoza*,[72] this Court stressed that an arraignment not only satisfies the due process clause of the Constitution, but also affords an accused an opportunity to know the precise charge that confronts him or her. Through arraignment, the accused is placed in a position to enter his or her plea with full knowledge of the consequences.[73] It is a vital aspect of any criminal prosecution, demanded by no less than the Constitution itself.

In *People v. Verra*,[74] this Court held that "just as an accused is accorded this constitutional protection, so is the State entitled to due process in criminal prosecutions. It must similarly be given the chance to present its evidence in support of a charge."[75]

There is no proof of Marqueses' arraignment here. After the Warrant of Arrest issued against him was returned, his name appeared again only in the Regional Trial Court's April 1, 2013 Order.[76] There, the Regional Trial Court did not state if he was belatedly arraigned or if he made a voluntary appearance. It merely granted the prosecution's Motion to correct the names of Saldua and Palmea.

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[70] *Kummer v. People*, 717 Phil. 670, 687 (2013) [Per J. Brion, Second Division].

[71] *Taglay v. Daray*, 693 Phil. 45 (2012) [Per J. Peralta, Third Division].

[72] 168 Phil. 83 (1977) [Per J. Fernando, Second Division].

[73] *Id.* at 87.

[74] 432 Phil. 279 (2002) [Per J. Puno, First Division].

[75] *Id.* at 283.

[76] RTC records, p. 257.

Without evidence of Marqueses' arraignment, the Regional Trial Court had no authority to order his acquittal. All proceedings against him before the Regional Trial Court are deemed void.

Finally, in line with current jurisprudence,[77] this Court deems it proper to impose exemplary damages and civil indemnity, both in the amount of ₱75,000.00.

WHEREFORE, the appeal is **DISMISSED**. The May 18, 2016 Decision of the Court of Appeals in CA-G.R. CR HC No. 06250 is **AFFIRMED with MODIFICATIONS**. The acquittal of accused Marvin Marqueses is deemed **VACATED**.

Accused-appellants Ronald Palema *y* Vargas, Rufel Palmea *y* Bautista, Lyndon Saldua *y* Quezon, and Virgo Grengia are found **GUILTY** beyond reasonable doubt of robbery with homicide punished under Article 294 of the Revised Penal Code. They are sentenced to suffer the penalty of *reclusion perpetua*. They are also **DIRECTED** to pay the heirs of the victim, Enicasio Depante *y* Rosales, the amounts of: (1) Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; (2) Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity; (3) Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages; (4) Three Thousand Seven Hundred Fifty-One Pesos (₱3,751.00) as hospital expenses; and (5) One Hundred Twenty Thousand Pesos (₱120,000.00) as funeral expenses.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until full satisfaction.[78]

SO ORDERED.

Caguioa,[*] *Reyes, A. Jr., Hernando*, and *Inting, JJ.*, concur.

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[77] *People v. Jugueta*, 783 Phil. 806 (2016) [Per J. Peralta, *En Banc*].

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

[*] Designated additional Member per Raffle dated July 8, 2019.

FIRST DIVISION

[G.R. No. 231839. July 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHAEL RYAN ARELLANO *y* NAVARRO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WHEN THE TRIAL COURT'S FINDINGS HAVE BEEN AFFIRMED BY THE APPELLATE COURT, SAID FINDINGS ARE GENERALLY BINDING UPON THE SUPREME COURT; EXCEPTIONS.— [F]actual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect, if not conclusive effect. This is truer if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon the Court save in settled exceptions such as: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.

2. ID.; ID.; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES; CANNOT BY ITSELF OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OR CONSTITUTE PROOF BEYOND REASONABLE DOUBT; OBTAINS ONLY WHEN NOTHING IN THE RECORDS SUGGEST THAT THE LAW

ENFORCERS INVOLVED DEVIATED FROM THE STANDARD CONDUCT OF OFFICIAL DUTY AS PROVIDED FOR IN THE LAW; CASE AT BAR.— The idea behind according greater weight to the credibility of the police officers in most drugs cases rests not only upon the entrapping officers' positive and straightforward testimonies but more so on the presumption of regularity in the performance of their duties. Nevertheless, the presumption can be rebutted by contrary evidence. And when the presumption is discarded and weighed against the requirement of the law for convicting an accused based no less than on proof beyond reasonable doubt, the balance should tilt in favor of the accused. The primacy of the constitutional presumption of innocence must also be upheld over the presumption of regularity in the performance of public functions, particularly when irregularities visibly attended the case at hand. x x x Accused-appellant's defense of frame up consequently stands on firmer ground than the inconsistent statements and irregular acts of the police officers. This Court will not skirt the issue of the police officers' highly suspicious and ominous demeanor by relying on the presumption of regularity. This presumption, it must be stressed, is not conclusive. Any taint of irregularity affects the whole performance and should make the presumption unavailable. The presumption, in other words, obtains only when nothing in the records suggest that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. But where the official act in question is irregular on its face, as in this case, an adverse presumption arises as a matter of course. The presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt.

3. **ID.; ID.; DEFENSE OF FRAME-UP; VIEWED WITH DISFAVOR BECAUSE IT HAS BECOME A COMMON EXCUSE OF AN ACCUSED THAT CAN EASILY BE FABRICATED AND IS A REGULAR PLOY IN PROSECUTIONS FOR THE ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS.—** A common precept that we often downplay is the defense of frame up. This defense is viewed with disfavor because it has become a common excuse of an accused that can easily be fabricated and is a regular ploy in prosecutions for the illegal sale and possession of dangerous drugs. While We are aware that in some cases, law enforcers resort to the practice of planting

evidence in order to, *inter alia*, harass, nevertheless the defense of frame-up in drug cases requires strong and convincing evidence because of the presumption that the police officers had performed their duties regularly and that they acted within the bounds of their authority.

4. ID.; ID.; IF THE INCULPATORY FACTS AND CIRCUMSTANCES ARE CAPABLE OF TWO OR MORE EXPLANATIONS, ONE OF WHICH IS CONSISTENT WITH THE INNOCENCE OF THE ACCUSED AND THE OTHER CONSISTENT WITH HIS GUILT, THEN THE EVIDENCE DOES NOT FULFILL THE TEST OF MORAL CERTAINTY AND IS NOT SUFFICIENT TO SUPPORT A CONVICTION; ACQUITTAL OF THE ACCUSED, PROPER IN CASE AT BAR.— [I]t is hornbook doctrine that if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. Based on our review and consideration of the facts and the records of this case, we are unconvinced as to the culpability of accused-appellant for the crimes charged. As such, we are constrained to acquit herein 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

BERSAMIN, *C.J.*:

The version and evidence of the State must be free of reasonable doubt to warrant the conviction of the accused for the crime charged against him. Any doubt must be resolved in favor of the accused in view of the presumption of his innocence.

The Case

Through this appeal, the accused-appellant assails the affirmance of his conviction for violations of Section 5, Section

11 and Section 12, all of Republic Act No. 9165 (Comprehensive Dangerous Acts Law of 2002) under the decision promulgated on November 9, 2016 by the Court of Appeals (CA).[1] He had been found and pronounced guilty beyond reasonable doubt of said crimes by the Regional Trial Court (RTC), Branch 13, in Laoag City, Ilocos Norte through the judgment rendered on September 11, 2015 in Criminal Case No. 15491, Criminal Case No. 15492, and Criminal Case No. 15493.[2]

Antecedents

The informations charged the accused-appellant thusly:

Criminal Case No. 15491

That on or about the 18th day of April 2013, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously had in his possession, custody and control, THREE (3) heat sealed transparent plastic sachets containing Methamphetamine Hydrochloride locally known as "Shabu" with an aggregate weight of 0.2143 gram[s], FOUR (4) open transparent plastic sachets containing white residues, beli[e]ve[d] to be Methamphetamine Hydrochloride, without any license or authority, in violation of the aforecited law.

CONTRARY TO LAW.[3]

Criminal Case No. 15492

That on or about the 18th day of April 2013, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously sell and deliver to a poseur buyer One (1) piece plastic sachet containing Methamphetamine Hydrochloride locally

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[1] *Rollo*, pp. 2-20; penned by Associate Justice Ramon R. Garcia, with the concurrence of Associate Justice Leoncia R. Dimagiba and Associate Justice Marie Christine Azcarraga-Jacob.

[2] CA *rollo*, pp. 40-54; penned by Presiding Judge Philip G. Salvador.

[3] Records, p. 1.

known as "*Shabu*" with an aggregate weight of 0.1780 gram, a dangerous drug, without any license or authority, in violation of the aforecited law.

CONTRARY TO LAW.[4]

Criminal Case No. 15493

That on or about the 18th day of April 2013, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously had in his possession, custody and control, TWO (2) folded aluminum foils, a drug paraphernalia, without any license or authority, in violation of the aforecited law.

CONTRARY TO LAW.[5]

Accused-appellant pleaded not guilty to the offenses charged. Trial on the merits then ensued.

The factual and procedural antecedents was rendered by the CA in its assailed decision as follows:

On April 18, 2013, a confidential informant went to the Provincial Anti-Illegal Drugs Special Operations Task Group (PAIDSOTG) office and gave a tip regarding the illegal drug activities of appellant. At around 9:30 a.m. of the same day, Action Officer Police Inspector Jeffrey Taccad summoned PO3 Dalere and PO2 Agtang, PO3 John Dacauang, PO1 Salacup, and PO1 Sarandi for a briefing on the conduct of a buy-bust operation against appellant. During the briefing, the confidential informant made arrangement with appellant for the sale of shabu worth ₱1,000. Appellant agreed and told the confidential informant to meet at Brgy. Buyon, Bacarra, Ilocos Norte. PO3 Dalere was designated as a poseur-buyer upon which he was given a ₱1,000 bill with the initials "JMBD" to be used as the buy-bust money. A pre-operation Police Blotter was entered by PO3 Dalere.

The team proceeded to Brgy. Buyon, Bacarra, Ilocos Norte. Upon arrival thereat, appellant called the confidential informant's cellphone

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[4] *Id*.

[5] *Id*.

instructing the latter to proceed to Room 11 of Farmside Hotel located at 49-B, Raraburan, Laoag City. Unknown to appellant, the call was received by PO3 Dalere who then informed Action Officer Taccad about the change of venue.

Upon arrival at the Farmside Hotel, PO3 Dalere and the confidential informant went to Room 11. Appellant was already standing in front of the room. The confidential informant introduced PO3 Dalere as a friend who was going to buy shabu. Appellant asked PO3 Dalere how much he was going to buy. PO3 Dalere replied "*₱1,000.00 only, pare*". Appellant invited them to enter the room. PO3 Dalere gave to appellant the ₱1000 bill which the latter put in his right pocket. Appellant then picked one (1) plastic sachet containing white crystalline substance on top of the bed and handed it to PO3 Dalere. PO3 Dalere made a missed call to PO2 Salacup, which was the pre-arranged signal to the buy-bust team that the sale had already been consummated. The team entered the room. PO2 Salacup then arrested and conducted a body search on appellant. The ₱1000 buy-bust money was recovered from appellant's right pocket. All the other pieces of evidence found on top of the bed were gathered. When the barangay officials arrived, PO3 Dalere placed his initials "JMBD" on the plastic sachet of shabu bought from appellant including the other plastic sachets of shabu, aluminum foil and a lighter found on top of the bed. In the presence of the barangay officials, the police officers also took photographs and made a Certificate of Inventory of the seized items.

Appellant was then brought to PAIDSOTG office. A letter-request for laboratory examination addressed to the Ilocos Norte Police Provincial Crime Laboratory was prepared to determine the presence of any form of dangerous drugs in the items seized from appellant. PO3 Dalere personally delivered the letter-request and the seized items to the PNP Crime Laboratory which was received by PO3 Padayao. The specimens were then handed to Forensic Chemist Amiely Ann Navarro.

In Chemistry Report No. D-031-2013-IN dated April 18, 2013, Forensic Chemist Navarro found that that plastic sachet appellant sold to PO3 Dalere Hacutina, with the markings "JMBD-1" weighing 0.0876 gram, as well as the three (3) plastic sachets recovered from appellant which were marked as "JMBD-2 to JMBD-4", were likewise positive for Methamphetamine Hydrochloride or shabu. Two (2) opened transparent plastic sachets containing white residue marked as "JMBD-5" and "JMBD-7" were also found positive for shabu.

For the defense, appellant was presented as the lone witness.

Appellant testified that at around 9:00 a.m. on April 18, 2013, he and a female acquaintance were at Room 11 of the Farmside Hotel located at Brgy. Raraburan, Laoag City. When they were about to check out at 12:00 noon, someone knocked at the room. He peeped and saw a man at the door. He asked the man "*Why boss?*" but there was no answer. The man tried to forcibly enter the room but he could not do so because there was a door stopper. The man's companion pointed a gun at him saying "*Buksan mo, putang ina mo*". Another man entered through the window and unlocked the door. When the men were inside the room, they immediately grabbed him. He asked them "*Why boss, why bossing?*" but there was no answer. They handcuffed him and searched his pocket from which they were able to get his cellphone and money. They pulled him outside and they kept hitting his stomach telling him to bring it out. They brought him back inside the room and was told *"These are the things that we have taken from you, it's plenty." He answered "Ana nga ibagbagam a naala yo kanyak? " (What are you saying that you got some things from me?).* When the barangay officials arrived, he begged for their help but to no avail. He was then brought to the PAIDSOTG office. While in detention, he asked P/Insp. Taccad the reason for his arrest and detention but there was no response. When he kept crying and pleading, P/Insp. Taccad told him "*Pasensya kan, biktima ka lang*." On cross-examination, he was asked whether he has filed any criminal nor administrative complaint against the police officers, he answered in the negative.[6]

On September 11, 2015, the RTC rendered judgment finding the accused-appellant guilty as charged, disposing:

WHEREFORE, judgment is hereby rendered finding accused Michael Ryan Arellano y Navarro GUILTY beyond reasonable doubt on all the charges and is therefore sentenced as follows:

1. for illegal possession of shabu with an aggregate weight of 0.2143 gram as charged in Criminal Case No 15491, to suffer the indeterminate penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY to FOURTEEN (14) YEARS and to pay a fine of Php300,000.00;

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

2. for illegal sale of shabu as charged in Criminal Case No. 15492, to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Php500,000.00.

3. for illegal possession of drug paraphernalia as charged in Criminal Case No. 15493, to suffer the indeterminate penalty of imprisonment of SIX (6) MONTHS and ONE (1) DAY as minimum to TWO (2) YEARS FOUR (4) MONTHS and ONE (1) DAY as minimum and to pay a fine of Php10,000.00.

x x x x x x x x x

SO ORDERED.[7]

The accused-appellant challenged the finding of guilty by the RTC, insisting that the apprehending officers had committed irregularities in the performance of their duties; and that the State had not established the identity and integrity of the seized items.

As mentioned, the CA affirmed the convictions, decreeing:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The Decision dated September 11, 2015 of the Regional Trial Court, Branch 13, Laoag City, Ilocos Norte is **AFFIRMED**.

SO ORDERED.[8]

The CA observed that the Prosecution had sufficiently proved beyond reasonable doubt the accused-appellant's guilt for the illegal sale and the illegal possession of illegal drugs as well as the illegal possession of drug paraphernalia by showing through its documentary and testimonial evidence all the elements of the crimes charged; that the testimonies of poseur-buyer PO3 Dalere and his back-up officer PO2 Salacup were entitled to full credence considering that the physical evidence on record supported the same; that there had been no break in the chain of custody of the confiscated drugs and paraphernalia; that the integrity and evidentiary value of the *corpus delicti* had

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[7] CA *rollo*, pp. 53-54.

[8] *Rollo*, p. 19.

been duly preserved; and that the accused-appellant's defenses of denial and frame-up did not prevail because there was no evidence to substantiate them.

Hence, this appeal.

Accused-appellant filed a notice of appeal dated November 25, 2016 with the Court of Appeals. The Office of the Solicitor General (OSG), representing the People of the Philippines, filed a manifestation and motion[9] dated October 26, 2017 that the appellee's brief would be adopted as its supplemental brief in the case. Meanwhile, accused-appellant, represented by the Public Attorney's Office (PAO), filed his supplemental brief[10] dated December 27, 2017.

In his supplemental brief, accused-appellant called out the material inconsistencies in the testimonies of the police operatives, which lends credibility to his defense of denial and frame-up. He asserted that there were significant discrepancies in the testimonies of PO3 Dalere and the other police operatives regarding the presence of a girl in the hotel room where he was allegedly apprehended. Moreover, accused-appellant held that the so-called confiscated drug paraphernalia tested negative for dangerous drugs, which only proved that such were not intended for smoking or consuming any illegal drugs.

Ruling of the Court

The appeal is meritorious.

At the outset, the Court reiterates the settled rule that the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect, if not conclusive effect. This is truer if such findings were affirmed by the appellate court. When the

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[9] *Id*. at 33.

[10] *Id*. at 43-57.

trial court's findings have been affirmed by the appellate court, said findings are generally binding upon the Court"[11] save in settled exceptions such as: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[12]

Upon review, the Court has determined that the present case squarely falls under some of these exceptions.

The idea behind according greater weight to the credibility of the police officers in most drugs cases rests not only upon the entrapping officers' positive and straightforward testimonies but more so on the presumption of regularity in the performance of their duties. Nevertheless, the presumption can be rebutted by contrary evidence. And when the presumption is discarded and weighed against the requirement of the law for convicting an accused based no less than on proof beyond reasonable doubt, the balance should tilt in favor of the accused. The primacy of the constitutional presumption of innocence must also be upheld over the presumption of regularity in the performance of public functions, particularly when irregularities visibly attended the case at hand.

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[11] *People v. Prajes*, G.R. No. 206770, April 02, 2014, 720 SCRA 594, 601, citing *People v. Vitero*, G.R No. 175327, April 3, 2013, 695 SCRA 54, 64-65.

[12] *Id*., citing *People v. Omictin*, G.R. No. 188130, July 26, 2010, 625 SCRA 611, 619.

A common precept that we often downplay is the defense of frame up. This defense is viewed with disfavor because it has become a common excuse of an accused that can easily be fabricated and is a regular ploy in prosecutions for the illegal sale and possession of dangerous drugs. While We are aware that in some cases, law enforcers resort to the practice of planting evidence in order to, *inter alia*, harass, nevertheless the defense of frame-up in drug cases requires strong and convincing evidence because of the presumption that the police officers had performed their duties regularly and that they acted within the bounds of their authority.[13]

The Joint Affidavit[14] of the police officers who took part in the buy-bust operation and apprehension of accused-appellant, as well as their testimonies during the trial were found after trial and appellate review as the true story. On these bases, both court convicted accused-appellant of the crimes charged. There was little, if at all, significant discussion devoted on accused-appellant's claim that he was at the Farmside hotel with a female companion on that fateful day. In the police officers' joint affidavit as well as during their direct examinations, there was no mention at all of such female companion. The only instance when such fact came to be acknowledged by the Prosecution was during the course of the cross examination of PO3 Dalere, the poseur-buyer, as follows:

x x x x x x x x x

Q: It is not also true Mr. Witness that upon entering Room 11 there was female person named Jan Ballesteros who was with the accused?

x x x x x x x x x

A: I saw a female inside the room, ma'am.
Q: This female person you do not know the name?
A: Yes ma'am.[15]

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[13] See *People v. Mamaril*, G.R. No. 171980, October 6, 2010, 632 SCRA 369, 377.

[14] Records, pp. 3-5.

[15] TSN, May 27, 2014, p. 94.

x x x x x x x x x

Q: Did you ask her name?
A: No, your Honor.
Q: At the INPPO Mr. Witness, do you confirm that you brought this female who was inside the room of the accused after the arrest of the accused?
A: I cannot recall, ma'am.
Q: What you only recall was that only the accused was the one whom you brought to the INPPO after his arrest?
A: Yes, ma'am.[16]

x x x x x x x x x

Q: And present inside the room were yourself, the confidential informant, one (1) female and the accused, do you confirm that?
A: Yes, ma'am.
Q: Did you notice where exactly the room was the female staying?

x x x x x x x x x

A: I cannot recall, ma'am.[17]

x x x x x x x x x

Q: On top Mr. Witness, you were to stand inside the room for at least one hour?
A: Yes, ma'am.[18]

x x x x x x x x x

During PO3 Dalere's re-direct examination, he was asked what happened to accused-appellant's female companion. He merely answered that the female companion remained in the room even after the barangay officials arrived in the room. He added no other details because he was supposedly preparing

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[16] *Id*. at 95.

[17] *Id*. at 97.

[18] *Id*. at 99.

the inventory. On re-cross examination, the following were established:

Q: You do not recall exactly if that woman whose name you do not recall was seated in the bed wherein you stated there were items on the bed?
A: No, ma'am.

Q: What do you mean by "no" you do not recall if she was seated on the bed?
A: Yes, your Honor.
Q: However, you confirmed Mr. Witness that when the alleged accused handed you a plastic sachet which you said allegedly contained shabu, this woman was present and she witnessed the handling of the shabu to you?[19]

x x x x x x x x x

Q: Nevertheless, Mr. Witness, this female person, no question was asked of what was she doing inside the room?
A: None, ma'am.
Q: And no case was filed to this companion of the accused inside the room, this woman?
A: None, ma'am.[20]

During his direct examination, PO2 Salacup entirely ignored the presence of the woman companion of accused-appellant during the buy-bust operation:

Q: Aside from you, Officer Dalere, Officer Sarandi, who else entered the room?
A: Inspector Taccad, Inspector David, sir.[21]

x x x x x x x x x

Q: How about the informant, when you were handcuffing the accused?

COURT: Already answered.

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[19] *Id*. at 104-105.

[20] *Id*. at 106.

[21] *Id*. at 127.

A: He was inside aside from the informant, sir.
Q: What was he doing at that time?
A: I cannot recall, your Honor.
Q: Aside from the informant, Michael Arellano, you and Dalere, when you were handcuffing, were there other person[s] inside?
A: None, sir.[22]

Clearly, the police officers were inconsistent in their testimonies. The presence of the accused-appellant's female companion inside a small room was a detail that could simply be overlooked or ignored. Moreover, the female companion was never bodily searched, or questioned, or invited to the police station for investigation. The police officers simply dismissed her presence as inconsequential to the case at hand. They did not offer any explanation as regards the grave omission and even attempted to conceal such fact by hiding behind the presumption or regularity. While we submit that petitioner's allegation of frame-up is evidentiary in nature and are matters for his defense, which must be presented and heard during the trial, we cannot simply turn a blind eye to the incongruous testimonies of the police officers and affirm the findings of the courts below.

While it is true that the accused-appellant could have secured the affidavit of his female companion to bolster his claim of having been framed-up, the same explanation can be ascribed as to why accused-appellant opted not to file any cases against the police officers who participated in the so-called buy-bust operation: fear of reprisal. And as the courts find fault that such inaction from accused-appellant was contrary to human experience, the very same human experience would prompt us to believe that accused-appellant was impelled by his trepidation considering that he was under police custody since his arrest. We cannot afford to be so naive as to afford the police officers all the benefits of our doubt and condemn an accused whose security is at the mercy of the very same police officers.

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[22] *Id*. at 128.

It was not very prudent of the police officers to just release accused-appellant's female companion without first ascertaining what her involvement in the whole transaction or trade was. Such inaction by the police officers was inherently wrong in so many levels. Their indifference to the presence of the lady was suspicious and their failure to even routinely ask for the name and personal details of the said female companion was highly curious.

Accused-appellant's defense of frame up consequently stands on firmer ground than the inconsistent statements and irregular acts of the police officers. This Court will not skirt the issue of the police officers' highly suspicious and ominous demeanor by relying on the presumption of regularity. This presumption, it must be stressed, is not conclusive. Any taint of irregularity affects the whole performance and should make the presumption unavailable. The presumption, in other words, obtains only when nothing in the records suggest that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. But where the official act in question is irregular on its face, as in this case, an adverse presumption arises as a matter of course.[23] The presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt.[24]

Granting for the sake of argument that the chain of custody of the illegal drugs was substantially complied with by the police officers, this does not excuse the leniency of the lower courts in determining the veracity of accused-appellant's defense. This irregularity committed by the police officers militates against the prosecution's case because it not only puts in question the validity of the buy-bust operation by the very officers who are

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[23] *People v. Abetong*, G.R. No. 209785, June 4, 2014, 725 SCRA 304, 317-318, citing *People v. Capuno*, G.R. No. 185715, January 19, 2011, 640 SCRA 233, 251.

[24] *People v. Tan*, G.R. No. 133001, December 14, 2000, 348 SCRA 116, 126.

supposedly adept both in the requirements of the law and the proper execution of their operations, but also discredit the identity of the *corpus delicti*.

Lastly, it is hornbook doctrine that if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.[25] Based on our review and consideration of the facts and the records of this case, we are unconvinced as to the culpability of accused-appellant for the crimes charged. As such, we are constrained to acquit herein accused-appellant.

WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals promulgated on November 9, 2016 is **REVERSED** and **SET ASIDE**. Accused-appellant Michael Ryan Arellano *y* Navarro is hereby **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Prisons is ordered to immediately **RELEASE** accused-appellant from custody, unless he is being held for some other lawful cause, and to **INFORM** this Court, within five (5) days from receipt of this Decision, of the date accused-appellant was actually released from confinement.

SO ORDERED.

Del Castillo, Jardeleza, Gesmundo, and *Carandang, JJ.,*

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[25] *Id*. at 127.

SECOND DIVISION

[G.R. No. 232006. July 10, 2019]

IN RE: THE WRIT OF *HABEAS CORPUS* FOR MICHAEL LABRADOR ABELLANA, *petitioner,* **(detained at the New Bilibid Prisons, Muntinlupa City),** *vs.* **HON. MEINRADO P. PAREDES, in his capacity as Presiding Judge, Regional Trial Court of Cebu City Branch 13, PEOPLE OF THE PHILIPPINES, S/SUPT BENJAMIN DELOS SANTOS (RET.), in his capacity as Chief of Bureau of Corrections,** *respondents.*

SYLLABUS

1. POLITICAL LAW; WRIT OF *HABEAS CORPUS*; A SPEEDY AND EFFECTUAL REMEDY TO RELIEVE PERSONS FROM UNLAWFUL RESTRAINT; CIRCUMSTANCES WHEN THE WRIT MAY ALSO BE AVAILED OF AS A POST-CONVICTION REMEDY; CASE AT BAR.— The high prerogative writ of *habeas corpus* is a speedy and effectual remedy to relieve persons from unlawful restraint. It secures to a prisoner the right to have the cause of his detention examined and determined by a court of justice and to have it ascertained whether he is held under lawful authority. Broadly speaking, the writ of *habeas corpus* extends to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. Thus, the most basic criterion for the issuance of the writ is that the individual seeking such relief be illegally deprived of his freedom of movement or placed under some form of illegal restraint. Concomitantly, if a person's liberty is restrained by some legal process, the writ of *habeas corpus* is unavailing. The writ cannot be used to directly assail a judgment rendered by a competent court or tribunal which, having duly acquired jurisdiction, was not ousted of this jurisdiction through some irregularity in the course of the proceedings. However, jurisprudence has recognized that the writ of *habeas corpus* may also be availed of as a post-conviction remedy when, as a consequence of a judicial

proceeding, any of the following exceptional circumstances is attendant: 1) there has been a deprivation of a constitutional right resulting in the restraint of a person; 2) the court had no jurisdiction to impose the sentence; or 3) the imposed penalty has been excessive, thus voiding the sentence as to such excess. Here, petitioner is invoking the first circumstance. Nevertheless, it must be noted that when the detention complained of finds its origin in what has been judicially ordained, the range of inquiry in a *habeas corpus* proceeding is considerably narrowed. Whatever situation the petitioner invokes from the exceptional circumstances listed above, the threshold remains high. Mere allegation of a violation of one's constitutional right is not enough. The violation of constitutional right must be sufficient to void the entire proceedings. This, petitioner failed to show.

2. **ID.; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO DUE PROCESS; ENTAILS THAT A PARTY IS AFFORDED A REASONABLE OPPORTUNITY TO BE HEARD IN SUPPORT OF HIS CASE AND WHAT IS PROHIBITED IS THE ABSOLUTE ABSENCE OF THE OPPORTUNITY TO BE HEARD; CASE AT BAR.—** In essence, procedural due process entails that a party is afforded a reasonable opportunity to be heard in support of his case and what is prohibited is the absolute absence of the opportunity to be heard. When the party invoking his right to due process was in fact given several opportunities to be heard and to air his side, but it was by his own fault or choice that he squandered these chances, then his cry for due process must fail. Petitioner avers that he has been deprived of his right to due process because of lack of notice of the proceedings in the trial court. To recall, the RTC submitted the case for decision on April 30, 2009 for failure of petitioner and his counsel to appear during the scheduled hearing on the same date for initial presentation of the evidence for the defense. However, petitioner claims that he was not notified of said hearing. He likewise claims that he was not given the notice setting the promulgation of judgment on July 29, 2009. As regards the scheduled hearing on April 30, 2009, even if it were true that petitioner or his counsel was not notified of such, it is still not enough to warrant a finding of denial of due process. For in the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice

but the denial of the opportunity to be heard. To reiterate, as long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process. In this case, the Court finds that petitioner was still afforded opportunity to be heard. x x x [T]he Court agrees with the RTC and the CA that petitioner was not deprived of due process. After all, the Court has consistently held that the crux of due process is simply an opportunity to be heard, or an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Verily, petitioner was able to file several pleadings, including the following: motion to quash the search warrant, motion for physical re-examination and re-weighing of the alleged *shabu* confiscated from him, petition for bail, and demurrer to evidence. Also, he was represented by counsel when all prosecution witnesses testified and his counsel was also able to cross-examine them. Lastly, he was able to file a motion for new trial or reconsideration of the RTC Decision convicting him. A party who was given the opportunity to seek a reconsideration of the action or ruling complained of cannot claim denial of due process of law.

3. **LEGAL ETHICS; ATTORNEYS; GENERALLY, A CLIENT IS BOUND BY THE COUNSEL'S ACTS, INCLUDING EVEN MISTAKES IN THE REALM OF PROCEDURAL TECHNIQUE; AN EXCEPTION IS WHEN THE RECKLESS OR GROSS NEGLIGENCE OF THE COUNSEL DEPRIVES THE CLIENT OF DUE PROCESS OF LAW AND THAT GROSS NEGLIGENCE IS NOT ACCOMPANIED BY THE CLIENT'S OWN NEGLIGENCE OR MALICE; CASE AT BAR.—** Likewise, petitioner's claim of denial of right to competent counsel must fail. While Atty. Albura was indeed negligent when he deliberately failed to appear at the scheduled promulgation of judgment as a sign of protest, the same does not warrant the granting of the petition for the issuance of the writ of *habeas corpus*. On the contrary, petitioner is bound by Atty. Albura's negligence. As held by the Court in *Bejarasco, Jr. v. People*: **The general rule is that a client is bound by the counsel's acts, including even mistakes in the realm of procedural technique**. The rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in

behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself. **A recognized exception to the rule is when the reckless or gross negligence of the counsel deprives the client of due process of law. For the exception to apply, however, the gross negligence should not be accompanied by the client's own negligence or malice,** considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him. x x x Here, Atty. Albura's act of not attending the promulgation of judgment as a sign of protest was clearly an act of negligence. However, the same cannot be characterized as gross negligence as to amount to a clear abandonment of petitioner's cause. As mentioned earlier, Atty. Albura informed petitioner of the schedule of promulgation of judgment. He was also able to file a Motion for New Trial or Reconsideration of the RTC Decision convicting petitioner. At any rate, even if such act constituted gross negligence, the Court finds that petitioner was also negligent. Despite being notified of the scheduled promulgation of judgment, he still failed to attend the same. Worse, he became a fugitive from justice for several months until he was arrested. Even in the subsequent proceedings, petitioner still appears to lack sufficient diligence over his case. He filed a petition for relief from judgment more than six months after his arrest, which was clearly beyond the period allowed by the rules. Moreover, the instant petition had been filed more than five years after the Entry of Judgment of the CA Resolution, making the same final and immutable. Considering that what is at stake is his liberty, petitioner should have exercised the standard of care which an ordinary prudent man devotes to his business. He cannot simply leave the fate of his case entirely to his counsel and later on pass the blame to the latter. Indeed, diligence is required not only from lawyers but also from their clients.

APPEARANCES OF COUNSEL

Salatandre and Associates Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a petition for the issuance of the writ of *habeas corpus* under Rule 102 of the Rules of Court. Petitioner Michael Labrador Abellana (petitioner) prays for his release from prison on the ground that he has been deprived of his rights to due process and to competent counsel.

The Facts

Petitioner was charged before Branch 13, Regional Trial Court, Cebu City (RTC) with violation of Sections 11 and 12, Article II of Republic Act No. (R.A.) 9165 or the Comprehensive Dangerous Drugs Act of 2002. The factual findings by the RTC in its Decision are as follows:

> A search warrant was issued against herein accused by the presiding judge of this court. The accused who is Michael Badajos also known as Michael Badayos is a resident of Bgy. Suba, Cebu City. The search warrant was for violation of Section 11, Article II of RA 9165.
>
> When the team led by P/Supt. Labra arrived, the accused was present. They identified themselves as police officers and informed the accused of the existence of the search warrant. PO2 Maglinte was designated as searcher while PO2 dela Victoria was designated recorder. The search was done in the presence of the accused and barangay tanods of Bgy. Suba.
>
> The sala of the 2-storey house was searched first. Then they found the hanged pants of the accused in the window. There was no other male person in the house. They found in the said front pocket of the accused the following items:
>
> 1. Big transparent plastic pack of white crystalline substance believed to be *shahu*. They marked it SW-MAB-01. They also found *shabu* paraphernalia consisting of the following:
>
> One scissor;
> Two disposable lighters;
> One improvised clip;
> One rolled aluminum tinfoil;

One improvised burner;
Six assorted sizes of empty plastic packs;
One improvised funnel inside a plastic pack (Exh. D).[1]

Subsequently, petitioner was charged on the basis of the following Informations:

CBU-77150

That on or about the 26th day of May 2008 at about 4:30 p.m. in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and under his control one (1) heat-sealed transparent plastic packs of white crystalline substance weighing 6.89 [grams] locally known as "shabu" containing methylamphetamine hydrochloride, a dangerous drug, without authority of law.

CONTRARY TO LAW.

CBU-77151

That on the 26th day of May 2008 at about 4:30 p.m. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without any lawful purpose, did then and there have in his possession and control the following:

a) One (1) scissor
b) Two (2) disposable lighters
c) One (1) improvised clip
d) One (1) rolled aluminum tin foil
e) One (1) improvised burner
f) Assorted sizes of empty packs to be used in repacking *shabu*
g) One (1) improvised funnel

which are instruments or equipments *(sic)* fit or intended for smoking, consuming, administering, ingesting or introducing any dangerous drug into the body.

CONTRARY TO LAW.[2]

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[1] *Rollo*, pp. 66-67.

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

Petitioner pleaded not guilty to the crimes charged in both Informations.[3]

He thereafter filed a Motion to Quash Search Warrant, which was denied by the RTC in an Order dated September 15, 2006.[4] After the pre-trial, the trial for the case ensued. Petitioner was represented then by Atty. Dario Rama, Jr. (Atty. Rama).[5]

On November 9, 2007, petitioner filed a Motion for Physical Re-examination and Re-weighing of the alleged *shabu* confiscated from him, which was granted by the RTC. The Qualitative Report revealed that the actual weight of the drugs seized was 4.4562 grams and not 6.89 grams. As a result, petitioner was able to file a Petition for Bail, which was granted.[6] Thus, on April 4, 2008, petitioner was released from detention after furnishing the bail bond.[7]

After the prosecution rested its case, petitioner filed a demurrer to evidence, which was denied.[8]

On December 3, 2008, Atty. Raul Albura (Atty. Albura) filed his Entry of Appearance[9] as counsel for petitioner.

On April 30, 2009, the RTC issued an Order[10] submitting the case for decision for failure of petitioner and his counsel to appear during the scheduled hearing on even date for initial presentation of evidence for the defense.[11]

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[3] *Id*. at 66.

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

[5] *Id*. at 11.

[6] *Id*. at 11, 56-57 and 58.

[7] *Id*. at 59.

[8] *Id*. at 12.

[9] *Id*. at 60.

[10] *Id*. at 61.

[11] *Id*. at 12.

On July 25, 2009, petitioner, through Atty. Albura, filed an Urgent Motion to Defer Promulgation of Judgment.[12] Petitioner claimed that he received a copy of the July 17, 2009 Notice setting the promulgation of judgment on July 29, 2009 at 9:30 a.m. only on July 22, 2009. Petitioner also made the following claims:

> x x x the Honorable Court, ordered the accused to present his witness starting September 10, 2008. Unfortunately, **he failed to testify or present witnesses because** x x x **there was no proper guidance of his previous counsel** [which] he observed [as] not [being able to defend] his case diligently as exemplified by: a) failure to quash the search warrant before arraignment[; and] b) failure to file the Demurrer to Evidence on time.
>
> Finally, last September 24, 2008 hearing, accused **manifested [to] the Honorable Court [his desire to replace or change] his counsel**. Due to financial constraints, it took him until December 9, 2008 to engage the services of **Atty. Raul A. Albura, who entered his appearance** on the same date.
>
> x x x Unfortunately, **the present counsel was never furnished copies of any [order, process and notice] from this Honorable Court** since the time he represented the accused despite filing a formal Entry of Appearance received by the court last December 9, 2008 x x x.
>
> In fact, **the undersigned counsel accidentally received the Notice of Promulgation of Judgment** when he visited the court's office to follow-up his Notarial Petition.
>
> x x x In view of the foregoing, **the promulgation of judgment in this case without giving the accused an opportunity to adduce his defense** either testimonial or documentary is **a denial of his constitutional right to due process**.[13] (Emphasis and underscoring supplied)

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[12] With Manifestation to Submit A Memorandum, *id*. at 62-64.

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

Rulings of the RTC

On July 29, 2009, the RTC promulgated its Decision[14] dated May 11, 2009,[15] the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered finding accused MICHAEL L. ABELLANA[,] also known as MICHAEL BADAYOS[,] GUILTY beyond reasonable doubt of the crime of violation of Section 11, Art. II, RA 9165, and sentences him to TWELVE (12) YEARS AND ONE (1) DAY TO FIFTEEN (15) YEARS of imprisonment, subject to [a] fine in the amount of THREE HUNDRED THOUSAND PESOS (₱300,000.00)[;] and for violation of Section 12, Art. 2, RA 9165[,] he is hereby sentenced to suffer SIX (6) MONTHS AND ONE (1) DAY TO FOUR (4) YEARS of imprisonment and a fine in the amount of TEN THOUSAND PESOS (₱10,000.00).[16]

Motion for New Trial or Reconsideration

On August 13, 2009, petitioner filed a Motion for New Trial or Reconsideration.[17] He alleged that his rights as an accused had been prejudiced by some irregularities committed during trial. Specifically, he claimed that he had been deprived of his right to due process because he had not been properly notified ever since Atty. Albura became his new counsel and that in total, Atty. Albura received only two notices involving the case, which included the Notice of Promulgation of Judgment.[18] Petitioner also discussed the merits of his case, claiming that there were errors of fact in the RTC Decision.[19]

On August 28, 2009, the RTC issued a Warrant of Arrest[20] against petitioner.

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[14] *Id*. at 65-68; penned by Judge Meinrado P. Paredes.

[15] *Id*. at 12 and 155.

[16] *Id*. at 68. Emphasis omitted, underscoring supplied.

[17] *Id*. at 69-80.

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

[19] *Id*. at 73.

[20] *Id*. at 81.

On November 25, 2009, the RTC issued a Show Cause Order[21] against Atty. Albura to explain why he should not be held in contempt for the following statements in petitioner's Motion for New Trial or Reconsideration:

> x x x Although, **counsel acknowledged his part of the blame for his failure to attend the said promulgation** but with a reason **as a sign of a protest** premised on the foregoing circumstances especially that counsel tried to defer the promulgation of the judgment by filing an "Urgent Motion to Defer the Promulgation of Judgment with a Manifestation to Submit a Memorandum" filed last July 27, 2009.[22] (Emphasis supplied)

On December 28, 2009, the RTC issued an Order[23] denying petitioner's Motion for New Trial or Reconsideration on the basis of the last paragraph of Section 6, Rule 120 of the Rules of Court, which provides:

> SECTION 6. *Promulgation of judgment.* — x x x
>
> x x x x x x x x x
>
> **If the judgment is for conviction and the <u>failure of the accused to appear was without justifiable cause</u>, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest.** Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (6a) (Emphasis and underscoring supplied)

The RTC stated that when the case was called for promulgation of judgment, petitioner failed to appear despite notice through the bond company. His counsel's knowledge of the scheduled promulgation was also admitted when he stated in the Motion

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[21] *Id*. at 82.

[22] *Id*. Underscoring omitted, emphasis supplied.

[23] *Id*. at 83-87.

for New Trial or Reconsideration that "the first notice was received accidentally when counsel visited the courts' office to follow up his notarial petition whereby a court's personnel casually served [it] like an ordinary notice."[24] Thus, petitioner's failure to appear for promulgation of judgment was without justifiable cause. Moreover, petitioner did not surrender within 15 days from date of promulgation and there was no manifestation that his absence was for a justifiable cause. Thus, he lost all the remedies available, including a motion for new trial or reconsideration.[25]

In any case, the RTC ruled that petitioner was not deprived of his right to due process. The RTC stated that there was no proper substitution of counsel.[26] The RTC also rejected petitioner's claim that his previous counsel was negligent for failing to quash the warrant and for failure to file the demurrer to evidence on time. The RTC ruled that there was no ground to quash the warrant and the demurrer was actually filed on time. Moreover, the RTC stated that the previous counsel, Atty. Rama, was not remiss in his duties as he filed several pleadings for petitioner, including the motion for re-examination and re-weighing of the *shabu* and the petition for bail, both of which were granted for petitioner's benefit. In contrast, the RTC stated that it was Atty. Albura who discouraged his client from attending the scheduled promulgation as a sign of protest.[27]

Lastly, the RTC ruled that contrary to petitioner's claims, he was not deprived of his day in court. He was represented when all prosecution witnesses testified and the latter were cross-examined by his previous counsel. The RTC held:

> The accused invoked his right to be present. **But after he posted bail, he became scarce and failed to appear during the scheduled promulgation. The right to present evidence may be waived.**

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[24] *Id*. at 83.

[25] *Id*. at 84.

[26] *Id*. at 84-87.

[27] *Id*. at 86.

Contrary to the contention of counsel for movant, there was no conviction without due process of law. Due process does not mean lack of hearing but lack of opportunity to be heard. **In this case, the accused was given opportunity to be heard**.[28] (Emphasis supplied)

At the time of the issuance of the RTC Order dated December 28, 2009, petitioner was still at large.[29] On February 10, 2010, petitioner was finally arrested at his residence.[30]

On February 12, 2010, Atty. Albura filed a Manifestation of his withdrawal as counsel for petitioner, which was granted on February 16, 2010.[31]

Petition for Relief from Judgment

On August 16, 2010, petitioner's third counsel, Atty. Reynaldo Acosta (Atty. Acosta), filed a Petition for Relief from Judgment[32] on the ground that petitioner was "deprived of his [constitutional right to be heard and to present evidence in his behalf in view of the excusable negligence of Atty. Albura in not appearing during the above-mentioned hearing and for failure of his bondsman or Atty. Albura to inform him of the scheduled hearing."[33] In his Affidavit of Merit,[34] petitioner claimed that he was neither notified of the schedule of the hearing on the initial presentation of defense evidence nor was he notified of the promulgation of judgment.

In an Order[35] dated September 7, 2010, the RTC denied the petition for relief from judgment for lack of factual and legal basis. The RTC ruled that relief from judgment was not a proper

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[28] *Id*. at 87.

[29] *Id*.

[30] *Id*. at 14.

[31] *Id*.

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

[33] *Id*. at 14.

[34] *Id*. at 91.

[35] *Id*. at 93-94.

remedy. In any event, even if the petition were to be given due course, it would still be denied based on the following:

> He blamed his bondsman and original counsel in not informing him of the scheduled hearing. **He should not rely on his bondsman and counsel. He is the most interested party in these criminal cases.** His lawyer was not negligent because he filed a Motion for New Trial or Reconsideration although the court denied the same. After his conviction on May 11, 2009, he was arrested and detained on February 2010, he had plenty of time to avail of any remaining remedy. It was only on August 16, 2010 [when] he filed the so-called petition for relief from judgment. Thus, he filed the said petition more than six (6) months from the time he learned about his conviction.
>
> He was abandoned by his former lawyer because he did not cooperate with him.
>
> **The accused is bound by the negligence of his counsel. He cannot blame his bondsman because, as earlier stated, he should have inquired from his lawyer, the bondsman or the court the scheduled hearing. In fact, he knew the scheduled hearing**.[36] (Emphasis supplied)

On October 6, 2010 and December 28, 2010, petitioner filed a Motion for Reconsideration and Supplemental Motion for Reconsideration, respectively. These motions were denied by the RTC in an Order[37] dated January 24, 2011. The RTC reiterated its ruling in the previous order, with the addition that the petition was filed out of time.

The RTC emphasized that according to Section 3, Rule 38 of the Rules of Court, the petition for relief should be filed "within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken." Here, petitioner was detained on February 10, 2010 and according to the RTC, it is presumed that he learned about the judgment against him on said date.

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[36] *Id*. at 94.

[37] *Id*. at 15 and 103-107.

However, petitioner filed the petition only on August 16, 2010, which is beyond the 60-day period; hence, the same was filed out of time.[38]

The RTC also ruled, citing jurisprudence, that a party who has filed a timely motion for new trial cannot file a petition for relief after his motion has been denied as these two remedies are exclusive of each other. Here, since petitioner filed a timely motion for new trial but was denied, he should have appealed the same. A petition for relief from judgment will not be granted when appeal was available and was an adequate remedy.[39]

Aggrieved, petitioner went to the Court of Appeals (CA) via petition for *certiorari*.[40]

Ruling of the CA

On February 17, 2012, the CA issued a Resolution[41] dismissing the petition. The CA adopted the RTC's findings that petitioner had due notices of the hearings set for defense evidence and promulgation of judgment but failed to appear. The CA also agreed with the RTC that the petition for relief was filed out of time and that the proper remedy should have been an appeal from the denial of petitioner's motion for new trial or reconsideration.[42]

On March 16, 2012, the above-mentioned Resolution became final and executory for petitioner's failure to move for reconsideration or appeal the same. Consequently, an Entry of Judgment was made and the resolution was recorded in the Book of Entries of Judgment.[43]

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[38] *Id*. at 106.

[39] *Id*.

[40] *Id*. at 108-120.

[41] *Id*. at 121-123; penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Abraham B. Borreta.

[42] *Id*. at 122.

[43] *Id*. at 124.

Petition before the Court

On June 20, 2017, petitioner filed a Petition for the Issuance of the Writ of *Habeas Corpus*[44] before the Court. He claims that a petition for the issuance of the writ of *habeas corpus* may be availed of as a post-conviction remedy in such cases when a person is deprived of his Constitutional rights during the court proceedings.[45] Specifically, he claims that he has been deprived of his rights to due process and to competent counsel.

Petitioner avers that he has been deprived of his right to due process because of lack of notice of the proceedings in the RTC. He claims that the RTC hastily submitted the criminal cases for decision even if there was no proof on record that petitioner or his previous counsels, Attys. Rama and Albura, received any notice or order from the court of the proceedings, thereby effectively depriving him of his right to be heard and to present evidence on his behalf.[46] Moreover, petitioner argues that he has been deprived of his right to competent counsel due to the negligence of Atty. Albura.[47]

In compliance with the Court's directive,[48] respondent, through the Office of the Solicitor General (OSG) filed a Comment.[49] The OSG contends that petitioner was not deprived of his constitutional rights; hence, the writ of *habeas corpus* cannot be issued to him as a post-conviction remedy.

According to the OSG, petitioner was afforded ample opportunity to be heard and to adduce his own evidence. However, it was his and his counsel's negligence and fault that caused his current predicament. The OSG notes that petitioner was represented by counsel when the prosecution witnesses

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[44] *Id*. at 3-39.

[45] *Id*. at 18.

[46] *Id*. at 20.

[47] *Id*. at 30.

[48] *Id*. at 126.

[49] *Id*. at 150-174.

testified and he was able to cross-examine them. His failure to present evidence in support of his defense was due to his negligence and that of his counsel for failing to appear at the trial despite due notice. Likewise, petitioner's counsel received the notice of the promulgation of judgment set on July 29, 2009. The OSG emphasized that petitioner's counsel even filed an Urgent Motion to Defer Promulgation of Judgment dated July 25, 2009, yet he still failed to appear during the date of promulgation. Petitioner similarly did not appear despite notice to his bondsman. As a result of his inexcusable absence during the promulgation of judgment, petitioner already lost all legal remedies in the rules against the judgment.[50]

Additionally, the OSG argues that while Atty. Albura was indeed negligent, petitioner was nevertheless bound by the negligence of his counsel. Citing the case of *Bejarasco, Jr. v. People*,[51] the OSG avers that petitioner is bound by the gross negligence of his counsel because he himself was negligent for failing to monitor the status of his case.[52]

The OSG also maintains that the doctrine of immutability of judgment applies against petitioner. The OSG points out that the judgment rendered by the CA dismissing his petition for *certiorari* which sought to annul and set aside the RTC Orders had already become final and executory. Thus, the petition should be denied.[53]

Lastly, the OSG contends that the same issues and arguments raised by petitioner have already been thoroughly discussed by the RTC in its December 28, 2009 Order and the CA in its February 17, 2012 Resolution. Likewise, petitioner was able to file different pleadings raising the arguments in the instant petition. Thus, the Court should deny the same.[54]

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[50] *Id*. at 161-162.

[51] 656 Phil. 337 (2011).

[52] *Rollo*, pp. 166-168.

[53] *Id*. at 168-169.

[54] *Id*. at 170.

In compliance with the Court's Resolution dated June 20, 2018, petitioner filed a Reply[55] reiterating the grounds he had raised in his petition.

Issue

Whether the petition for the writ of *habeas corpus* should be granted.

The Court's Ruling

The petition should be denied.

The Writ of Habeas Corpus

The high prerogative writ of *habeas corpus* is a speedy and effectual remedy to relieve persons from unlawful restraint. It secures to a prisoner the right to have the cause of his detention examined and determined by a court of justice and to have it ascertained whether he is held under lawful authority.[56]

Broadly speaking, the writ of *habeas corpus* extends to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.[57] Thus, the most basic criterion for the issuance of the writ is that the individual seeking such relief be illegally deprived of his freedom of movement or placed under some form of illegal restraint.

Concomitantly, if a person's liberty is restrained by some legal process, the writ of *habeas corpus* is unavailing. The writ cannot be used to directly assail a judgment rendered by a competent court or tribunal which, having duly acquired jurisdiction, was not ousted of this jurisdiction through some irregularity in the course of the proceedings.[58]

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[55] *Id*. at 178-190.

[56] See *Go v. Dimagiba*, 499 Phil. 445, 456 (2005).

[57] RULES OF COURT, Rule 102, Sec. 1.

[58] *De Villa v. The Director, New Bilibid Prisons*, 485 Phil. 368, 381 (2004).

However, jurisprudence has recognized that the writ of *habeas corpus* may also be availed of as a post-conviction remedy when, as a consequence of a judicial proceeding, any of the following exceptional circumstances is attendant: 1) there has been a deprivation of a constitutional right resulting in the restraint of a person; 2) the court had no jurisdiction to impose the sentence; or 3) the imposed penalty has been excessive, thus voiding the sentence as such excess.[59] Here, petitioner is invoking the first circumstance.

Nevertheless, it must be noted that when the detention complained of finds its origin in what has been judicially ordained, the range of inquiry in a *habeas corpus* proceeding is considerably narrowed.[60] Whatever situation the petitioner invokes from the exceptional circumstances listed above, the threshold remains high. Mere allegation of a violation of one's constitutional right is not enough. The violation of constitutional right must be sufficient to void the entire proceedings.[61] This, petitioner failed to show.

On petitioner's right to due process

In essence, procedural due process entails that a party is afforded a reasonable opportunity to be heard in support of his case and what is prohibited is the absolute absence of the opportunity to be heard. When the party invoking his right to due process was in fact given several opportunities to be heard and to air his side, but it was by his own fault or choice that he squandered these chances, then his cry for due process must fail.[62]

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[59] *Go v. Dimagiba*, *supra* note 56.

[60] *Gumabon v. Director of the Bureau of Prisons*, 147 Phil. 362, 368 (1971).

[61] *Alejano v. Cabuay*, 505 Phil. 298, 310 (2005).

[62] *Suyan v. People*, 738 Phil. 233, 241 (2014).

Petitioner avers that he has been deprived of his right to due process because of lack of notice of the proceedings in the trial court. To recall, the RTC submitted the case for decision on April 30, 2009 for failure of petitioner and his counsel to appear during the scheduled hearing on the same date for initial presentation of the evidence for the defense.[63] However, petitioner claims that he was not notified of said hearing. He likewise claims that he was not given the notice setting the promulgation of judgment on July 29, 2009.

As regards the scheduled hearing on April 30, 2009, even if it were true that petitioner or his counsel were not notified of such, it is still not enough to warrant a finding of denial of due process. For in the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard. To reiterate, as long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process.[64] In this case, the Court finds that petitioner was still afforded opportunity to be heard, as will be discussed below. Moreover, the hearing on April 30, 2009 was not the first scheduled hearing for the presentation of evidence of the defense. The records show that as early as September 10, 2008, the RTC had already ordered petitioner to present his witnesses; however, he failed to do so.[65]

On the notice setting the promulgation of judgment on July 29, 2009, it is already established that Atty. Albura received the same since he was able to file on July 25, 2009 an Urgent Motion to Defer Promulgation of Judgment.[66] However, petitioner claims that he was not notified by Atty. Albura. The Court is not convinced.

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[63] *Rollo*, p. 61.

[64] *Gannapao v. Civil Service Commission*, 665 Phil. 60, 70 (2011).

[65] *Rollo*, p. 86.

[66] *Id.* at 62-64.

The Urgent Motion to Defer Promulgation of Judgment was filed by Atty. Albura on petitioner's behalf. Further, in the Motion for New Trial or Reconsideration, Atty. Albura explained that when he received the notice setting the promulgation of judgment, he inquired from petitioner whether he received other notices of scheduled hearings.[67] Thus, it is clear that Atty. Albura informed petitioner of the promulgation of judgment. Furthermore, the RTC also informed petitioner through his bonding company.[68] Petitioner cannot now claim that he was not informed of the scheduled promulgation.

On this note, Section 6 of Rule 120 provides:

SECTION 6. *Promulgation of judgment.* — x x x

x x x x x x x x x

If the **judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedie**s. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (Emphasis and underscoring supplied)

Clearly, petitioner lost the remedies available to him when he failed to appear at the promulgation of judgment despite being notified of the same. He cannot shift the blame to his counsel, for while Atty. Albura was out of line when he deliberately did not appear at the promulgation "as a sign of protest," it was still incumbent on petitioner to attend the same. Moreover, the rule provides that within 15 days from promulgation, the accused may still surrender and file a motion for leave of court to avail of the remedies, after proving that

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[67] *Id.* at 71.

[68] *Id.* at 83.

his absence was for a justifiable cause. However, the Court notes that petitioner, who was out on bail, failed to surrender himself as he was then at large.[69] He was only arrested on February 10, 2010.[70]

Considering the foregoing, the Court agrees with the RTC and the CA that petitioner was not deprived of due process. After all, the Court has consistently held that the crux of due process is simply an opportunity to be heard, or an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[71] Verily, petitioner was able to file several pleadings, including the following: motion to quash the search warrant,[72] motion for physical re-examination and re-weighing of the alleged *shabu* confiscated from him,[73] petition for bail,[74] and demurrer to evidence.[75] Also, he was represented by counsel when all prosecution witnesses testified and his counsel was also able to cross-examine them.[76] Lastly, he was able to file a motion for new trial or reconsideration[77] of the RTC Decision convicting him. A party who was given the opportunity to seek a reconsideration of the action or ruling complained of cannot claim denial of due process of law.[78]

In view thereof, petitioner's claim of denial of due process is without merit.

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[69] *Id*. at 87.

[70] *Id*. at 14.

[71] *Dela Cruz v. People*, 792 Phil. 214, 230-231 (2016).

[72] *Rollo*, p. 46.

[73] *Id*. at 51-52.

[74] *Id*. 56-57.

[75] See *id*. at 86.

[76] *Id*. at 85.

[77] *Id*. at 69-80.

[78] *Amarillo v. Sandiganbayan*, 444 Phil. 487, 497 (2003).

On petitioner's right to competent counsel

Likewise, petitioner's claim of denial of right to competent counsel must fail. While Atty. Albura was indeed negligent when he deliberately failed to appear at the scheduled promulgation of judgment as a sign of protest, the same does not warrant the granting of the petition for the issuance of the writ of *habeas corpus*. On the contrary, petitioner is bound by Atty. Albura's negligence. As held by the Court in *Bejarasco, Jr. v. People*:[79]

> **The general rule is that a client is bound by the counsel's acts, including even mistakes in the realm of procedural technique**. The rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself. **A recognized exception to the rule is when the reckless or gross negligence of the counsel deprives the client of due process of law. For the exception to apply, however, the gross negligence should not be accompanied by the client's own negligence or malice,** considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.
>
> **Truly, a litigant bears the responsibility to monitor the status of his case, for no prudent party leaves the fate of his case entirely in the hands of his lawyer**. It is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case; hence, to merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough.[80] (Emphasis and underscoring supplied)

In sum, the negligence and mistakes of the counsel are binding on the client, unless the counsel has committed gross negligence.

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[79] *Supra* note 51.

[80] *Id*. at 340.

For a claim of a counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown. ***As well***, the gross negligence should not be accompanied by the client's own negligence or malice.[81]

Here, Atty. Albura's act of not attending the promulgation of judgment as a sign of protest was clearly an act of negligence. However, the same cannot be characterized as gross negligence as to amount to a clear abandonment of petitioner's cause. As mentioned earlier, Atty. Albura informed petitioner of the schedule of promulgation of judgment. He was also able to file a Motion for New Trial or Reconsideration of the RTC Decision convicting petitioner.

At any rate, even if such act constituted gross negligence, the Court finds that petitioner was also negligent. Despite being notified of the scheduled promulgation of judgment, he still failed to attend the same. Worse, he became a fugitive from justice for several months until he was arrested. Even in the subsequent proceedings, petitioner still appears to lack sufficient diligence over his case. He filed a petition for relief from judgment more than six months after his arrest, which was clearly beyond the period allowed by the rules. Moreover, the instant petition had been filed more than five years after the Entry of Judgment of the CA Resolution, making the same final and immutable.

Considering that what is at stake is his liberty, petitioner should have exercised the standard of care which an ordinary prudent man devotes to his business.[82] He cannot simply leave the fate of his case entirely to his counsel and later on pass the blame to the latter. Indeed, diligence is required not only from lawyers but also from their clients.[83]

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[81] *Resurreccion v. People*, 738 Phil. 704, 718 (2014).

[82] *Id*. at 719.

[83] *Id*.

Time and again, the Court has ruled that a client is bound by his counsel's conduct, negligence, and mistake in handling a case. To allow a client to disown his counsel's conduct would render the proceedings indefinite, tentative, and subject to reopening by the mere subterfuge of replacing counsel.[84] While this rule has recognized exceptions, the Court finds none in this case.

Conclusion

The writ of *habeas corpus* is a high prerogative writ which furnishes an extraordinary remedy; it may thus be invoked only under extraordinary circumstances.[85]

Indeed, the rule is that when there is a deprivation of a person's constitutional rights, the court that rendered the judgment is deemed ousted of its jurisdiction and *habeas corpus* is the appropriate remedy to assail the legality of his detention.[86] The inquiry on a writ of *habeas corpus* is addressed, not to errors committed by a court within its jurisdiction, but to the question of whether the proceeding or judgment under which the person has been restrained is a complete nullity. The concern is not merely whether an error has been committed in ordering or holding the petitioner in custody, but whether such error is sufficient to render void the judgment, order, or process in question.[87]

Petitioner, however, failed to convince the Court that the proceedings before the trial court were attended by violations of his rights to due process or competent counsel as to oust the RTC of its jurisdiction. Thus, the issuance of the writ of *habeas corpus* is unwarranted.

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[84] *Uyboco v. People* (Resolution), 749 Phil. 987, 996 (2014).

[85] *De Villa v. The Director, New Bilibid Prisons*, *supra* note 58 at 383.

[86] *In Re: Azucena L. Garcia*, 393 Phil. 718, 730 (2000).

[87] *Calvan v. Court of Appeals*, 396 Phil. 133, 142 (2000).

WHEREFORE, in view of the foregoing, the instant petition for the issuance of the writ of *habeas corpus* is **DENIED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 232071. July 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BBB,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT THEREOF IS ACCORDED GREAT WEIGHT AND RESPECT AND BINDING UPON THE SUPREME COURT.—** After a careful review of the records of this case, however, the Court finds no cogent reason to reverse the ruling of the CA. Time and again, the Court has ruled that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the CA.

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; THREE (3) WELL-ENTRENCHED PRINCIPLES TO GUIDE THE COURT IN DETERMINING THE INNOCENCE OR GUILT OF THE ACCUSED; A RAPE VICTIM'S TESTIMONY IS ENTITLED TO GREAT WEIGHT WHEN SHE ACCUSES A CLOSE RELATIVE OF HAVING RAPED HER.—** To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility

and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Accordingly, in resolving rape cases, the primordial or single most important consideration is almost always given to the credibility of the victim's testimony. When the victim's testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party. A rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her.

3. **ID.; ID.; ID.; DELAY IN REPORTING AN INCIDENT OF RAPE DUE TO DEATH THREAT CANNOT BE TAKEN AGAINST THE VICTIM BECAUSE THE CHARGE OF RAPE IS RENDERED DOUBTFUL ONLY IF THE DELAY IS UNREASONABLE AND UNEXPLAINED; CASE AT BAR.—** BBB further assails AAA's credibility on the fact that she failed to immediately report to her aunt the incidents she accuses him of doing and that she waited until July 21, 2012, or the fourth alleged molestation, before she finally sought help. The argument hardly persuades. Settled is the rule that delay in reporting an incident of rape due to death threat cannot be taken against the victim because the charge of rape is rendered doubtful only if the delay is unreasonable and unexplained. To the Court, there is nothing unreasonable nor unexplained with the delay in AAA's disclosure. First of all, the alleged delay between the first incident to the last incident, which is also the same day she sought the help of her aunt, is a mere three (3)-month period. Second of all, AAA was terrified. At the time she was sexually molested by her own grandfather, she was only a minor. Worse, BBB constantly threatened her should she reveal the horrific acts he was doing to her.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; DEFENSE OF DENIAL; A SELF-SERVING NEGATIVE EVIDENCE THAT CANNOT BE GIVEN GREATER WEIGHT THAN THE STRONGER AND MORE TRUSTWORTHY**

AFFIRMATIVE TESTIMONY OF A CREDIBLE WITNESS; CASE AT BAR.— AAA's direct, positive and categorical testimony, absent any ill-motive, necessarily prevails over BBB's defense of denial. Like alibi, denial is an inherently weak and easily fabricated defense. It is a self-serving negative evidence that cannot be given greater weight than the stronger and more trustworthy affirmative testimony of a credible witness. While BBB denied the charges against him, he failed to produce any material and competent evidence to controvert the same and justify an acquittal.

5. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE UNDER ARTICLE 266-A, PARAGRAPH 1 (a) IN RELATION TO ARTICLE 266-B; ELEMENTS.—** [I]n Criminal Cases Nos. 2012-4969 and 2012-4970, We sustain BBB's conviction of qualified rape defined under Article 266-A, paragraph 1(a) in relation to Article 266-B of the RPC. Under said Article 266-A, paragraph 1(a), the crime of rape may be committed: (1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: (a) Through force, threat, or intimidation; (b) When the offended party is deprived of reason or otherwise unconscious; (c) By means of fraudulent machination or grave abuse of authority; and (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. Pursuant to Article 266-B, paragraph 1, moreover, the rape is qualified when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim. Thus, the elements of the offense charged are that: (a) the victim is a female over 12 years but under 18 years of age; (b) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and (c) the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she is deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority.

6. **ID.; ID.; ID.; ID.; IN RAPE COMMITTED BY A CLOSE KIN, MORAL ASCENDANCY TAKES THE PLACE OF VIOLENCE AND INTIMIDATION.—** We have consistently

held that in rape committed by a close kin, moral ascendancy takes the place of violence and intimidation. This is due to the fact that force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other. Indeed, a rape victim's actions are oftentimes overwhelmed by fear rather than reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies the terror because the perpetrator is the person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and degree of fear.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, THE CREDIBILITY OF THE VICTIM IS ALMOST ALWAYS THE SINGLE MOST IMPORTANT ISSUE; ACCUSED MAY BE CONVICTED SOLELY ON THE BASIS OF THE TESTIMONY OF THE VICTIM THAT PASSES THE TEST OF CREDIBILITY; CASE AT BAR.— Time and again, the Court has held that in rape cases, the credibility of the victim is almost always the single most important issue. If the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis. The rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and their behavior in court. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. The rule finds an even more stringent application where the said findings

are sustained by the CA. In view of the foregoing, We rule that the prosecution satisfactorily proved beyond reasonable doubt that BBB had carnal knowledge of his own granddaughter, AAA, and that he was correctly convicted of qualified rape under Article 266-A, paragraph 1(a), in relation to Article 266-B of the RPC.

8. CRIMINAL LAW; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT); LASCIVIOUS CONDUCT UNDER SECTION 5 (b) THEREOF; ELEMENTS; PENALTY IN CASE AT BAR.— With respect to Criminal Cases Nos. 2012-4974 and 2012-4973, We likewise sustain the rulings of the courts below finding BBB liable under Section 5(b), Article III of R.A. No. 7610 for his lascivious conduct committed against AAA, who was only sixteen (16) years old at the time. The elements of sexual abuse under Section 5(b) of R.A. No. 7610 are: (1) The accused commits the act of sexual intercourse or lascivious conduct; (2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) The child, whether male or female, is below 18 years of age. x x x In addition, the Court notes that the perverse actuations committed by BBB against AAA likewise constitutes lascivious conduct defined by Section 2(g) and (h) of the rules implementing R.A. 7610 x x x Pursuant to Our pronouncement in *People v. Tulagan* and *People v. Caoli*, however, the nomenclature of the offense shall be designated as "Lascivious conduct under Section 5(b) of R.A. No. 7610." As for the penalty imposed, We affirm the ruling of the CA that the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* provided by Section 5(b) of R.A. No. 7610 should be applied in its maximum period in view of the aggravating circumstance of relationship, BBB being the grandfather of AAA. In *Caoili*, We held that in crimes against chastity, such as acts of lasciviousness, relationship is always aggravating. Thus, in view of the presence of this aggravating circumstance and absence of any mitigating circumstance, the penalty shall be applied in its maximum period, which is *reclusion perpetua*. This is in consonance with Section 31(c) of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is the ascendant of the victim. The Court, however, notes that there is no need to qualify the sentence of *reclusion perpetua* with

the phrase "without eligibility for parole," as held by the appellate court. This is pursuant to the A.M. No. 15-08-02-SC, in cases where death penalty is not warranted, such as this case, it being understood that convicted persons penalized with an indivisible penalty are not eligible for parole.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

For consideration of the Court is the appeal of the Decision[1] dated February 9, 2017 of the Court of Appeals (*CA*) in CA-G.R. CR HC No. 01441-MIN which affirmed, with modification, the Joint Judgment[2] dated August 27, 2015 of the Regional Trial Court (*RTC*) of [redacted] City, Misamis Oriental, finding accused-appellant BBB guilty beyond reasonable doubt of two (2) counts of rape under Article 266-A, paragraph 1(a) of the Revised Penal Code (*RPC*), in relation to Republic Act (R.A.) No. 7610, as amended by R.A. No. 8353, otherwise known as the *Anti-Rape Law of 1997* and two (2) counts of child abuse in violation of Section 10, in relation to Section 3, of R.A. No. 7610.

The antecedent facts are as follows.

In four (4) separate Informations, BBB was charged with two (2) counts of rape under Article 266-A, paragraph 1(a) of the RPC, in relation to R.A. No. 7610, and two (2) counts of child abuse in violation of Section 10, in relation to Section 3, of R.A. No. 7610, the accusatory portions of which read:

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[1] Penned by Associate Justice Maria Filomena D. Singh, with Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño, concurring; *rollo*, pp. 3-28.

[2] Penned by Judge Giovanni Alfred H. Navarro; CA *rollo*, pp. 0044-0067.

Criminal Case No. 2012-4969

That sometime on April 17, 2012, at more or less 9:00 o'clock in the evening, in XXX, [redacted] City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who is the grandfather of the victim, by means of force, violence and intimidation, did then and there [willfully], unlawfully, and feloniously have carnal knowledge with (sic) [AAA], 16 years old, minor, by inserting his penis into the latter's vagina and have (sic) sexual intercourse for the first occasion, against her will and without her consent. With the aggravating circumstances of that (sic) the victim is under eighteen (18) years of age and the offender is a grandfather of the said victim within the third degree of consanguinity; and minority.

Contrary to and in violation of Article 266-A, paragraph 1(a) of the Revised Penal Code, in relation to R.A. 7610, as amended by R.A. 8353, otherwise known as the Anti-Rape Law of 1997.

Criminal Case No. 2012-4970

That sometime on June 10, 2012, at more or less 10:00 o'clock in the morning, in XXX, [redacted] City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who is the grandfather of the victim, by means of force, violence and intimidation, did then and there [willfully], unlawfully, and feloniously have carnal knowledge with (sic) [AAA], 16 years old, minor, by inserting his penis into the latter's vagina and have (sic) sexual intercourse for the second occasion, against her will and without her consent. With the aggravating circumstances of that (sic) the victim is under eighteen (18) years of age and the offender is a grandfather of the said victim within the third degree of consanguinity; and minority.

Contrary to and in violation of Article 266-A, paragraph 1(a) of the Revised Penal Code, in relation to R.A. 7610, as amended by R.A. 8353, otherwise known as the Anti-Rape Law of 1997.

Criminal Case No. 2012-4972

That sometime on July 20, 2012, at around 10:00 o'clock in the evening, more or less in XXX, [redacted] City, Misamis

Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who is the grandfather of the private offended party and a relative within the third civil (sic) by consanguinity, and taking undue advantage of the victim's minority, with violence and intimidation, did then and there, knowingly, unlawfully and criminally sexually molest private offended minor (sic) [AAA] who is sixteen years (sic) (16) years old and a minor, by removing her clothes, and caressing her breasts, sucking her nipples, and touching the other parts of her body, against her will, thereby debasing, degrading and demeaning the intrinsic worth and dignity of the private offended minor, as child and which acts are detrimental and prejudicial to her development as a normal human being, to the damage and prejudice of the said victim as may be allowed by law. (sic)

Contrary to law and in violation of Section 10, in relation to Section 3 of Republic Act 7610.

Criminal Case No. 2012-4973

That sometime on July 21, 2012, at around 12:00 noon, more or less in XXX, [redacted] City, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who is the grandfather of the private offended party and a relative within the third civil (sic) by consanguinity, and taking undue advantage of the victim's minority, with violence and intimidation, did then and there, knowingly, unlawfully and criminally sexually molest private offended minor (sic) [AAA] who is sixteen years (sic) (16) years old and a minor, by removing her clothes, and caressing her breasts, sucking her nipples, and touching the other parts of her body, against her will, thereby debasing, degrading and demeaning the intrinsic worth and dignity of the private offended minor, as child and which acts are detrimental and prejudicial to her development as a normal human being, to the damage and prejudice of the said victim as may be allowed by law. (sic)

Contrary to law and in violation of Section 10, in relation to Section 3 of Republic Act 7610.[3]

On September 11, 2012, BBB was arraigned and pleaded not guilty to the charges filed against him. Subsequently, trial

[3] *Rollo* pp. 5-7.

on the merits ensued. The prosecution presented victim AAA[4] and Dr. Marlene K. Coronado as witnesses.

It was established by the prosecution that AAA was born out of wedlock on June 29, 1996. After the death of her father, her mother re-married. Consequently, AAA was left to be raised by her maternal grandparents – grandfather BBB and grandmother CCC at [redacted] City.

At about 9 o'clock in the evening of April 17, 2012, while CCC was on vacation in Cebu, AAA was awakened when BBB came close to her. AAA was lying on the bed when BBB kissed her lips, mounted her and pulled up her sleeveless shirt. He, thereafter, kissed her stomach up to her neck, squeezed her breasts, and kissed her nipples. As BBB threatened AAA that he will not send her to school anymore if she will not let him use her, he removed her short pants and underwear and removed his as well. Then, he sat on her, inserted his finger in her organ many times, and thereafter inserted his penis in her vagina. After satisfying his lust, BBB went back to sleep with AAA's 2-year-old nephew between them.[5]

On June 10, 2012, CCC was sewing clothes at the living room with only a cabinet dividing it from the sleeping area. At 10 o'clock in the morning of said day, AAA was looking after her sleeping nephew on the hammock at the sleeping area with

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[4] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "*An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes*"; Republic Act No. 9262, "*An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes*"; Section 40 of A.M. No. 04-10-11-SC, known as the "*Rule on Violence Against Women and Their Children*" effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

[5] *Rollo*, p. 4.

BBB. BBB then asked AAA to sit on his lap, but AAA refused. Despite this, BBB pulled her close to him, removed her short pants and underwear, and made her sit on his penis while he was seated upright. After having coitus with AAA, BBB put his pants back on.[6]

On July 20, 2012, at around 10 o'clock in the evening, while CCC was sewing clothes at a *nipa* hut right outside their house, AAA was left again with BBB and her nephew in the sleeping area. BBB then touched AAA's breasts, raised her sleeveless shirt while she was lying down and kissed her nipples. BBB, thereafter, went outside the house while AAA went to the kitchen.[7]

On July 21, 2012, while AAA was cooking lunch, BBB hugged her from behind, inserted his hand in her shirt, and squeezed her breasts. BBB, thereafter, walked away. AAA did not shout as she was scared of her grandfather. After lunch of the same day, AAA went to her aunt, DDD, to tell her what happened. Consequently, DDD brought AAA to the Barangay Kagawad, YYY, to seek for help. BBB was immediately arrested and was detained at [redacted]City Police Station. The next day, AAA was brought to Misamis Oriental Provincial Hospital in [redacted] City for medical examination conducted by Dra. Marlene K. Coronado who found that AAA's genitalia showed an old laceration at 3 o'clock and that her hymen was no longer intact.[8]

For its part, the defense presented the lone testimony of BBB who denied the accusations against him. According to BBB, it was only him and AAA's nephew who were in the house in the evening of April 17, 2012. His wife, CCC, was then in Cebu while AAA was in [redacted] City. He said that AAA left in the morning of April 15, 2012 to look for a job and returned only on April 24, 2012. Pacaña further testified that he could not have sexually molested AAA on June 10, 2012

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[6] *Id.*

[7] *Id.* at 5.

[8] *Id.*

and July 20, 2012 because there were several persons in the house and that he and CCC were busy taking turns with the sewing. As for the July 21, 2012 incident, BBB alleged that he was not at home the entire day since he left for the Iglesia ni Cristo Church at 5:00 a.m. and went home at 5:00 p.m.[9]

On August 27, 2015, the RTC rendered its Joint Judgment finding BBB guilty of the crimes charged, the dispositive portion of which provides:

> WHEREFORE, premises considered, judgment is hereby rendered, the Court finds accused, [BBB], GUILTY beyond reasonable doubt of two (2) counts of qualified rape and two (2) counts of sexual abuse under Section 5(b), Article III, of Republic Act No. 7610.
>
> In Criminal Case No. 2012-4969, he is hereby sentenced him (sic) to suffer the penalty of *reclusion perpetua* without the benefit of parole, and to pay [AAA] ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱30,000.00 as exemplary damages.
>
> In Criminal Case No. 2012-4970, he is hereby sentenced him (sic) to suffer the penalty of *reclusion perpetua* without the benefit of parole, and to pay [AAA] ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱30,000.00 as exemplary damages.
>
> In Criminal Case No. 2012-4972, he is hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to eighteen (18) years of *reclusion temporal*, as maximum; to pay a fine of ₱15,000.00; and to pay [AAA] ₱20,000.00 as civil indemnity and ₱15,000.00 as moral damages.
>
> In Criminal Case No. 2012-4973, he is hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to eighteen (18) years of *reclusion temporal*, as maximum; to pay a fine of ₱15,000.00; and to pay [AAA] ₱20,000.00 as civil indemnity and ₱15,000.00 as moral damages.
>
> In the service of his sentences, the accused is hereby credited with the full time during which he has undergone preventive imprisonment, provided that he agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.[10]

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[9] CA *rollo*, p. 0050.

[10] *Id.* at 0066-0067.

In its Decision dated February 9, 2017, the CA affirmed, with modification, the RTC ruling, and disposed of the case as follows:

> WHEREFORE, the Joint Judgment dated 27August 2015 issued by Branch 27 of the Regional Trial Court, [redacted] in Criminal Cases Nos. 2012-4969 (for Rape), 2012-4970 (for Rape), 2012-4972 (for Child Abuse) and 2012-4973 (for Child Abuse) is hereby AFFIRMED with MODIFICATION.
>
> In Criminal Cases Nos. 2012-4969 and 2012-4970, the awards of civil indemnity *ex delicto*, moral and exemplary damages against AAA are hereby increased to Php 100,000.00 each in both cases.
>
> In Criminal Cases Nos. 2012-4972 and 2012-4973, the accused-appellant [BBB] is hereby sentenced to suffer the penalty of *reclusion perpetua*, without eligibility of parole, in both cases. He is likewise ordered to pay the private offended party [AAA], in both cases, as follows: ₱15,000.00 as fine, ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages and ₱15,000.00 as exemplary damages.
>
> The accused-appellant [BBB] is further ordered to pay interest on all damages awarded at the rate of 6% *per annum* from finality of this decision until fully paid.
>
> SO ORDERED.[11]

Now before Us, BBB manifested that he would no longer file a Supplemental Brief as he has exhaustively discussed the assigned errors in his Appellant's Brief.[12] The Office of the Solicitor General (*OSG*) similarly manifested that it had already discussed its arguments in its Appellee's Brief.[13] BBB insists that AAA's credibility as a witness is objectionable considering that she failed to immediately disclose to her aunt, DDD, whom she usually confides in, the alleged sexual assaults committed by him. He added that her contradicting testimonies failed to overturn the constitutional presumption of innocence in his favor. Thus, the judgment should be reversed.

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[11] *Rollo*, pp. 27-28.

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

[13] *Id.* at 38.

After a careful review of the records of this case, however, the Court finds no cogent reason to reverse the ruling of the CA. Time and again, the Court has ruled that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the CA.[14] To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Accordingly, in resolving rape cases, the primordial or single most important consideration is almost always given to the credibility of the victim's testimony. When the victim's testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party. A rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her.[15]

Here, BBB contends that he should be acquitted since AAA's testimony contains inconsistencies and contradictions. But as We have consistently ruled, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone. Inaccuracies and inconsistencies in her testimony are generally expected. Thus, such fact, alone, cannot automatically result in an accused's acquittal.[16]

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[14] *People v. Talib-og*, G.R. No. 238112, December 5, 2018.

[15] *People v. Galagati*, 788 Phil. 670, 684-685 (2016).

[16] *People v. Perez*, 783 Phil. 187, 197-198 (2016).

BBB further assails AAA's credibility on the fact that she failed to immediately report to her aunt the incidents she accuses him of doing and that she waited until July 21, 2012, or the fourth alleged molestation, before she finally sought help. The argument hardly persuades. Settled is the rule that delay in reporting an incident of rape due to death threat cannot be taken against the victim because the charge of rape is rendered doubtful only if the delay is unreasonable and unexplained.[17] To the Court, there is nothing unreasonable nor unexplained with the delay in AAA's disclosure. First of all, the alleged delay between the first incident to the last incident, which is also the same day she sought the help of her aunt, is a mere three (3)-month period. Second of all, AAA was terrified. At the time she was sexually molested by her own grandfather, she was only a minor. Worse, BBB constantly threatened her should she reveal the horrific acts he was doing to her.

Thus, AAA's direct, positive and categorical testimony, absent any ill-motive, necessarily prevails over BBB's defense of denial. Like alibi, denial is an inherently weak and easily fabricated defense. It is a self-serving negative evidence that cannot be given greater weight than the stronger and more trustworthy affirmative testimony of a credible witness.[18] While BBB denied the charges against him, he failed to produce any material and competent evidence to controvert the same and justify an acquittal.

Therefore, in Criminal Cases Nos. 2012-4969 and 2012-4970, We sustain BBB's conviction of qualified rape defined under Article 266-A, paragraph 1(a) in relation to Article 266-B of the RPC. Under said Article 266-A, paragraph 1(a), the crime of rape may be committed: (1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: (a) Through force, threat, or intimidation; (b) When the offended party is deprived of reason or otherwise unconscious; (c) By

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[17] *People v. Galagati, supra* note 15, at 687.

[18] *Id.* at 688.

means of fraudulent machination or grave abuse of authority; and (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. Pursuant to Article 266-B, paragraph 1, moreover, the rape is qualified when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim. Thus, the elements of the offense charged are that: (a) the victim is a female over 12 years but under 18 years of age; (b) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and (c) the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she is deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority.[19]

In this relation, We have consistently held that in rape committed by a close kin, moral ascendancy takes the place of violence and intimidation. This is due to the fact that force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other.[20] Indeed, a rape victim's actions are oftentimes overwhelmed by fear rather than reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies the terror because the perpetrator is the person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and degree of fear.[21]

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[19] *Id.* at 686.

[20] *People v. Ubiña*, 554 Phil. 199, 209 (2007).

[21] *People v. Paculba*, 628 Phil. 662, 675-676 (2010).

In the instant case, it is undisputed that AAA was only fifteen (15) years old when she was raped by BBB, first on April 17, 2012, and second, on June 10, 2010, as evidenced by the Certification issued by the Office of the Local Civil Registry of [redacted] City. It is also undisputed that BBB is the grandfather of AAA, who sexually assaulted his own grandchild by inserting his penis inside her vagina. On the first sexual congress on April 17, 2012, AAA was steadfast and consistent in her testimony, to wit:

Q (Deputy City Prosecutor): Now, kindly tell this Honorable Court what transpired when you woke up at around 9:00 o'clock in the evening?
A: When I was lying down and I felt asleep he came near me.

Q: Who is this "he" you are referring to?
A: AAA. [BBB herein].

Q: Now, when he went near you, what did he do, if any?
A: He kissed my lips.

Q: After that, what else did he do, if any?
A: Then he opened my clothes and he was on top.

Q: By the way, what was your attire at that time?
A: Sleeveless.

Q: Now, when he pulled up your sleeveless, what else did he do, if any?
A: He kissed my stomach going towards the neck.

Q: After he kissed your neck, what did he do to your breasts, if any?
A: He squeezed my breasts.

Q: And then after he squeezed your breasts, what else did he do to your nipples?
A: Then he kissed my nipples.

Q: Now, after he kissed your nipples, what did he tell you then?
A: He told me that if I will not let him use me he will not let me continue schooling.

Q: Now, after he told you that, what did he do then?
A: He removed my shorts and panty and he also removed [his] shorts.

Q: Was he wearing brief at that time?
A: No.

Q: Now, after he took his short pants, what did he do then?
A: He sat on me and then he fingered [me] many times.

Q: Can you elaborate "he fingered [me] many times." What part of your body did he finger many times?
A: My organ.

Q: You said that he fingered your organ. What part of your body that he fingered?
A: My vagina.

Q: Now, after he fingered your vagina many times, what else did he do?
A: Then he inserted his penis.

Q: He inserted his penis in what part of your body?
A: In my vagina.

Deputy City Prosecutor: I would like to put on record, Your Honor, please that the witness is shading (sic) tears.

Court: The Court would like to ask the witness.

When you say he fingered, do you mean to say that he fingered your vagina?
A: Yes, Your Honor.

Deputy City Prosecutor: Now, when he inserted his penis to your vagina, what else did he do?

A: Then he pushed and pulled.

Q: Now, what did you feel to your vagina?
A: Painful.

Q: What did you observe, if any, to your vagina?
A: It was painful and there is something fluid that came out.

Q: Now, I noticed [AAA] that you did not shout when this incident occurred. Can you tell this Honorable Court why you did not shout?
A: Because I was afraid of my "lolo."

Q: When he inserted his penis you did not shout?
A: No.

Q: Why?
A: Because I was really afraid of my "lolo" so I did not shout.

Q: Now, after he inserted the penis, and made the push and pull position, what happened next?
A: Then he went back to where he was sleeping and me, I went back to sleep.

x x x x x x x x x

Q: (Deputy City Prosecutor): Now, while on this particular time 10:00 o'clock in the morning of June 10, 2012, kindly tell this Honorable Court what were your Nanay or grandmother CCC doing at that time?
A: (AAA): She was sewing.

Q: How about you, what were you doing at that time?
A: Watching the baby.

Q: How did you watch this child?
A: Let him sleep and put him on the hammock.

Q: The same nephew in the other case?
A: Yes, Sir.

Q: Now, while you were watching your nephew at that time, what did your grandfather tell you, if any?
A: He said, sit down on my lap.

Q: What was your attire at that time?
A: Also sleeveless.

Q: Now, when you were asked by your grandfather to sit on his lap, what was his position, is he standing? Or sitting?
A: Sitting down.

Q: What was his attire at that time?
A: Shirt with sleeves.

x x x x x x x x x

Q: Now, when your "lolo" asked you to sit on his lap, what was your response?
A: I said, "no."

Q: When you refused to sit what did he do to you?
A: He pulled me and removed my pants.

x x x x x x x x x

Q: Now, when your grandfather removed your short pants, what did he do to your panty, if any?
A: He also removed.

Q: At the time that he removed his short pants [,] what was his position, was he standing or sitting?
A: Sitting.

Q: Sitting on the chair or on the floor?
A: On the floor.

Q: Now, after your grandfather removed his short pants, what else did he do?

A: He inserted his penis into my vagina.

Court (to the witness): So what was your position at that time?
A: I was also sitting.

Q (Deputy City Prosecutor): You are sitting in what part of the body of your grandfather, if any?
A: His thighs.

Court (asking the witness): And while in this position the penis of your Tatay was already inserted into your vagina?
A: Yes, Your Honor.

Q: So in other words, you sat on your grandfather's penis?
A: Yes, Your Honor.

Q: (Deputy City Prosecutor): Now, after he inserted his penis in that position, what else did he do?
A: Then he put his shorts back on.

Court (to the witness): While in that position, did he make a push and pull movement?
A: Yes, made the push and pull for a long time.[22]

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[22] *Rollo*, pp. 11-17.

Time and again, the Court has held that in rape cases, the credibility of the victim is almost always the single most important issue. If the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis. The rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and their behavior in court. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. The rule finds an even more stringent application where the said findings are sustained by the CA.[23]

In view of the foregoing, We rule that the prosecution satisfactorily proved beyond reasonable doubt that BBB had carnal knowledge of his own granddaughter, AAA, and that he was correctly convicted of qualified rape under Article 266-A, paragraph 1(a), in relation to Article 266-B of the RPC. As the grandfather of his victim, AAA, he succeeded in satisfying his incestuous desires not only through his threats and intimidation, but also because of his moral ascendancy over his minor grandchild. Thus, the courts below were correct in imposing the penalty of *reclusion perpetua* for each count of rape, without eligibility for parole, pursuant to A.M. No. 15-08-02-SC,[24] and

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[23] *People v. Navasero*, G.R. No. 234240, February 6, 2019.

[24] Section II of A.M. No. 15-08-02-SC Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties, August 4, 2015 provides:

in lieu of death, because of its suspension under Republic Act No. 9346.[25] As to the award of damages, the CA was correct in modifying the RTC's ruling such that BBB is now ordered to pay, for each count of rape, civil indemnity in the amount of ₱100,000.00, moral damages in the amount of ₱100,000.00, and exemplary damages in the amount of ₱100,000.00, pursuant to *People v. Jugueta*,[26] as well as a six percent (6%) interest per annum on all the amounts awarded reckoned from the date of finality of this Decision until the damages are fully paid.[27]

In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "without eligibility for parole":

(1) x xx; and

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "without eligibility for parole" shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

35.RPC, Article 266-B:

Art. 266-B, Penalty. x x x

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]

[25] Article 266-B of the Revised Penal Code provides:

Art. 266-B. Penalty. x x x

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]

[26] 783 Phil. 806 (2016).

[27] *People v. Navasero, supra* note 23.

With respect to Criminal Cases Nos. 2012-4974 and 2012-4973, We likewise sustain the rulings of the courts below finding BBB liable under Section 5(b), Article III of R.A. No. 7610 for his lascivious conduct committed against AAA, who was only sixteen (16) years old at the time. The elements of sexual abuse under Section 5(b) of R.A. No. 7610 are: (1) The accused commits the act of sexual intercourse or lascivious conduct; (2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) The child, whether male or female, is below 18 years of age.[28] At the trial, AAA clearly and unequivocally narrated how BBB sexually abused her on July 20, 2012 and July 21, 2012 by forcefully mashing her breasts and kissing her nipples. She recounted the harrowing experience in the hands of her own grandfather as follows:

Q: (Deputy City Prosecutor): Now, [AAA], we are now discussing the third and fourth cases. Could you recall, [AAA], where were you on July 20, 2012, at 10:00 o'clock in the evening?
A: I was at home, Sir.

Q: You are referring to your house situated at XXX, [redacted] City?
A: Yes, Sir.

Q: May we know who were with you at that time at your house?
A: My Tatay, my Nanay, my nephew, and me, Sir.

Q: The same Nanay your grandmother, CCC?
A: Yes, Sir.

Q: Now, at that particular time, where was your Nanay or grandmother CCC?
A: Sewing, Sir.

Q: She was sewing where?
A: In our *nipa* hut at the front, Sir.

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[28] *People v. Caoili*, G.R. Nos. 196342 & 196848, August 8, 2017, 835 SCRA 107, 145.

Q: How far is this *nipa* hut from your house?
A: It's near, Sir.

Q: Now, at that time, what were you doing then?
A: I was [lying] down. Sir.

Q: While you were [lying] down, kindly tell this [Honorable] Court what did your grandfather do? If any.
A: He touched my breast and raised my clothes, Sir.

Q: After your grandfather raised your clothes, what did he do to your breasts? If any.
A: He kissed my nipples, Sir.

Court: What was your upper garment at that time
A: Sleeveless, Your Honor.

Court: Is that a t-shirt?
A: T-shirt, your honor.

Court: What was your lower garment at that time?
A: Short, your honor.

Court: Please proceed, Fiscal.

Deputy City Prosecutor: Before your Tatay or grandfather kissed your nipples, what did he do first to your breast?
A: He was touching them, Sir.

Q: After that, he kissed your nipples?
A: Yes, Sir.

Q: How many times [did] your Tatay [kiss] your nipples?
A: Many times, Sir.

Q: Now, at that time that your grandfather touched your breasts and kissed your nipples, what did you do?
A: I was just silent, Sir.

Q: Now, kindly tell this Honorable Court why did you keep silent and you did not shout?
A: I did not shout because I was afraid that somebody else might know, Sir.

Q: Particularly, your grandmother?
A: Yes, Sir.

Q: Now, at that time that your grandfather touched your breasts and kissed your nipples, were you afraid?
A: Afraid, Sir.

Q: After he kissed your nipples, where did he go then?
A: Then he went away, Sir.

Q: How about you?
A: I went to the place where we cooked food, Sir.[29]

Q: On the following day, [AAA], we are now referring to Criminal Case No. 2012-4973. Kindly tell this Court what did you do during lunchtime on July 21, 2012?
A: I was cooking lunch, Sir.

Q: While you were cooking lunch, where was your grandmother at that time?
A: She was sewing, sir.

Q: Where?
A: Also in that *nipa* hut, Sir.

Q: While you were cooking at that time, what did your grandfather do then?
A: He inserted his hands inside my breasts (sic) and squeezed my breasts and then he walked away, Sir.

Q: What was your attire then?
A: T-shirt, Sir.

Q: How about th.e lower portion?
A: Also shorts, Sir.

Q: At the time that your grandfather touched your breasts, what was his position? At the front or at the back of you?
A: At the back, Sir.

Q: Now, how many times did your grandfather touched (sic) your breasts?
A: Many times, Sir.

Q: After that, he left?
A: After that, he went away, Sir.

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[29] *Rollo*, pp. 20-23. (Underscoring omitted)

Q: What did you do at that time when your grandfather was still mashing your breasts?
A: Then I went to my Aunt DDD, Sir.

Q: Before that? My question is at the time that your grandfather touched your breasts, what did you do? Did you shout or not?
A: I did not shout, Sir.

Q: Why did you not shout?
A: Because I was afraid, Sir.

Q: You were afraid by (sic) your Lolo?
A: Yes, Sir.[30]

In view of the foregoing account, it is evident that the elements of lascivious conduct under Section 5(b) of R.A. No. 7610 were sufficiently established. The Section provides:

Section 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

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(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the [victim] is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x

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[30] *Id.* at 23-24. (Underscoring omitted)

In addition, the Court notes that the perverse actuations committed by BBB against AAA likewise constitutes lascivious conduct defined by Section 2(g) and (h) of the rules implementing R.A. 7610, to wit:

> (g) "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children;
>
> (h) "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.[31]

Thus, We sustain the findings of the trial and appellate courts that on two (2) consecutive days from July 20, 2012 to July 21, 2012, BBB sexually abused his own granddaughter by mashing her breasts and kissing her nipples multiple times and, thereafter, nonchalantly walking away as if nothing had happened. In the course of her testimony, AAA revealed that she did not immediately tell anyone of the incidents because she was afraid of her grandfather who was making threats on her. It is, therefore, clear that BBB succeeded in coercing AAA to engage in lascivious conduct. Not only did he scare her with consistent threats should she disclose his bestiality, he evidently used his moral influence and ascendancy as her grandfather who was exercising parental authority over her. To repeat, it is doctrinal that moral influence or ascendancy takes the place of violence and intimidation. Clearly, therefore, the elements of the offenses charged against BBB are present in this case.

Pursuant to Our pronouncement in *People v. Tulagan*[32] and *People v. Caoli*[33] however, the nomenclature of the offense shall

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[31] Emphasis ours.

[32] *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

[33] *People v. Caoili, supra* note 28.

be designated as "Lascivious conduct under Section 5(b) of R.A. No. 7610." As for the penalty imposed, We affirm the ruling of the CA that the penalty of *reclusion temporal* in its medium period to *reclusion perptua* provided by Section 5(b) of R.A. No. 7610 should be applied in its maximum period in view of the aggravating circumstance of relationship, BBB being the grandfather of AAA. In *Caoili*, We held that in crimes against chastity, such as acts of lasciviousness, relationship is always aggravating. Thus, in view of the presence of this aggravating circumstance and absence of any mitigating circumstance, the penalty shall be applied in its maximum period, which is *reclusion perpetua*.[34] This is in consonance with Section 31(c)[35] of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is the ascendant of the victim. The Court, however, notes that there is no need to qualify the sentence of *reclusion perpetua* with the phrase "without eligibility for parole," as held by the appellate court. This is pursuant to the A.M. No. 15-08-02-SC,[36] in cases where death penalty is not warranted, such as this case, it being understood that convicted persons penalized with an indivisible penalty are not eligible for parole.

With respect to the amount of damages, the Court modifies the CA ruling and therefore orders BBB to pay AAA, for each count, civil indemnity in the amount of ₱75,000.00, moral damages in the amount of ₱75,000.00, and exemplary damages

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[34] *Id.*

[35] Section 31 (c) of R.A. No. 7610 provides:

Article XII, Section 31. *Common Penal Provisions.* —

x x x x x x x x x

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked.

x x x x x x x x x

[36] *Supra* note 24.

in the amount of ₱75,000.00, pursuant to our ruling in *Tulagan*[37] with interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid. In addition, he is further ordered to pay a fine in the amount of ₱15,000.00, pursuant to Section 31 (f) 96[38] of R.A. No. 7610.[39]

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Joint Judgment dated August 27, 2015 of the Regional Trial Court of [redacted], Misamis Oriental, in Criminal Cases Nos. 2012-4969-70 and 2012-4972-73, as affirmed by the Decision dated February 9, 2017 of the Court of Appeals in CA-G.R. CR HC No. 01441-MIN, is **AFFIRMED** with **MODIFICATIONS**. We find accused-appellant BBB guilty beyond reasonable doubt:

1. In Criminal Cases Nos. 2012-4969 and 2012-4970, of Qualified Rape under Article 266-A(l), in relation to Article 266-B, of the Revised Penal Code, and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole on each count. Appellant is **ORDERED** to **PAY** AAA on each count the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

2. In Criminal Cases Nos. 2012-4972 and 2012-4973, of Lascivious Conduct under Section 5(b) of Republic Act No. 7610 and is sentenced to suffer the penalty of *reclusion perpetua*, and to pay a fine of ₱15,000.00 for each count. Appellant is further **ORDERED** to **PAY** AAA on each count the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

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[37] *Supra* note 31.

[38] Section 31 (f) 96 of R.A. No. 7610 provides:

Article XII, Section 31. *Common Penal Provisions.* —

x x x x x x x x x

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

[39] *People v. Caoili, supra* note 28.

Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 233697. July 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARNELLO REFE *y* GONZALES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS UNDER SECTION 5, ARTICLE II THEREOF; ELEMENTS; THE PROSECUTION HAS THE BURDEN OF PROVING THAT THE DANGEROUS DRUGS PRESENTED BEFORE THE TRIAL COURT ARE THE SAME ITEMS CONFISCATED FROM THE ACCUSED.— In proving the guilt of the accused charged with illegal sale of dangerous drugs, the following elements must be established: To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 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**. x x x The prosecution has the burden of proving that the dangerous drugs presented before the trial court are the same items confiscated from the accused.

2. ID.; ID.; PROCEDURE FOR THE CUSTODY AND DISPOSITION OF CONFISCATED, SEIZED, OR SURRENDERED DANGEROUS DRUGS; NON-COMPLIANCE WITH THE PROCEDURE IS EXCUSABLE ONLY WHEN THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS WERE PROPERLY PRESERVED AND A CREDIBLE JUSTIFICATION IS PROVIDED; CASE AT BAR.— Section 21, paragraph 1 of R.A. No. 9165 provides the procedure for the custody and disposition of confiscated, seized, or surrendered dangerous drugs. x x x This provision was further expounded in the Implementing Rules and Regulations of R.A. No. 9165. x x x Thus, the statutory requirements are clear. The apprehending officers must *immediately* conduct a physical inventory and photograph the seized items in the presence of the following: (a) the accused or the person from whom the items were confiscated, or his representative or counsel; (b) a representative from the media; (c) a representative from the Department of Justice (DOJ); and (d) any elected public official. They must also sign the inventory and be furnished with their own copy thereof. x x x While noncompliance with these requirements is excusable, this only applies when the integrity and the evidentiary value of the seized items were properly preserved. The prosecution must also provide a credible justification for the arresting officers' failure to comply with the procedure under Section 21 of R.A. No. 9165. In this case, it is evident, that the arresting officers did not strictly observe the statutory requirements for the chain of custody. *First,* the inventory and taking of photographs were not immediately conducted at the place of arrest. Only the marking of the plastic sachet allegedly taken from Arnello was performed right after the arrest, while the inventory and photograph were taken in the police station. x x x *Second*, the arresting officers did not conduct the inventory and take photographs of the seized items in the presence of a DOJ representative and a media representative. Those present during the marking and inventory were all representatives of the barangay, which only complied with the required presence of an elective official as witness. Worse, Barangay Captain Menor testified that he did not observe the actual marking of the seized plastic sachet, and the preparation of the inventory. x x x *Finally,* the prosecution did not present any justification for these procedural lapses on the part of the police officers. There was also no showing that earnest

efforts were made to comply with the mandated procedure under Section 21 of R.A. No. 9165. Noncompliance, or even approximated compliance in certain instances, is inexcusable, especially when there is no adequate explanation on the part of the prosecution.

3. **ID.; ID.; ID.; PRESENCE OF THE REQUIRED WITNESSES PREVENTS SWITCHING, PLANTING, OR CONTAMINATING THE SEIZED EVIDENCE, WHICH TAINTS THE INTEGRITY AND EVIDENTIARY VALUE OF THE CONFISCATED DANGEROUS DRUGS.—** The Court has consistently recognized the policy behind requiring the presence of these persons during the inventory. The presence of the witnesses prevents switching, planting, or contaminating the seized evidence, which taints the integrity and evidentiary value of the confiscated dangerous drugs. In line with this, jurisprudence requires the apprehending officers to immediately mark the seized items upon their confiscation, or at the "earliest reasonably available opportunity," because this serves as the primary reference point in establishing the chain of custody.

4. **ID.; ID.; ID.; FAILURE TO FULLY COMPLY WITH THE STATUTORY REQUIREMENT ON THE CHAIN OF CUSTODY OF THE SEIZED EVIDENCE TAINTS THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* ESPECIALLY WHEN THE AMOUNT OF DANGEROUS DRUG INVOLVED IS MINUTE DUE TO THE POSSIBILITY THAT THE SEIZED ITEM WAS TAMPERED; CASE AT BAR.—** Failure to fully comply with the statutory requirement on the chain of custody of the seized evidence taints the integrity and evidentiary value of the *corpus delicti*. This holds especially true "**when the amount of the dangerous drug is minute due to the possibility that the seized item was tampered**." Here, the quantity of the seized illegal drugs was 0.0488 gram, which exposes it to more risk of evidence planting and contamination. Despite the miniscule quantity of the seized illegal drugs, the arresting team in this case took several liberties in the application of Section 21 of R.A. No. 9165 with no explanation at all as to why they failed to observe the requirements of the law. This reckless regard of the rules cannot be sanctioned by the Court.

5. **ID.; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY; APPLIES WHEN THERE IS NOTHING TO**

SUGGEST THAT THE POLICE OFFICERS DEVIATED FROM THE STANDARD CONDUCT OF OFFICIAL DUTY REQUIRED BY LAW; CASE AT BAR.— [T]he trial court and the CA erred in relying on the presumption of regularity in the performance of the police officers' duty. It should be borne in mind that the presumption only applies when there is nothing to suggest that the police officers deviated from the standard conduct of official duty required by law. It does not apply when the arresting officers failed to comply with the mandatory language of Section 21 of R.A. No. 9165, as in this case. "[T]he lack of conclusive identification of the illegal drugs allegedly seized x x x coupled with the irregularity in the manner by which the same were placed under police custody before offered in court, strongly militates a finding of guilt." In other words, the presumption of regularity—gratuitously invoked in instances such as this—does not serve to cure the lapses and deficiencies on the part of the arresting officers. The presumption of regularity in the performance of official duty cannot prevail over the presumption of innocence. Part of the prosecution's duty in overturning this presumption of innocence is to establish that the requirements under Section 21 of R.A. No. 9165 were strictly observed. The rule on the chain of custody is a matter of substantive law, which should not be simply ignored as a procedural technicality. For these reasons, the Court finds the acquittal of Arnello warranted under the circumstances.

APPEARANCES OF COUNSEL

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[1] is the Decision[2] dated March 16, 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08102, which

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[1] *Rollo*, pp. 17-18.

[2] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Sesinando E. Villon and Rodil V. Zalameda, concurring; *id.* at 2-16.

denied the appeal of accused-appellant Arnello Refe *y* Gonzales (Arnello) from the judgment of conviction of the Regional Trial Court (RTC) of Bangui, Ilocos Norte. The trial court found him guilty of illegal sale of dangerous drugs, punishable under Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Factual Antecedents

On October 27, 2014, Arnello was charged with the illegal sale of dangerous drugs, in violation of Section 5, Article II of R.A. No. 9165. The Information against him reads as follows:

Criminal Case No. 2229-19

That on or about 7:30 o'clock in the morning of August 31, 2014 at Brgy. Nagsanga, in the municipality of Pasuquin, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully, feloniously and knowingly sell one small heat-sealed transparent plastic sachet of white crystalline substance weighing 0.0488 gram containing methamphetamine hydrochloride commonly known as "shabu," a dangerous drug, worth [₱]500.00 to PO1 Rolly Llama acting as a poseur-buyer, without any authority or license from the appropriate government agency to do so.

CONTRARY TO LAW.[3]

In an Order dated November 3, 2014, the trial court set the arraignment of Arnello on November 17, 2014.[4] During his arraignment, Arnello, with the assistance of his counsel from the Public Attorney's Office, pleaded not guilty to the charge.[5] The parties stipulated in pre-trial that at the time of his arrest, Arnello was at Barangay Nagsanga, Pasuquin, Ilocos Norte[.][6]

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[3] Records, p. 1.

[4] *Id*. at 31.

[5] *Id*. at 33.

[6] *Id*. at 38.

According to the prosecution, on August 31, 2014, at around 6:00 a.m., Police Officer 1 Rolly Llama (PO1 Llama) was at the police station of Pasuquin, Ilocos Norte, together with Senior Police Officer 1 Jonathan Caldito (SPO1 Caldito), and SPO1 Frederick Bulosan (SPO1 Bulosan). Their Chief of Police, Police Senior Inspector Rommel Ramos (PSI Ramos), was also at the station at that time. An informant then came to the station, and reported to PSI Ramos that Arnello was selling *shabu* in Barangay Nagsanga.[7]

After receiving this information, the police officers supposedly validated the report. They likewise coordinated with the Provincial Anti-Illegal Drugs Special Operations Task Group and the Philippine Drug Enforcement Agency (PDEA). PSI Ramos then conducted a briefing for a planned buy-bust operation to arrest Arnello.[8]

SPO1 Caldito, SPO1 Bulosan, and PO1 Llama were selected as members of the buy-bust team. PO1 Llama, in particular, was designated as the poseur-buyer. He was given a ₱500.00 bill, marked with his initials (*i.e.*, "RUL"), for the purchase of *shabu*. The remaining members of the buy-bust team were designated as back-up security.[9]

The briefing concluded. At around 7:30 a.m. of the same day, PO1 Llama and the informant boarded a motorcycle and proceeded to Barangay Nagsanga. They stopped near Nagsanga Elementary School, which was supposedly the agreed location for the transaction between the informant and Arnello. The rest of the team followed, aboard a Hilux vehicle.[10]

Arnello was already waiting in the area when PO1 Llama and the informant arrived at the meeting place. The informant introduced Arnello to PO1 Llama as the buyer, and thereafter,

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[7] TSN, June 29, 2015, pp. 3-4.

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

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

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

Arnello asked him how much would he purchase. PO1 Llama responded that he intends to buy *shabu* "worth ₱500.00." Arnello then handed him a plastic sachet containing a white crystalline substance, and in turn, PO1 Llama gave him the marked ₱500.00 bill. Arnello placed the money in his right-hand pocket, prompting PO1 Llama to send a missed call to SPO1 Bulosan. This was the pre-arranged signal of the buy-bust team, indicating that the transaction was consummated.[11]

After executing the pre-arranged signal, PO1 Llama grabbed Arnello's arm, who allegedly struggled against the arrest. PO1 Llama then introduced himself as a police officer and handcuffed Arnello. Soon after, SPOT Bulosan and SPO1 Caldito arrived at the scene and assisted PO1 Llama in the arrest of the accused. SPO1 Caldito frisked Arnello, which resulted in the recovery of the marked money. PO1 Llama then apprised Arnello of his constitutional rights.[12]

PO1 Llama proceeded to mark the plastic sachet containing a white crystalline substance, with the initials of the accused: "AGR." Present during the marking were the barangay officials of Nagsanga, specifically: Barangay Captain Rogelio Menor (Barangay Captain Menor), Barangay *Kagawad* Claridel Q. Bulosan, and Barangay *Tanod* Pablo B. Garaza, Jr.[13]

Upon finishing the marking, the police officers took Arnello to the police station where they conducted the inventory. The inventory, or the Acknowledgment Receipt of Property/Articles Seized, was prepared in the presence of Arnello and the barangay officials. It stated that the following items were seized from Arnello: (a) one (1) transparent heat-sealed plastic sachet containing a white crystalline substance believed to be *shabu*, marked as "AGR"; (b) one (1) ₱500.00 bill, with serial number LG73546, marked as "RUL"; (c) one (1) white Samsung cellular phone, with a white and yellow case; and (d) one (1) yellow

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

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

[13] *Id*. at 11-12; records, p. 56.

Cricket lighter. Arnello and the witnesses to the inventory, except for Barangay Kagawad Bulosan, signed the document.[14] PO1 Llama likewise took a photograph of the marked money, together with the plastic sachet marked with "AGR."[15]

Following the completion of the documents, PO1 Llama went to the Philippine National Police Crime Laboratory in Laoag City to submit the evidence for analysis and examination. The plastic sachet containing a white crystalline substance, marked as "AGR," was received by PO1 Julius Surell (PO1 Surell) at around 8:50 p.m.[16] PO1 Surell then turned over the specimen to P/Insp. Amiely Ann L. Navarro (P/Insp. Navarro) for the conduct of the necessary laboratory examination.[17]

The examination of the specimen yielded a positive result for methamphetamine hydrochloride, a dangerous drug.[18] A sample of Arnello's urine was also submitted to P/Insp. Navarro for examination. The screening test on the urine sample yielded a negative result for methamphetamine and THC-metabolites.[19] Following the conduct of the examination, P/Insp. Navarro turned over the specimen sample to the evidence custodian, SPO4 Nilo Domingo.[20]

Arnello, for his part, denied the accusations against him. According to him, at around 10:00 p.m., on August 30, 2014, he had just put his child to sleep. Afterwards, he walked from his house towards the east of Nagsanga Elementary School, where his live-in partner was selling barbecue. As he was making his way there, he was suddenly picked-up by police officers,

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[14] Records, p. 56.

[15] TSN, June 29, 2015, pp. 13-14.

[16] *Id*. at 14-15; records, pp. 41-42, and 44.

[17] TSN, February 9, 2015, p. 4.

[18] Records, p. 26.

[19] *Id*. at 27.

[20] *Id*. at 42; TSN, February 9, 2015, p. 5.

one of whom he was able to recognize as his neighbor, SPO1 Bulosan.[21]

The police officers forcibly boarded Arnello inside a Hilux vehicle and took him to his house. They went inside and searched the place, while Arnello was outside, with his wrists handcuffed. The police did not find anything, so they took Arnello to the police station where they beat him, and put him in jail. Arnello was detained for five days.[22]

Arnello denied that a buy-bust operation took place. According to Arnello, he filed administrative complaints against PO1 Llama, SPO1 Bulosan, and SPO1 Caldito, which resulted in their suspension.[23]

Claire Dela Cruz (Claire), Arnello's live-in partner, also testified for the defense. She claimed that on the night of August 30, 2014, she texted Arnello to fetch her from the area where she was selling barbecue, as it was already getting late. Claire then saw Arnello from a distance, as he was making his way towards her, However, she later observed Arnello being forcibly placed inside a Hilux vehicle, which immediately left, heading towards the direction of their house. Claire followed the vehicle to their house, but she was unable to get near Arnello because of the crowd gathering nearby. She subsequently found out that Arnello was being charged for illegally selling *shabu*.[24]

Before the defense rested its case, the parties entered into stipulations with respect to the testimonies of Arnello's neighbors, particularly, Jefferson Miranda, Ryan Lagundino, and Jacqueline Cabingas. The prosecution agreed that the testimonies of these witnesses involved attesting to the arrest of Arnello on August 30, 2014, at 10:00 p.m.[25]

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[21] TSN, December 7, 2015, pp. 3-4.

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

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

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

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

The prosecution also admitted the genuineness and due execution of the Medical Certificate dated September 3, 2014,[26] which observed the following findings on the body of Arnello: (a) healing vertical abrasion, one (1) inch, back, thoracic left; (b) healing vertical superficial abrasion three and a half (3 ½) inches by one-fourth (¼) inch, back, left; (c) healing vertical superficial abrasion two (2) inches by one-half (½) inch below scapula, left; (d) hematoma one (1) inch, distal end, right forearm; (e) pain on deep palpation, right hypochondrium area; and (f) healing horizontal abrasion, one (1) inch lateral aspect, upper portion, left leg.

Ruling of the RTC

In a Decision[27] dated January 7, 2016, the trial court found Arnello guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165, thus:

> WHEREFORE, the court finds the accused [Arnello] GUILTY beyond reasonable doubt of Violation of Section 5, [R.A.] No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, and hereby imposes upon him the penalty of life imprisonment plus a fine of Five Hundred Thousand pesos (₱500,000.00), and to pay the costs.
>
> The methamphetamine hydrochloride subject of this case is hereby declared forfeited in favor of the government, to be destroyed in accordance with the aforesaid law. The clerk of court is directed to coordinate with the [PDEA] for this purpose.
>
> **SO ORDERED.**[28]

In its decision, the RTC gave more credence to the prosecution witnesses, who testified as to the conduct of the buy-bust operation. The trial court held that allegations of frame-up and extortion are common defenses, which are easily concocted and fabricated.[29] Furthermore, the RTC found that the integrity

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[26] Records, p. 11.

[27] Rendered by Presiding Judge Rosemarie V. Ramos; *id*. at 92-118.

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

[29] *Id*. at 113.

and evidentiary value of the seized evidence were preserved. Arnello purportedly failed to overcome the presumption of regularity on the part of the police officers who handled the seized evidence.[30]

Aggrieved, Arnello filed a Notice of Appeal[31] on January 19, 2016. In the Order dated January 21, 2016, the trial court gave due course to the appeal, and directed the elevation of the records to the CA.[32]

Ruling of the CA

On August 9, 2016, the counsel for Arnello filed his appellant's brief with the CA.[33] In his brief, it was argued that the police officers failed to comply with several statutory requirements in the conduct of the buy-bust operation. The police officers also did not proffer a reasonable explanation to justify their non-compliance with the requirements under Section 21 of R.A. No. 9165.[34] For this reason, the integrity and evidentiary value of the seized evidence were not properly preserved.

The People of the Philippines, as represented by the Office of the Solicitor General (OSG), filed its brief on December 6, 2016.[35] Relying on the presumption of regularity in the performance of their duty, the OSG argued that the evidence was properly handled by the police officers, in accordance with Section 21 of R.A. No. 9165. The OSG also claimed that the trial court correctly gave more credence to the testimony of the prosecution witnesses, especially since Arnello's only defense is bare denial.[36]

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[30] *Id*. at 110-111.

[31] *Id*. at 121.

[32] *Id*. at 122.

[33] CA *rollo*, pp. 25-52.

[34] *Id*. at 34-42.

[35] *Id*. at 94-107.

[36] *Id*. at 103-105.

In a Decision[37] dated March 16, 2017, the CA affirmed Arnello's conviction:

> WHEREFORE, premises considered, the appeal is DENIED. The Decision dated January 7, 2016 of the [RTC], Branch 19, Bangui, Ilocos Norte, convicting accused-appellant [Arnello] of violation of Section 5, Article II of [R.A.] No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 is hereby AFFIRMED.
>
> SO ORDERED.[38]

The CA found that the prosecution was able to satisfactorily establish all the elements of illegal sale of dangerous drugs, *to wit*: (a) proof that the transaction or sale took place; and (b) the presentation of the *corpus delicti* or the illicit drug as evidence.[39] Consistent with the ruling of the trial court, the CA likewise considered the defenses of denial and frame-up as unconvincing, especially since Arnello was caught *in flagrante delicto*.[40]

The CA also held that there was sufficient compliance with the chain of custody rule. Moreover, the integrity of the evidence is presumably preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered, which was not present in this case. Since Arnello was unable to discharge the burden of overcoming this presumption, the CA ruled that there was enough proof establishing his guilt beyond reasonable doubt.[41]

Unsatisfied with the decision of the CA, Arnello appealed his conviction to this Court.[42]

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[37] *Rollo*, pp. 2-16.

[38] *Id*. at 16.

[39] *Id*. at 7-10.

[40] *Id*. at 10.

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

[42] *Id*. at 17.

Ruling of the Court

The Court now resolves whether the guilt of Arnello was proven beyond reasonable doubt. Central to this issue is the Court's determination of whether the integrity and evidentiary value of the evidence were duly preserved.

The records of the ease reveal substantial inadequacies in the police officers' compliance with the requirements on the chain of custody, pursuant to Section 21 of R.A. No. 9165. The prosecution was also unable to provide a justifiable ground for this non-compliance.

In these lights, the Court is constrained to grant the present appeal.

The prosecution failed to establish the identity and integrity of the corpus delicti.

In proving the guilt of the accused charged with illegal sale of dangerous drugs, the following elements must be established:

> To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 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**.
>
> x x x x x x x x x
>
> **In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense.** Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. "The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[43] (Emphases Ours)

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[43] *People v. Ismael*, 806 Phil. 21, 29 (2017).

The prosecution has the burden of proving that the dangerous drugs presented before the trial court are the same items confiscated from the accused. In this regard, Section 21, paragraph 1 of R.A. No. 9165 provides the procedure for the custody and disposition of confiscated, seized, or surrendered dangerous drugs:[44]

> **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[.][45]

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[44] *See* Implementing Rules and Regulations of R.A. No. 9165, Section 21(a); *see also* the PDEA Guidelines on the Implementing Rules and Regulations of Section 21 of R.A. No. 9165 as Amended by R.A. No. 10640 (May 28, 2015).

[45] This has been amended by R.A. No. 10640, An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of R.A. No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002," to read:

(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 alter 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

This provision was further expounded in the Implementing Rules and Regulations of R.A. No. 9165, the pertinent portion of which reads as follows:

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**[.] (Emphases Ours)

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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.

Thus, the statutory requirements are clear. The apprehending officers must *immediately* conduct a physical inventory and photograph the seized items in the presence of the following: (a) the accused or the person from whom the items were confiscated, or his representative or counsel; (b) a representative from the media; (c) a representative from the Department of Justice (DOJ); and (d) any elected public official. They must also sign the inventory and be furnished with their own copy thereof.

The Court has consistently recognized the policy behind requiring the presence of these persons during the inventory. The presence of the witnesses prevents switching, planting, or contaminating the seized evidence, which taints the integrity and evidentiary value of the confiscated dangerous drugs.[46] In line with this, jurisprudence requires the apprehending officers to immediately mark the seized items upon their confiscation, or at the "earliest reasonably available opportunity,"[47] because this serves as the primary reference point in establishing the chain of custody.[48] As this Court judiciously explained in *People v. Mendoza*:[49]

> Based on the foregoing statutory rules, the manner and timing of the marking of the seized drugs or related items are crucial in proving the chain of custody. Certainly, the marking after seizure by the arresting officer, being the starting point in the custodial link, should be made immediately upon the seizure, or, if that is not possible, as close to the time and place of the seizure as practicable under the obtaining circumstances. **This stricture is essential because the succeeding handlers of the contraband would use the markings as their reference to the seizure. The marking further serves to separate the marked seized drugs from all other evidence from the time of seizure from the accused until the drugs are disposed of upon the termination of the criminal proceedings.** The deliberate

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[46] *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[47] *People v. Sabdula*, 733 Phil. 85, 96 (2014).

[48] *People v. Dahil, et al.*, 750 Phil. 212, 232 (2015).

[49] 736 Phil. 749 (2014).

taking of these identifying steps is statutorily aimed at obviating switching, "planting" or contamination of the evidence. Indeed, the preservation of the chain of custody vis-a-vis the contraband ensures the integrity of the evidence incriminating the accused, and relates to the element of relevancy as one of the requisites for the admissibility of the evidence.[50] (Emphasis Ours)

While noncompliance with these requirements is excusable, this only applies when the integrity and the evidentiary value of the seized items were properly preserved. The prosecution must also provide a credible justification for the arresting officers' failure to comply with the procedure under Section 21 of R.A. No. 9165.[51]

In this case, it is evident that the arresting officers did not strictly observe the statutory requirements for the chain of custody.

First, the inventory and taking of photographs were not immediately conducted at the place of arrest. Only the marking of the plastic sachet allegedly taken from Arnello was performed right after the arrest, while the inventory and photograph were taken in the police station. This was clear from the direct testimony of PO1 Llama, the poseur-buyer:

[Prosecutor Rommel Calupig:]
So, after the recovery of the Php500 peso [*sic*] bill, what happened next, Mr. Witness?

[PO1 Llama:]
I apprised him of his constitutional right, sir.

[Prosecutor Rommel Calupig:]
After that, what happened next, Mr. Witness.

[PO1 Llama:]
We marked the items recovered from him, sir.

[Prosecutor Rommel Calupig:]
Who made the markings, all of you?

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[50] *Id*. at 761.

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

[PO1 Llama:]
I did, sir.

[Prosecutor Rommel Calupig:]
What item did you mark?

[PO1 Llama:]
The plastic sachet containing white crystalline substance, sir.

[Prosecutor Rommel Calupig:]
What markings did you put on that plastic sachet?

[PO1 Llama:]
The initial AGR, the initial [*sic*] of the accused, sir.

[Prosecutor Rommel Calupig:]
Where did that plastic sachet come from?

[PO1 Llama:]
From me, sir.

[Prosecutor Rommel Calupig:]
And where did you get that plastic sachet?

[PO1 Llama:]
It was handed to me by the accused, sir.

[Prosecutor Rommel Calupig:]
Who were present when you made the marking?

[PO1 Llama:]
The barangay officials of Nagsanga, Brgy. Captain Rogelio Roger Menor and a kagawad and one tanod, sir.

[Prosecutor Rommel Calupig:]
Where did you make the markings?

[PO1 Llama:]
In Nagsanga, sir.

x x x x x x x x x

[Prosecutor Calupig:]
After the markings, where did you proceed, Mr. Witness?

[PO1 Llama:]
We went back to the police station, sir.

[Prosecutor Calupig:]
And what did you do in the police station?

[PO1 Llama:]
We prepared the pertinent documents, sir.

[Prosecutor Calupig:]
Do you have any proof that indeed you conducted an inventory of the items mentioned?

[PO1 Llama:]
Yes, sir.

[Prosecutor Calupig:]
What are those proofs?

[PO1 Llama:]
The receipt of inventory and the pictures, sir.

x x x x x x x x x

[Prosecutor Calupig:]
How about the accused, where was he when you made the markings?

[PO1 Llama:]
He was beside me, sir.

x x x x x x x x x

[Prosecutor Calupig:]
How about this photograph, will you go over the same and tell this Honorable Court, what is this in connection with the photograph you mentioned?

[PO1 Llama:]
Yes, sir this is the same.[52] (Emphases Ours)

Clearly, the inventory and taking of photographs were not immediately conducted at the place of arrest. POI Llama testified that the apprehending team went back to the police station for this purpose. While Section 21 of R.A. No. 9165 allows the inventory to be done at the nearest police station, or at the nearest office of the arresting team, whichever is practicable,

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[52] TSN, June 29, 2015, pp. 11-14.

there was no showing that the Pasuquin Police Station was the nearest office from the place of Arnello's arrest in Barangay Nagsanga.

Second, the arresting officers did not conduct the inventory and take photographs of the seized items in the presence of a DOJ representative[53] and a media representative. Those present during the marking and inventory were all representatives of the barangay, which only complied with the required presence of an elective official as witness. Worse, Barangay Captain Menor testified that he did not observe the actual marking of the seized plastic sachet, and the preparation of the inventory:

> [Atty. Christine Joy Bosi (*counsel for Arnello*):]
> You also affixed your signature in the acknowledgment receipt of property or articles seized from the accused, do you understand what inventory means or this one, acknowledgment receipt of property or article seized, do you understand that?
>
> [The Court:]
> What is your understanding on that?
>
> [Barangay Captain Menor:]
> (No answer)
>
> [Atty. Bosi:]
> Let us make it simple, Mr. Witness. Did you understand the contents of that?
> May we just place it on record, your Honor that there is no answer from the witness.
>
> [The Court:]
> **You cannot understand or what? What is your understanding on that?**
>
> [Barangay Captain Menor:]
> **They just let me signed (sic) this document, your Honor. I do not know what it contains.**

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[53] As amended, R.A. No. 10640 now requires the presence of a representative from the National Prosecution Service (R.A. No. 10640, Section 1).

[The Court:]
This document would show that you were present and you saw a one (1) (*sic*) transparent heat-sealed plastic sachet on August 31, 2014 when [Arnello] was arrested. So when you were at the police station did you actually see these items?

[Barangay Captain Menor:]
Yes, your Honor.

[The Court:]

Now, if you did not see these items[,] would you sign this document?

[Barangay Captain Menor:]

No I would not, your Honor.

[The Court:]

So you signed the document because you saw those items listed therein?

[Barangay Captain Menor:]

Yes, your Honor.

[Atty. Bosi:]

You saw the items, Mr. Witness together with the markings already on it?

[Barangay Captain Menor:]

Yes, ma'am.

[Atty. Bosi:]

Not during when the markings were made on these items?

[Barangay Captain Menor:]

When the items were displayed they just told me, ma'am, "You come and see these items."

[Atty. Bosi:]
You signed this document inside the police station of Pasuquin, Ilocos Norte, correct, Mr. Witness?

[Barangay Captain Menor:]

Yes, sir (*sic*).

[Atty. Bosi:]

Which was already prepared by the police officers together with the markings, what you did only was to sign or affix your signature?

[Barangay Captain Menor:]

Yes, when I saw the items, ma'am[,] that was when I signed the document.[54] (Emphases Ours)

Evidently, Barangay Captain Menor merely relied on the representations of the police officers that the evidence marked was the same item seized from Arnello. The seized evidence was already marked when Barangay Captain Menor was asked to sign the inventory at the police station. Hence, his presence, or that of the other barangay officials, could not have prevented the planting, tampering, or contamination of evidence.

Finally, the prosecution did not present any justification for these procedural lapses on the part of the police officers. There was also no showing that earnest efforts were made to comply with the mandated procedure under Section 21 of R.A. No. 9165. Noncompliance, or even approximated compliance in certain instances, is inexcusable, especially when there is no adequate explanation on the part of the prosecution. As this Court held in *People of the Philippines v. Pastorlito V. Dela Victoria*:[55]

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 RA 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

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[54] TSN, September 10, 2015, pp. 6-8.

[55] G.R. No. 233325, April 16, 2018.

cannot be brushed aside as a simple procedural technicality. **While non-compliance is allowed, the same ought to be justified.** Case law states that the prosecution must show that earnest efforts were exerted by the PDEA operatives to comply with the mandated procedure as to convince the Court that the attempt to comply was reasonable under the given circumstances. Since this was not the case here, the Court is impelled to conclude that there has been an unjustified breach of procedure and hence, the integrity and evidentiary value of the *corpus delicti* had been compromised. Consequently, Dela Victoria's acquittal is in order.[56] (Emphases Ours and citations omitted)

Failure to fully comply with the statutory requirement on the chain of custody of the seized evidence taints the integrity and evidentiary value of the *corpus delicti*. This holds especially true "**when the amount of the dangerous drug is minute due to the possibility that the seized item was tampered**."[57] Here, the quantity of the seized illegal drugs was 0.0488 gram, which exposes it to more risk of evidence planting and contamination. Despite the miniscule quantity of the seized illegal drugs, the arresting team in this case took several liberties in the application of Section 21 of R.A. No. 9165 with no explanation at all as to why they failed to observe the requirements of the law. This reckless regard of the rules cannot be sanctioned by the Court.

Neither can the Court simply disregard Arnello's defense of frame-up. The medical certificate[58] supports his allegation that the police officers attacked and beat him, resulting in his injuries. His claim of having been arrested on the night of August 30, 2014—not in the morning of August 31, 2014—was also corroborated by other defense witnesses.[59]

In these lights, the trial court and the CA erred in relying on the presumption of regularity in the performance of the police

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[56] *Id*.

[57] *People v. Caiz*, 790 Phil. 183, 209-210 (2016).

[58] Records, p. 11.

[59] TSN, December 7, 2015, pp. 16-17.

officers' duty. It should be borne in mind that the presumption only applies when there is nothing to suggest that the police officers deviated from the standard conduct of official duty required by law.[60] It does not apply when the arresting officers failed to comply with the mandatory language of Section 21 of R.A. No. 9165, as in this case. "[T]he lack of conclusive identification of the illegal drugs allegedly seized x x x coupled with the irregularity in the manner by which the same were placed under police custody before offered in court, strongly militates a finding of guilt."[61]

In other words, the presumption of regularity—gratuitously invoked in instances such as this—does not serve to cure the lapses and deficiencies on the part of the arresting officers. The presumption of regularity in the performance of official duty cannot prevail over the presumption of innocence. Part of the prosecution's duty in overturning this presumption of innocence is to establish that the requirements under Section 21 of R.A. No. 9165 were strictly observed. The rule on the chain of custody is a matter of substantive law, which should not be simply ignored as a procedural technicality.[62] For these reasons, the Court finds the acquittal of Arnello warranted under the circumstances.

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated March 16, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 08102, which in turn affirmed the Decision dated January 7, 2016 of the Regional Trial Court of Bangui, Ilocos Norte in Criminal Case No. 2229-19, is hereby **REVERSED** and **SET ASIDE**.

Accused-appellant Arnello Refe *y* Gonzales is **ACQUITTED** based on reasonable doubt.

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[60] *People v. Dela Cruz*, 744 Phil. 816, 830 (2014).

[61] *Mallillin v. People*, 576 Phil. 576, 593 (2008).

[62] *People v. Geronimo*, G.R. No. 225500, September 11, 2017, 839 SCRA 336, 352-353; see also *People v. Ceralde,* G.R. No. 228894, August 7, 2017, 834 SCRA 613, 624-625.

The Director of the Bureau of Corrections is directed to: (a) cause the immediate release of Arnello Refe *y* Gonzales, unless he is being lawfully held for another cause; and (b) inform this Court of the date of his release, or the reason for his continued confinement as the case may be, within five (5) days from notice.

Copies of this Decision must be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 234429. July 10, 2019]

SPOUSES FELIPE PARINGIT and JOSEFA PARINGIT, *petitioners, vs.* **MARCIANA PARINGIT BAJIT, ADOLIO PARINGIT,[*] and ROSARIO PARINGIT ORDOÑO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AFFIRMANCE OF DECISION OF THE COURT OF APPEALS, PROPER IN CASE AT BAR.— This Court's Decision dated September 29, 2010 speaks of the whole 150 square meter lot and nothing less. x x x The decision

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[*] Also referred as "Adolfo Paringit" in some parts of the *Rollo*.

consistently refers to subject property as **the lot**, meaning its entirety, all 150 square meters and not just 110 square meters as petitioners have erroneously asserted. Consequently, when the trial court specified the entire 150 square meters to be distributed among the five (5) siblings, Florencio, Felipe, Marciana, Adolio, and Rosario, each to get 30 square meters, the trial court computed the numbers correctly. And when the trial court said that the respective shares of respondents Marciana, Adolio, and Rosario totaled 90 square meters, or 30 square meters each, it again computed the numbers correctly.

2. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; INDIRECT CONTEMPT; DEVISING VARIOUS WAYS AND MEANS OF DELAYING FOR ALMOST NINE (9) YEARS THE IMPLEMENTATION OF THE COURT'S DECISION IS CONTUMACIOUS DISOBEDIENCE; CASE AT BAR.— This Court keenly notes the propensity of petitioners and their counsel for devising various ways and means of delaying for almost nine (9) years now the implementation of its Decision dated September 29, 2010. This is contumacious disobedience. To borrow the words of Justice Conrado V. Sanchez, *non-compliance with the lower court's order is no more than non-recognition of this Court's directive.* Petitioners *must know that this Court is not expected to yield to assaults of disrespect.*

APPEARANCES OF COUNSEL

John Albino Achas for petitioners.
Romeo Bartolome for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari*[1] assails the following issuances of the Court of Appeals in CA-G.R. SP No. 143060, entitled *Spouses Felipe Paringit and Josefa Paringit v. Marciana*

[1] *Rollo*, pp. 26-38.

Paringit Bajit, Adolio Paringit, Rosario Paringit Ordoño, Hon. Regional Trial Court of Manila, Branch 39, and Sheriff Ronie L. Orajay:

1. Decision dated May 5, 2017,[2] which declared that the trial court did not alter the terms of this Court's Decision dated September 29, 2010; and

2. Resolution dated September 27, 2017,[3] which denied petitioners' motion for reconsideration.

The Proceedings Before the Trial Court

In Civil Case No. 96-79284, respondents Marciana Paringit Bajit, Adolio Paringit, and Rosario Paringit Ordoño sued their brother and his wife herein petitioners Spouses Felipe and Josefa Paringit, for annulment of title and reconveyance of property. The case got raffled to the Regional Trial Court (RTC) – Branch 39, Manila, presided by Judge Noli C. Diaz.

In their complaint, respondents essentially alleged that the case involved a 150 square meter lot situated in Manila and covered by Transfer Certificate of Title (TCT) No. 172313 in petitioners' name. Before the lot was registered in petitioners' name, their parents Julian and Aurelia Paringit used to lease it from Terocel Realty, Inc.. It was their family home. When Terocel offered to sell the lot to their parents, the latter sought financial help from their children. Only petitioners were able to give financial assistance for this purpose. Their father Julian then executed an affidavit declaring that the lot was purchased for the benefit of all his children, namely, Florencio, Marciana, Adolio, Rosario, and Felipe, subject to the condition that the first four aforenamed siblings reimburse Felipe their respective shares in the purchase price.

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[2] Penned by now SC Associate Justice Henri Jean Paul B. Inting and concurred in by Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba, *rollo*, pp. 8-18.

[3] *Rollo*, pp. 21-22.

From the time their parents bought the property (January 30, 1984) they and petitioners had since resided thereon. In 1988, petitioners moved to another house along the same street. After their father died on December 21, 1994, however, petitioners demanded that they pay back rentals for their use and occupancy of the property from March 1990 to December 1995.

After due proceedings, the trial court ruled in petitioners' favor and dismissed the complaint.[4]

The Proceedings Before the Court of Appeals

On appeal, the Court of Appeals reversed. It held that there was implied trust between petitioners, on one hand, and respondents, on the other. It ordered petitioners to reconvey to respondents (including Florencio, who was not a party to the case) their proportionate shares in the lot upon reimbursement to petitioners of respondents' shares in the purchase price plus legal interest.[5]

The Proceedings Before this Court

On petitioners' appeal by *certiorari*, this Court, in G.R. No. 181844, affirmed with modification through its Decision dated September 29, 2010,[6] *viz*:

WHEREFORE, the Court **DENIES** the petition, and **AFFIRMS** the decision of the Court of Appeals in CA-G.R. CV 84792 with the **MODIFICATION** that respondents Marciana Paringit Bajit, Adolio Paringit, and Rosario Paringit Ordoño reimburse petitioners Felipe and Josefa Paringit of their corresponding share in the purchase price plus expenses advanced by petitioners amounting to **₱60,000.00** with legal interest from April 12, 1984 until fully paid.

SO ORDERED.

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[4] By Decision dated July 21, 2004.

[5] By Decision dated August 29, 2007; CA-G.R. CV No. 84792.

[6] Penned by Associate Justice Roberto A. Abad and concurred in by Associate Justices Antonio T. Carpio, Antonio Eduardo B. Nachura, Diosdado M. Peralta, and Jose Catral Mendoza, G.R. No. 181844.

Following the finality of the aforesaid decision, the trial court issued the corresponding Writ of Execution.[7] Even after the lapse of nine (9) years, however, the writ of execution has remained unimplemented mainly because of the multiple motions filed by petitioners, which the trial court had invariably denied.

One of the last two (2) issuances of the trial court was the Order dated January 14, 2014,[8] *viz*:

x x x x x x x x x

As to the defendants' Manifestation, the Court cannot grant defendants' prayer that the deed of reconveyance should be limited only to 110 square meters and not 150 square meters considering that the Supreme Court Decision dated September 29, 2010 did not qualify as to the extent of the measurement of the subject property to be reconveyed to the plaintiffs upon reimbursement of their share in the purchase price of the subject property. Hence, in the absence of any qualification, the Court assumes that the deed of reconveyance covers the plaintiffs' proportionate share on the whole subject property (150 square meters) pursuant to the Supreme Court Decision dated September 29, 2010.[9]

x x x x x x x x x

Then the trial court issued its last directive under Order dated June 26, 2015,[10] granting respondents' Motion (for the Appointment of Surveyor with Prayer for Police Assistance from the Manila Police District and from the Barangay concerned).[11] The trial court reiterated the need to segregate respondents' 90 square meter share from the entire 150 square meter lot.

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[7] *Rollo*, pp. 61-62.

[8] *Id*. at 133-135.

[9] *Id*. at 135.

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

[11] *Id*. at 136-138.

But still insisting on the reconveyance to respondents of just 110 square meters, petitioners moved for reconsideration of the Order dated June 26, 2015. The trial court denied it.[12]

Imputing grave abuse of discretion on the trial court, petitioners went to the Court of Appeals to nullify the aforesaid orders for allegedly altering this Court's final and executory Decision dated September 29, 2010 in G.R. No. 181844.[13]

By its assailed Decision dated May 5, 2017,[14] the Court of Appeals dismissed the petition. It held that contrary to petitioners' contention, the trial court did not vary the terms of this Court's Decision dated September 29, 2010, but in fact, effected a sound and logical implementation of the same. Under its assailed Resolution dated September 27, 2017,[15] the Court of Appeals denied petitioners' motion for reconsideration.

The Present Petition

Petitioners now invoke this Court's discretionary appellate jurisdiction to grant them affirmative relief against the assailed dispositions of the Court of Appeals. Petitioners basically argue:[16]

(1) There were only four (4) parties involved in the case since petitioners are a couple and must be treated as one. This is the reason why the purchase price was divided into four (4). Hence, the lot must also be divided into four (4) equal portions *i.e.* 37.5 square meters or at the very least, 27.5 square meters each.[17]

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[12] See Order dated September 10, 2015, *rollo*, pp. 59-60.

[13] See Petition for *Certiorari* dated November 17, 2015; *rollo*, pp. 40-56.

[14] *Rollo*, pp. 8-18.

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

[16] See Petition for Review on *Certiorari* dated November 16, 2017, *rollo*, pp. 26-38.

[17] *Rollo*, p. 35.

(2) By ordering that 90 square meters be segregated from the entire 150 square meters, the trial court varied the terms of this Court's Decision dated September 29, 2010.[18]

(3) It is well settled that a decision which has acquired finality becomes immutable and unalterable.[19]

In their Comment dated June 2, 2018,[20] respondents counter, in the main:

(a) The formula of division petitioners are insisting upon is inaccurate. There are five (5) siblings involved, Florencio, Felipe, Marciana, Adolio, and Rosario. Thus, the 150 square meter lot must be divided into five (5), each getting a share of 30 square meters. Florencio bought 10 square meters from the 150 square meters. Felipe alone is enjoying Florencio's payment therefor. It is, thus, logical that Felipe should now only get 20 square meters. They, on the other hand, should retain their 30 square meters each.[21]

(b) In its Decision dated September 29, 2010, this Court directed them to reimburse petitioners their shares in the purchase price plus expenses with interest from April 12, 1984 until fully paid. They have faithfully complied with this directive, hence, petitioners must now give them their respective lot shares.[22]

(c) The trial court did not vary the terms of this Court's Decision dated September 29, 2010.[23]

Issue

Did the Court of Appeals correctly rule that when the trial court pronounced there was a need to segregate the 90 square

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[18] *Id*.

[19] *Id*.

[20] *Id*. at 157-162.

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

[22] *Id*.at 158.

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

meters from the 150 square meters lot, it actually conformed with the terms of this Court's Decision dated September 29, 2010?

Ruling

We rule in the affirmative.

This Court's Decision dated September 29, 2010 speaks of the whole 150 square meter lot and nothing less, thus:

x x x x x x x x x

Here, the evidence shows that Felipe and his wife bought the lot for the benefit of Julian and his children, rather than for themselves. Thus:

First. There is no question that the house originally belonged to Julian and Aurelia who built it. When Aurelia died, Julian and his children inherited her conjugal share of the house. When Terocel Realty, therefore, granted its long time tenants on Norma Street the right to acquire **the lots** on which their house stood, that right technically belonged to Julian and all his children. If Julian really intended to sell the entire house and assign the right to acquire **the lot** to Felipe and his wife, he would have arranged for Felipe's other siblings to give their conformity as co-owners to such sale. And if Felipe and his wife intended to buy **the lot** for themselves, they would have, knowing that Felipe's siblings co-owned the same, taken steps to secure their conformity to the purchase. These did not happen.

Second. Julian said in his affidavit that Felipe and his wife bought **the lot** from Terocel Realty on his behalf and on behalf of his other children. Felipe and his wife advanced the payment because Julian and his other children did not then have the money needed to meet the realty company's deadline for the purchase. Julian added that his other children were to reimburse Felipe for the money he advanced for them.

Notably, Felipe, acting through his wife, countersigned Julian's affidavit the way his siblings did. The document expressly acknowledged the parties' intention to establish an implied trust between Felipe and his wife, as trustees, and Julian and the other children as trustors. Josefa, Felipe's wife, of course claims that she signed the document only to show that she received a copy of it. But

her signature did not indicate that fact. She signed the document in the manner of the others.

Third. If Felipe and his wife really believed that the assignment of the house and the right to buy **the lot** were what their transactions with Julian were and if the spouses also believed that they became absolute owners of the same when they paid for the lot and had the title to it transferred in their name in 1987, then their moving out of the house in 1988 and letting Marciana, *et al.* continue to occupy the house did not make sense. They would make sense only if, as Marciana, *et al.* and their deceased father claimed, Felipe and his wife actually acquired the lot only in trust for Julian and all the children.

Fourth. Felipe and his wife demanded rent from Marciana, *et al.* only on December 18, 1995, a year following Julian's death on December 21, 1994. This shows that from 1984 when they bought the lot to December 18, 1995, when they made their demand on the occupants to leave, or for over 10 years, Felipe and his wife respected the right of the siblings to reside on **the property**. This is incompatible with their claim that they bought the house **and l**ot for themselves back in 1984. Until they filed the suit, they did nothing to assert their supposed ownership of the house **and lot.**

x x x x x x x x x

WHEREFORE, the Court **DENIES** the petition, and **AFFIRMS** the decision of the Court of Appeals in CA-G.R. CV 84792 with the **MODIFICATION** that respondents Marciana Paringit Bajit, Adolio Paringit, and Rosario Paringit Ordoño reimburse petitioners Felipe and Josefa Paringit of their corresponding share in the purchase price plus expenses advanced by petitioners amounting to **₱60,000.00** with legal interest from April 12, 1984 until fully paid.

SO ORDERED. (Emphasis supplied)

The decision consistently refers to subject property as **the lot**, meaning its entirety, all 150 square meters and not just 110 square meters as petitioners have erroneously asserted.

Consequently, when the trial court specified the entire 150 square meters to be distributed among the five (5) siblings, Florencio, Felipe, Marciana, Adolio, and Rosario, each to get 30 square meters, the trial court computed the numbers correctly. And when the trial court said that the respective shares of

respondents Marciana, Adolio, and Rosario totaled 90 square meters, or 30 square meters each, it again computed the numbers correctly.

A final word. This Court keenly notes the propensity of petitioners and their counsel for devising various ways and means of delaying for almost nine (9) years now the implementation of its Decision dated September 29, 2010. This is contumacious disobedience. To borrow the words of Justice Conrado V. Sanchez, *non-compliance with the lower court's order is no more than non-recognition of this Court's directive.* Petitioners *must know that this Court is not expected to yield to assaults of disrespect.*[24]

All told, this Court will not tolerate any more dilatory scheme to defeat the implementation of its Decision dated September 29, 2010.

ACCORDINGLY, the petition is **DENIED**, and the Decision dated May 5, 2017 and Resolution dated September 27, 2017 of the Court of Appeals in CA-G.R. SP No. 143060, **AFFIRMED**.

Petitioners and their counsel are strictly warned against committing any further action, strategy, or scheme which will have the effect of prolonging the already delayed implementation of the writ of execution in this case. Any violation hereof shall be sanctioned accordingly.

The Regional Trial Court – Branch 39, City of Manila is directed to promptly implement the Decision dated September 29, 2010 within ten (10) days from notice and submit its compliance report not later than five (5) days from implementation of the writ of execution.

SO ORDERED.

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

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[24] *Juan Ysasi v. Hon. Jose F. Fernandez, et al.,* 135 Phil. 382, 393 (1968).

SECOND DIVISION

[G.R. No. 234531. July 10, 2019]

AGUSAN WOOD INDUSTRIES, INC., *petitioner, vs.* **SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; PRESIDENTIAL DECREE NO. 705 (REVISED FORESTRY CODE); FOREST MANAGEMENT BUREAU UNDER THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) HAS JURISDICTION AS REGARDS COLLECTION AND INVOICING OF FOREST CHARGES, EVEN IF THE LATTER IS CONSIDERED AS INTERNAL REVENUE TAXES.—** [W]hile considered as internal revenue taxes, the jurisdiction as regards collection and invoicing of forest charges is vested upon the Forest Management Bureau under the DENR. This is supported by E.O. No. 273 itself as it was stated that the transfer was implemented for tax administration purposes only, particularly tax collection. x x x Accurately, what E.O. No. 273 removed from the 1977 NIRC and shifted to the Revised Forestry Code involves provisions pertaining to mere tax collection, namely: (a) mode of measuring forest products, invoicing, and collection of charges thereon; and (b) mode of measuring different forest charges. Alternatively put, the reforms introduced are for tax administration only, deputizing certain agencies to collect certain taxes. Subsequent amendment to the 1977 NIRC, which is the 1997 NIRC, retained this transfer. Verily, the transfer of the entire chapter on charges on forest products to the Revised Forestry Code, as well as the duties and responsibilities of the BIR to the DENR did not, in any way, change the nature of forest charges as internal revenue taxes.

2. **TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE; COMMISSIONER OF INTERNAL REVENUE; HAS JURISDICTION OVER CLAIMS FOR TAX CREDIT OR REFUND, WHICH MUST BE FILED WITHIN TWO (2) YEARS FROM THE DATE OF PAYMENT OF THE TAX OR PENALTY;**

CASE AT BAR.— Considering that only tax collection and invoicing of forest charges were deputized to the Forest Management Bureau under the DENR, other tax administration matters, such as refund and credit, pertinent rules under 1997 NIRC are applicable. x x x Under the law, to file a claim for tax credit or refund, it is necessary that: (a) a written notice be filed with the Commissioner; and (b) said written notice be filed within two years from the date of payment of the tax. Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes. To reiterate settled jurisprudence, tax refunds or credits – just like tax exemptions – are strictly construed against taxpayers, the latter have the burden to prove strict compliance with the conditions for the grant of the tax refund or credit. In this case, AWII paid for forest charges on December 29, 1995. However, its claim for refund and/or tax credit for erroneous payment was filed only on October 29, 1998 before the DENR Secretary. Not only was the claim filed out of time, but also it was lodged before the wrong agency. As it stands, AWII failed to discharge the burden of proving strict compliance. Hence, its claim for refund and/or tax credit is forever barred.

APPEARANCES OF COUNSEL

Joseph Cohon for petitioner.
The Solicitor General for respondent.

D E C I S I O N

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

Before us is a Petition for Review on *Certiorari,* which seeks to assail the Decision[1] dated February 28, 2017 and the

[1] Penned by Associate Justice Carmelita Salandanan Manahan, with Associate Justices Japar B. Dimaampao and Franchito N. Diamante, concurring; *rollo*, pp. 40-54.

Resolution[2] dated October 3, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 138003, which affirmed the ruling of the Office of the President (OP) in OP Case No. 10-C-123.[3]

The Relevant Antecedents

In 1995, petitioner Agusan Wood Industries, Inc. (AWII) was able to cut a total of 5,891 cubic meters of logs from its concession area in Agusan del Sur. Accordingly, it paid ₱6,459,523.45 as forest charges for the retrieval of the logs on December 29, 1995.[4]

However, AWII failed to retrieve the cut logs prior to and even after the expiration of its Timber License Agreement despite payment of the forest charges. It appears that AWII assigned its right to collect the refunds and/or tax credit of the forest charges it previously paid to its sister company, International Timber Corporation (ITC).[5]

AWII was originally granted an authority to haul and dispose of the mentioned cut-prior volume per Clearance dated January 17, 1996, giving AWII one month to dispose the same. However, AWII's authority expired without any log/volume or part thereof being hauled or transported from the cutting area to the depository area or log pond.[6]

Another authority to haul and dispose, covering 2,945 cubic meters or 50% of the subject total reported cut-prior volume, was granted to AWII on September 11, 1997.[7]

In a Certification dated April 15, 1998, the Department of Environment and Natural Resources (DENR)-Community

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[2] *Id*. at 56-58.

[3] *Id*. at 74-80.

[4] *Id*. at 74.

[5] *Id*.

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

[7] *Id*. at 75.

Environment and Natural Resources stated that AWII was able to haul/transport 78.98 cubic meters only out of the latest authorized volume.[8]

On October 29, 1998, AWII requested for the refund and/or tax credit of the forest charges for the 5,890.41 cubic meters of logs cut from their logging area amounting to ₱6,459,523.45 before the DENR-Regional Executive Director (RED), Region 13, CARAGA, Butuan City.[9]

In a Memorandum Order[10] dated October 28, 1999, the DENR-RED ruled that as there was no pertinent regulation that may be made applicable to tax credit of forest charges; the request falls under the discretionary power of the DENR Secretary.

As a consequence, AWII requested for a refund and/or tax credit of the subject forest charges with the DENR Secretary. It asserted that the forest charges it paid was subject to the condition that prior cut logs were hauled, retrieved, or removed from the concession area; and failing which, it is entitled to refund and/or tax credit.[11]

The request, however, was denied in a Letter Order dated April 3, 2000.[12]

On May 9, 2000, AWII sought reconsideration of the Letter Order dated April 3, 2000, denying the request for refund and/or tax credit in its favor or to its sister company, ITC as assignee.[13]

In a Letter Order[14] dated September 8, 2000, the DENR Secretary reconsidered its previous Order and granted the refund

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[8] *Id*.

[9] *Id*.

[10] *Id*. at 87-88.

[11] *Supra* note 7.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 91-92.

and/or tax credit amounting to ₱6,459,523.45, citing Section 6 of DENR Administrative Order No. 80, Series of 1987. In granting the refund, the DENR Secretary construed that forest charges are due and should be paid as a matter of course the moment the cut logs were removed from the cutting area. However, when the forest products are not removed from the cutting area, as in this case, it necessarily follows that forest charges do not become due and demandable, and, thus, there is no obligation on the part of the Timber License Agreement holder or licensee to pay forest charges for prior cut logs not removed from the cutting area.[15]

AWII then requested for the implementation of the aforementioned Letter Order, but the same was denied in a Letter Order dated May 16, 2005. The dispositive portion of which reads:

> In view of the above premises, the request for refund and its assignment to Industrial Timber Corporation is denied on the following grounds:
>
> 1. That there is no law or rule that entitles AWII for a refund of forest charges upon its failure to haul the cut logs; and
>
> 2. There is no appropriation for refund of forest charges that were already remitted to the national treasury.[16]

Several motions for reconsideration were filed by AWII, but were ultimately denied by the DENR Secretary in a Letter Order dated February 10, 2010.[17]

As it failed to obtain favorable relief, AWII filed an appeal before the OP.

In a Decision[18] dated May 21, 2014, the OP denied the appeal. Among others, the OP maintained that it is not within the

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[15] *Id*. at 92.

[16] *Id*. at 76.

[17] *Id*.

[18] *Supra* note 3.

jurisdiction of the DENR Secretary to authorize tax refund and/or tax credit.

The *fallo* thereof reads:

> WHEREFORE, premises considered, the appeal of Agusan Wood Industries, Inc. is hereby DENIED for lack of merit. The Order dated 10 February 2010 issued by then DENR Acting Secretary Eleazar P. Quinto is hereby AFFIRMED.
>
> SO ORDERED.[19]

The motion for reconsideration filed by AWII was similarly denied in a Resolution[20] dated October 21, 2014.

Insisting that it is the DENR Secretary who has the authority to grant refund and/or tax credit the forest charges, AWII filed an appeal before the CA.

The CA, in the assailed Decision[21] dated February 28, 2017, dismissed the petition for lack of merit. In ruling so, the CA explained that the authority to grant credit lies with the Commissioner of Internal Revenue (CIR) considering that forest charges are internal revenue taxes. The CA likewise declared that as the 1997 National Internal Revenue Code (NIRC) applies, the right of AWII to file for a claim for refund and/or tax credit prescribed for not having been made within the reglementary period. The dispositive portion provides:

> WHEREFORE, in the light of the foregoing, the instant Petition for Review is DISMISSED for lack of merit. The May 21, 2014 Decision and October 21, 2014 Resolution of the Office of the President in O.P. Case No. 10-C-123 are AFFIRMED.
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> SO ORDERED.[22]

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[19] *Id*. at 80.

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

[21] *Supra* note 1.

[22] *Id*. at 53.

AWII filed a Motion for Reconsideration which was denied in the assailed Resolution[23] dated October 3, 2017.

Hence, this petition.

The Issue

AWII essentially contends that forest charges are not internal revenue taxes; hence, its act of filing for a claim for refund and/or tax credit with the DENR Secretary, and not with the CIR, is proper.

The Court's Ruling

The Forestry Reform Code of the Philippines or Presidential Decree No. 389, Series of 1974 (P.D. No. 389) was enacted to codify forestry laws in the Philippines, including the imposition of forest charges. Shortly thereafter, the Revised Forestry Code of the Philippines (Revised Forestry Code) or P.D. No. 705, Series of 1975 (P.D. No. 705) amended P.D. No. 389. The latter specifically recognized forest charges as taxes and imposed the responsibility of collecting and invoicing the same upon the Bureau of Internal Revenue (BIR), to wit:

> H.
> UTILIZATION AND MANAGEMENT
>
> SEC. 68 – Measuring of Forest Products and Invoicing and Collection of Charges Thereon. – The duties incident to the measuring of forest products shall be discharged by the Forest Management Bureau under regulations of the Department of Environment and Natural Resources. The Invoicing and Collection of the charges thereon shall be done by the Forest Management Bureau under regulations approved by the Secretary of Environment and Natural Resources.

On the other hand, the nature of forest charges as internal revenue taxes was affirmed in the 1977 NIRC, which considered the same as one of the "Miscellaneous Taxes" and thereby devoted a whole chapter for it.

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[23] *Supra* note 2.

Subsequently, the 1977 NIRC was practically overhauled by Executive Order No. 273, Series of 1987 (E.O. No. 273). Among others, the whole chapter pertaining to forest charges was effectively transferred to the Revised Forestry Code, thus:

> SEC. 22. x x x
>
> The entire provisions of Chapter V, Title VIII of the National Internal Revenue Code governing the charges on forest products, including Section 297 of the same Code are hereby transferred to and shall form part of Presidential Decree No. 705, as amended, otherwise known as the Revised Forestry Code of the Philippines. All references to the Bureau of Internal Revenue, Commissioner of Internal Revenue and Ministry of Finance in the said Chapter V shall henceforth refer to the Forest Management Bureau, Director of Forest Management Bureau and Secretary of Environment and Natural Resources, respectively.

With the amendments introduced by E.O. No. 273, the responsibility of collecting forest charges, as well as the invoicing thereof, was transferred from the BIR to the Forest Management Bureau. Also, references to the CIR and the Department of Finance now refer to the Director of the Forest Management Bureau and the Secretary of Environment and Natural Resources, respectively.

This transfer of responsibility was further echoed in Republic Act No. 7161, to wit:

> SEC. 1. x x x
>
> All references to the Bureau of Internal Revenue, Commissioner of Internal Revenue, and Ministry of Finance in Sections 230 to 238 of the National Internal Revenue Code of 1977 shall hereafter refer to the Forest Management Bureau, Director of the Forest Management Bureau, and Secretary of Environment and Natural Resources, respectively.

Thus, while considered as internal revenue taxes, the jurisdiction as regards collection and invoicing of forest charges is vested upon the Forest Management Bureau under the DENR. This is supported by E.O. No. 273 itself as it was stated that the

transfer was implemented for tax administration purposes only, particularly tax collection, to wit:

> WHEREAS, it is also necessary to amend, revise and renumber the provisions of the National Internal Revenue Code and to **transfer the collection of certain taxes as a consequence of this and previous amendments in order to strengthen and improve tax administration and facilitate compliance thereof.** (Emphasis supplied)

Accurately, what E.O. No. 273 removed from the 1977 NIRC and shifted to the Revised Forestry Code involves provisions pertaining to mere tax collection, namely: (a) mode of measuring forest products, invoicing, and collection of charges thereon; and (b) mode of measuring different forest charges.

Alternatively put, the reforms introduced are for tax administration only, deputizing certain agencies to collect certain taxes.

Subsequent amendment to the 1977 NIRC, which is the 1997 NIRC, retained this transfer.

Verily, the transfer of the entire chapter on charges on forest products to the Revised Forestry Code, as well as the duties and responsibilities of the BIR to the DENR did not, in any way, change the nature of forest charges as internal revenue taxes.

Also, noteworthy is the fact that as early as the 1904 Internal Revenue Law, forest charges was treated as one of the sources of internal revenue.[24] Subsequent amendments, such as the

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[24] Sec. 25. The following sources of revenue shall be included in the internal revenue for the Philippine Islands, and the taxes imposed shall be collected by the Collector of Internal Revenue x x x and the revenue obtained therefrom shall be devoted to the support of the several provinces and of the Insular and municipal governments in the manner in this Act provided:

x x x x x x x x x

11. Tax on forestry products.

x x x x x x x x x

Internal Revenue Law of 1914[25] and Tax Code of 1939[26] retained this classification.

Even the case of *Cordero v. Conda*[27] clarified this matter, *viz.*:

> By law, forest charges have always been categorized as internal revenue taxes — for all purposes. Our statute books say so.
>
> We start with the Tax Code. Forest charges appear below the heading "TITLE VIII — MISCELLANEOUS TAXES", under Chapter V, along with such others as tax on banks (Chapter I), taxes on receipts of insurance companies (Chapter II), franchise tax (Chapter III), and amusement taxes (Chapter IV). And Section 18 of the same Code, includes "charges on forest products" in the list of those that "are deemed to be national internal revenue taxes[.]" x x x
>
> [F]orest charges are internal revenue taxes, whether one labels them taxes on property, or excise taxes, *i.e.*, taxes upon the privilege of cutting and carting away timber and forest products. And they fall under the philosophy of taxation — to support the general services of government. They go into the general fund.

Considering that only tax collection and invoicing of forest charges were deputized to the Forest Management Bureau under the DENR, other tax administration matters, such as refund

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[25] Art. I. — Sources of internal revenue.

Sec. 21. Sources of taxes. — The following taxes, fees, and charges in the nature of tax are deemed to be internal revenue taxes:

x x x x x x x x x

(f) **Charges for forest products[.]** (Emphasis supplied)

[26] Sec. 18. *Sources of Revenue*. – The following taxes, fees, and charges are deemed to be national internal revenue taxes:

x x x x x x x x x

(g) Miscellaneous taxes; fees and charges, namely, taxes on banks, and insurance companies, franchise taxes, taxes on amusements, **charges on forest products**, fees for sealing weights and measures, firearms license fees, radio registration fees, tobacco inspection fees, and water rentals. (Emphasis supplied)

[27] 124 Phil. 926, 933 and 937-938 (1966).

and credit, pertinent rules under 1997 NIRC are applicable, to wit:

SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*– The Commissioner may:

x x x x x x x x x

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction.

No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

x x x x x x x x x

SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Under the law, to file a claim for tax credit or refund, it is necessary that: (a) a written notice be filed with the Commissioner; and (b) said written notice be filed within two years from the

date of payment of the tax. Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.[28]

To reiterate settled jurisprudence, tax refunds or credits — just like tax exemptions — are strictly construed against taxpayers, the latter have the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.[29]

In this case, AWII paid for forest charges on December 29, 1995. However, its claim for refund and/or tax credit for erroneous payment was filed only on October 29, 1998 before the DENR Secretary. Not only was the claim filed out of time, but also it was lodged before the wrong agency. As it stands, AWII failed to discharge the burden of proving strict compliance. Hence, its claim for refund and/or tax credit is forever barred.[30]

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. Accordingly, the Decision dated February 28, 2017 and the Resolution dated October 3, 2017 of the Court of Appeals in CA-G.R. SP No. 138003 are **AFFIRMED *in toto***.

SO ORDERED.

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

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[28] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, 646 Phil. 710, 725 (2010).

[29] *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue*, 720 Phil. 782, 789 (2013).

[30] *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 197526, July 26, 2017, 832 SCRA 589, 606-607.

THIRD DIVISION

[G.R. No. 237553. July 10, 2019]

BDO UNIBANK, INC., *petitioner, vs.* **ANTONIO CHOA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; ACQUITTAL OF THE ACCUSED OR THE DISMISSAL OF THE CASE AGAINST HIM CAN ONLY BE APPEALED BY THE SOLICITOR GENERAL; THE PRIVATE COMPLAINANT OR THE OFFENDED PARTY MAY QUESTION SUCH ACQUITTAL OR DISMISSAL ONLY INSOFAR AS THE CIVIL LIABILITY OF THE ACCUSED IS CONCERNED; CASE AT BAR.— The State has the "inherent prerogative in prosecuting criminal cases and in seeing to it that justice is served." Subsumed under this right is the authority to appeal an accused's acquittal. In *Bautista v. Cuneta-Pangilinan,* this Court elaborated: The authority to represent the State in appeals of criminal cases before the Supreme Court and the CA is solely vested in the Office of the Solicitor General (OSG). x x x To be sure, in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. *The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned.* In a catena of cases, this view has been time and again espoused and maintained by the Court. In *Rodriguez v. Gadiane,* it was categorically stated that if the criminal case is dismissed by the trial court or if there is an acquittal, the appeal on the criminal aspect of the case must be instituted by the Solicitor General in behalf of the State. *The capability of the private complainant to question such dismissal or acquittal is limited only to the civil aspect of the case. . .*" x x x Here, although petitioner discussed respondent's criminal liability in its Petition for *Certiorari*, the totality of its arguments concerns the civil aspect of the case. It reinforced its position in its concluding paragraph: All told, public respondent Judge clearly committed grave abuse of discretion

amounting to lack and/or excess of jurisdiction in holding that the prosecution was not able to prove private respondent Choa's liability in the total amount of ₱7,875,904.96 as stated in the Information as well as CAMDEN's total outstanding obligation to petitioner BDO as of 31 March 2011 in the amount of ₱23,806,788.11. Thus, petitioner has the legal personality to file a special civil action questioning the Regional Trial Court Orders insofar as the civil aspect of the case is concerned.

2. ID.; ID.; TRIAL; DEMURRER TO EVIDENCE; MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE SHALL BE FILED WITHIN A NON-EXTENDIBLE PERIOD OF FIVE (5) DAYS AFTER THE PROSECUTION RESTS ITS CASE; CASE AT BAR.— Demurrer to evidence in criminal cases is governed by Rule 119, Section 23 of the Revised Rules of Criminal Procedure. x x x In *Valencia v. Sandiganbayan,* this Court clarified: A demurrer to evidence tests the sufficiency or insufficiency of the prosecution's evidence. As such, a demurrer to evidence or a motion for leave to file the same must be filed after the prosecution rests its case. But before an evidence may be admitted, the rules require that the same be formally offered, otherwise, it cannot be considered by the court. A prior formal offer of evidence concludes the case for the prosecution and determines the timeliness of the filing of a demurrer to evidence. A review of the case records reveals that when the prosecution filed its Formal Offer of Documentary Evidence on August 20, 2014, it included a reservation in its Prayer. x x x The prayer itself indicates that the prosecution would rest its case depending on whether the trial court admitted its evidence. If the trial court did not admit its evidence, the prosecution would present additional evidence; otherwise, it would rest its case. Due to this reservation, the five (5)-day period for the filing of a Motion for Leave had not yet started when petitioner filed its Formal Offer of Documentary Evidence. The prosecution is deemed to have rested its case on September 12, 2014, when the trial court admitted its documentary evidence. In *Cabador v. People,* this Court held that "only after [the court ruled on the prosecution's formal offer of documentary evidence] could the prosecution be deemed to have rested its case." However, the counting of the five (5)-day period did not commence on August 20, 2014, when the prosecution filed its Formal Offer of

Documentary Evidence; or on September 12, 2014, when the trial court admitted the evidence. Instead, it started upon respondent's receipt of the September 12, 2014 Order, for only then was he notified that the prosecution had rested its case. Nonetheless, respondent filed his Motion for Leave and Demurrer to Evidence on October 13, 2014. To recall, the September 12, 2014 Order had also directed respondent to submit his comment/opposition, which he then submitted on September 25, 2014. Even if there is no record of when respondent received a copy of the Order, it can be surmised that he received it before September 25, 2014. It follows that the Motion for Leave and the Demurrer to Evidence were filed beyond the five (5)-day period under Rule 119, Section 23 of the Rules of Court. The trial court, then, should have denied these pleadings outright.

3. MERCANTILE LAW; PRESIDENTIAL DECREE NO. 115 (TRUST RECEIPTS LAW); TRUST RECEIPT TRANSACTION; IMPOSES UPON THE ENTRUSTEE THE OBLIGATION TO DELIVER TO THE ENTRUSTER THE PRICE OF THE SALE, OR IF THE MERCHANDISE IS NOT SOLD, TO RETURN THE SAME TO THE ENTRUSTER; VIOLATION OF ANY OF THE UNDERTAKINGS IN A TRUST RECEIPT TRANSACTION CONSTITUTES ESTAFA DEFINED UNDER ARTICLE 315 (1) (b) OF THE REVISED PENAL CODE, WITHOUT NEED OF PROVING INTENT TO DEFRAUD.— "[A] trust receipt transaction imposes upon the entrustee the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the same to the entruster." *Gonzalez v. Hongkong & Shanghai Banking Corporation* explained: There are thus two obligations in a trust receipt transaction: the first, refers to money received under the obligation involving the duty to turn it over *(entregarla)* to the owner of the merchandise sold, while the second refers to merchandise received under the obligation to "return" it *(devolvera)* to the owner. A violation of any of these undertakings constitutes estafa defined under Art. 315 (1) (b) of the Revised Penal Code, as provided by Sec. 13 of Presidential Decree 115[.] x x x Criminal intent is irrelevant in prosecuting the violation of the Trust Receipts Law. In *Gonzalez:* That petitioner Gonzalez neither had the intent to defraud respondent HSBC nor personally

misused/misappropriated the goods subject of the trust receipts is of no moment. The offense punished under Presidential Decree No. 115 is in the nature of *malum prohibitum. A mere failure to deliver the proceeds of the sale or the goods if not sold, constitutes a criminal offense that causes prejudice not only to another, but more to the public interest.* This is a matter of public policy as declared by the legislative authority. Moreover, this Court already held previously that failure of the entrustee to turn over the proceeds of the sale of the goods, covered by the trust receipt, to the entruster or to return said goods if they were not disposed of in accordance with the terms of the trust receipt shall be punishable as estafa under Art. 315(1)(b) of the Revised Penal Code *without need of proving intent to defraud.*

4. ID.; CORPORATIONS; A CORPORATION, BEING A JURIDICAL ENTITY, MAY ACT ONLY THROUGH ITS DIRECTORS, OFFICERS AND EMPLOYEES; DEBTS INCURRED BY DIRECTORS, OFFICERS, AND EMPLOYEES, ACTING AS CORPORATE AGENTS, ARE NOT THEIRS BUT OF THE CORPORATION UNLESS THEY SO CONTRACTUALLY AGREE OR STIPULATE TO BE PERSONALLY LIABLE THEREFOR; CASE AT BAR.— Based on the prosecution's evidence, this Court cannot grant petitioner's Complaint. The prosecution's evidence consists of copies of: (1) Trust Receipt Agreement Nos. 006, 007, 008, 009, 024, 025, 046, and 047 between Equitable PCI Bank, Inc.—petitioner's predecessor-in-interest—and Camden, with respondent signing as its representative; (2) a copy of the Demand Letter dated May 22, 2003 addressed to Camden and respondent; (3) Camden's Statement of Account as of March 31, 2011; (4) the Certificate of Filing of the Articles and Plan of Merger dated May 25, 2007 between petitioner and Equitable PCI Bank, Inc.; (5) the Plan of Merger dated December 28, 2006 between petitioner and Equitable PCI Bank, Inc.; (6) Santiago's Judicial Affidavit; and (7) Carada's Judicial Affidavit. Although these pieces of evidence show that respondent signed the Trust Receipt Agreements, they do not show that he signed them in his personal capacity. On the bottom right corner of the agreements are two (2) lines: one for the "NAME OF CORPORATION," and the other for "AUTHORIZED SIGNATURE." In all agreements, "Camden Inds." was handwritten as the name of the corporation, while respondent's signature appeared as the authorized signature. Clearly, respondent affixed his signature only as

> Camden's representative. x x x [T]here was no guaranty clause or a similar clause on the page that he signed that would have made him personally liable in case of default of the company. In *Tupaz IV v. Court of Appeals:* A corporation, being a juridical entity, may act only through its directors, officers, and employees. Debts incurred by these individuals, acting as such corporate agents, are not theirs but the direct liability of the corporation they represent. As an exception, directors or officers are personally liable for the corporation's debts only if they so contractually agree or stipulate. Without any evidence that respondent personally bound himself to the debts of the company he represented, this Court cannot hold him civilly liable under the Trust Receipt Agreements.

APPEARANCES OF COUNSEL

Villaraza & Angangco for petitioner.
Villanueva Tiansay Trinidad Darvin Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

When a demurrer is granted in a criminal case, the private complainant can file a Rule 65 petition on the civil aspect of the case, as long as he or she can show that the trial court committed grave abuse of discretion in granting the demurrer.

This Court resolves a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, assailing the October 24, 2017 Decision[2] and February 13, 2018 Resolution[3]

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[1] *Rollo,* pp. 27-87.

[2] *Id*. at 9-21. The Decision was penned by Associate Justice Sesinando E. Villon, and concurred in by Associate Justices Manuel M. Barrios and Renato C. Francisco of the Ninth Division, Court of Appeals, Manila.

[3] *Id*. at 22-23. The Resolution was penned by Associate Justice Sesinando E. Villon, and concurred in by Associate Justices Manuel M. Barrios and Renato C. Francisco of the Former Ninth Division, Court of Appeals, Manila.

of the Court of Appeals in CA-G.R. SP No. 140059.[4] The Court of Appeals affirmed the November 26, 2014[5] and February 12, 2015[6] Orders of the Regional Trial Court, which granted Antonio Choa (Choa)'s Demurrer to Evidence.

On February 28, 2008, an Information[7] was filed before the Regional Trial Court of Pasig City against Choa, then president and general manager of Camden Industries, Inc. (Camden). He was charged with violating Presidential Decree No. 115, or the Trust Receipts Law, to the prejudice of BDO Unibank, Inc. (BDO), the private complainant. The Information read:

> That, on or about and during the period beginning March 12, 1999 until May 20, 1999, in the then Municipality of San Juan, now City of San Juan, a place within the jurisdiction of this Honorable Court, the above named accused, being then the President and General Manager of Camden Industries, Inc., execute several Trust Receipt Agreements with Nos. 0006, 0007, 0008, 0009, 0024, 0025, 0046 and 0047 in favor of Equitable PCI Bank (now Banco De Oro-EPCI, Inc.), herein represented by its Senior Manager Danilo M. De Dios, in consideration of the receipt by the said accused of . . . for which there is now due the sum of Php 7,875,904.96 under the terms of which the accused agreed to sell the same with express obligation to remit to the complainant bank proceeds of the sale and/or turn over the same if not sold or disposed of in accordance with the said Trust Receipt Agreements on demand, but the accused once in possession of the said good, far from complying with his obligation and with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously, misappropriate, misapply and convert to his own personal use and benefit the said goods and/or the proceeds

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[4] *Id*. at 76.

[5] *Id*. at 809-814. The Order, in Crim. Case No. 137326, was issued by Judge Leoncio M. Janolo, Jr. of Branch 264, Regional Trial Court, Pasig City (assigned in San Juan City).

[6] *Id*. at 906-909. The Order, in Crim. Case No. 137326, was issued by Judge Leoncio M. Janolo, Jr. of Branch 264, Regional Trial Court, Pasig City (assigned in San Juan City).

[7] *Id*. at 414-415.

of the sale thereof, and despite repeated demands, failed and refused to account for and/or remit the proceeds of the sale thereof, to the damage and prejudice of the said complainant bank in the aforementioned amount of Php7,875,904.96.

CONTRARY TO LAW.[8]

Trial ensued. The prosecution presented Gerard K. Santiago (Santiago) and Froilan Carada (Carada) as its witnesses.[9] The witnesses testified, among others, that per Civil Case No. 70098, entitled *"CAMDEN Industries, Inc. v. Equitable PCI Bank"* (Pasig civil case), which had been elevated to the Court of Appeals, BDO supposedly owed Camden the judgment award of ₱90 million.[10] They testified:

a. The subject trust receipts are for the account of CAMDEN Industries[;]

b. The complainant bank did not sue CAMDEN for the liability. The only one they sued was CAMDEN's President, the accused;

c. CAMDEN sued the bank and was awarded ₱90M plus. The bank was ordered to pay CAMDEN the same amount. The case is now on appeal to the Court of Appeals;

d. Upon the other hand, the money claim of the bank against CAMDEN and/or for the accused is ₱20M plus;

e. On clarificatory question by the court, the prosecution witness Gerard Santiago [a]dmitted that currently the bank is a judgment debtor of CAMDEN in the amount of ₱90M plus while the bank's claim against CAMDEN/accused is ₱20M plus[.][11]

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[8] *Id*. at 414 and 812.

[9] *Id*. at 90 and 809.

[10] *Id*. at 810. Gerard Santiago was then the account officer of BDO who handled Camden, Inc.'s account with respect to the Trust Receipt Agreements (*id*. at 602), while Froilan Carada was the head of the Letters of Credit Section of the Trade Processing Center of BDO (*id*. at 674).

[11] *Id*. at 809-810.

On August 20, 2014, the prosecution filed its Formal Offer of Documentary Evidence,[12] which the trial court admitted in its September 12, 2014 Order.[13] In the same Order, the trial court gave Choa 10 days to comment on the prosecution's evidence.[14]

On September 25, 2014, Choa filed his Comment.[15]

Later, on October 13, 2014, Choa filed a Motion for Leave (To file Demurrer to Evidence),[16] attached to which was his Demurrer to Evidence.[17] In both pleadings, Choa argued:

> It would thus appear that CAMDEN, represented by the accused, and the bank, assuming *arguendo* without admitting the bank's theory of the case, are mutually creditors and debtors of each other *(Art. 1278, Civil Code)*. Consequently, their obligations are extinguished proportionately by operation of law. Since the ₱20M plus being claimed by the bank is more than offset by the ₱90M plus judgment against the bank, there is no basis for the claim of violation of the *Trust Receipts Law*. At the very least, it would be impossible under such premises to build the case beyond reasonable doubt.[18] (Emphasis in the original)

In its October 20, 2014 Order,[19] the trial court directed the prosecution to comment on Choa's pleading, and Choa's counsel to reply on the comment if needed.[20]

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[12] *Id*. at 683-696.

[13] *Id*. at 762.

[14] *Id*.

[15] *Id*. at 766-767.

[16] *Id*. at 769-770.

[17] *Id*. at 772-773.

[18] *Id*. at 769 and 772.

[19] *Id*. at 776.

[20] *Id*.

On October 30, 2014, the prosecution filed its Opposition.[21] Arguing that the Motion for Leave should be expunged from the records, it claimed that the pleading was *pro-forma* for being filed beyond the five (5)-day reglementary period under Rule 119, Section 23 of the Rules of Court.[22]

Even if the Motion was timely filed, the prosecution asserted that it should still be denied for lack of basis, maintaining that Choa's civil liabilities could not have been offset by the judgment award granted to Camden in the Pasig civil case. It points out that since Choa's civil liabilities stemmed from his criminal violations of the Trust Receipts Law,[23] they could not be the subject of compensation.[24]

The prosecution added that the decision of the trial court, which had awarded Camden ₱90 million, was reversed and set aside by the Court of Appeals.[25]

On November 26, 2014, the trial court issued an Order[26] granting Choa's Demurrer to Evidence. Based on the records and the witnesses' testimonies, it found that the prosecution failed to establish Choa's guilt.[27]

The trial court found that: (1) the amounts BDO and Camden owed each other—BDO's ₱90 million judgment debt to Camden, and Camden's ₱20 million judgment debt to BDO—may be legally compensated; (2) BDO failed to prove that Choa was liable for ₱7,875,904.96, and that this amount formed part of the ₱20 million trust receipt; and (3) BDO failed to prove Choa's criminal intent in not paying or turning over the goods.[28]

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[21] *Id*. at 778-790.

[22] *Id*. at 779-783.

[23] *Id*. at 784-789.

[24] *Id*. at 785 *citing* CIVIL CODE, Art. 1288.

[25] *Id*. at 786-789.

[26] *Id*. at 809-814.

[27] *Id*. at 811.

[28] *Id*. at 811-813.

From these findings, the trial court declared that "the case is subject to compensatory action, which is civil in nature."[29]

The dispositive portion of the Regional Trial Court Order read:

WHEREFORE, premises considered, accused Antonio Choa's Demurrer to Evidence is hereby **GRANTED.**

SO ORDERED.[30] (Emphasis in the original)

The prosecution filed a Motion for Reconsideration,[31] which the trial court denied in its February 12, 2015 Order.[32]

Thus, BDO filed before the Court of Appeals a Petition for *Certiorari*,[33] assailing the trial court's November 26, 2014 and February 12, 2015 Orders. It argued that the trial court judge committed grave abuse of discretion in:

1. granting Choa's Demurrer to Evidence despite being filed out of time;
2. granting the Demurrer to Evidence without first resolving the Motion for Leave and giving BDO due process;
3. ruling that Choa's civil liabilities may be legally compensated with the judgment award in the Pasig civil case despite it being irrelevant to this case, and despite the award having been reversed by the Court of Appeals;
4. granting the Demurrer to Evidence despite the prosecution having established a *prima facie* case for Choa's violation of the Trust Receipts Law; and

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[29] *Id*. at 814.

[30] *Id*.

[31] *Id*. at 816-842.

[32] *Id*. at 906-909.

[33] *Id*. at 911-971.

5. ruling that the prosecution failed to present enough proof of Camden's outstanding obligations to BDO despite evidence to the contrary.[34]

Affirming the trial court's Orders, the Court of Appeals issued its October 24, 2017 Decision[35] denying BDO's Petition. It found that Choa filed his Motion for Leave within the prescriptive period since the prosecution could not "yet be deemed to have rested its case."[36] It explained that the trial court only "physically 'admitted'"[37] in its September 12, 2014 Order the prosecution's Formal Offer of Documentary Evidence, but had yet to rule on its admissibility. This was shown, the Court of Appeals explained, when Choa was also directed to submit his Comment.[38]

The Court of Appeals added that BDO was not denied due process. It pointed out that the bank's filing of its Opposition and subsequent Motion for Reconsideration showed that it had been given an opportunity to be heard.[39] The Court of Appeals noted that when the opportunity to be heard is accorded, "there is no denial of procedural due process."[40]

Finally, the Court of Appeals held that BDO failed to show how the trial court had committed grave abuse of discretion in issuing the September 12, 2014 Order.[41] Even if the trial court erred in granting Choa's Demurrer to Evidence, the Court of Appeals stated that this error was not "capricious and whimsical as to constitute grave abuse of discretion."[42]

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[34] *Id*. at 925-927.

[35] *Id*. at 89-101.

[36] *Id*. at 97.

[37] *Id*.

[38] *Id*.

[39] *Id*. at 100.

[40] *Id*.

[41] *Id*. at 98-100.

[42] *Id*. at 98.

The dispositive portion of the Court of Appeals Decision read:

> **WHEREFORE,** the instant petition is hereby **DENIED. ACCORDINGLY,** the assailed Orders dated November 26, 2014 and February 12, 2015 of the Regional Trial Court of Pasig City (assigned in San Juan City), Branch 264, in Criminal Case No. 137326, are hereby **AFFIRMED.**
>
> **SO ORDERED.**[43] (Emphasis in the original)

BDO moved for reconsideration[44] but the Court of Appeals denied the Motion in its February 13, 2018 Resolution.[45]

Hence, BDO filed this Petition for Review on *Certiorari*,[46] assailing the October 24, 2017 Decision and February 13, 2018 Resolution of the Court of Appeals.[47]

On November 5, 2018, Choa filed his Comment.[48] In turn, BDO filed its Reply[49] on February 1, 2019.

Petitioner insists that the Motion for Leave was not timely filed. It avers that under Rule 119, Section 23 of the Rules of Court, respondent should have filed his Motion for Leave within five (5) days from September 12, 2014, when the prosecution supposedly rested its case after its documentary evidence had been admitted by the trial court judge.[50] It claims that if, according to the Court of Appeals, the prosecution did not rest its case at the time of the filing of the Motion for Leave, then the trial

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[43] *Id*. at 101.

[44] *Id*. at 1195-1223.

[45] *Id*. at 103-104.

[46] *Id*. at 27-87.

[47] *Id*. at 76.

[48] *Id*. at 1317-1358.

[49] *Id*. at 1363-1382.

[50] *Id*. at 50-53.

court's judgment granting the Demurrer to Evidence was premature, and therefore, void.[51]

Moreover, petitioner contends that the trial court should have first ruled on respondent's Motion for Leave,[52] as this would have helped "in determining whether he is merely stalling the proceedings."[53] Nonetheless, even if the trial court judge was allowed to resolve respondent's Demurrer to Evidence without first ruling on the Motion, petitioner claims that the prosecution should have been given 10 days from notice of the ruling on the Motion so it could file its Opposition to the Demurrer to Evidence.[54] What happened, petitioner claims, was that the prosecution was deprived of an opportunity to be heard on both pleadings.[55]

Petitioner maintains that it was deprived of an opportunity to present extensive evidence on the overpayment in the Pasig civil case as it believed that the trial court would not use the Pasig civil case judgment in resolving the Demurrer to Evidence. It points out that the trial court has consistently stated in three (3) Orders—July 21, 2008, April 14, 2009, and November 8, 2010—that the Pasig civil case was irrelevant to this case. It says it did not know that the trial court would use the Pasig civil case judgment in ruling that the judgment debts may be offset.[56]

Finally, petitioner avers that the Court of Appeals should have decided on the merits of the Demurrer to Evidence after the trial court judge had committed grave abuse of discretion in:

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[51] *Id*. at 53-56.

[52] *Id*. at 60-64.

[53] *Id*. at 63.

[54] *Id*. at 64.

[55] *Id*.

[56] *Id*. at 56-60.

1. allowing respondent to comment on the Formal Offer of Documentary Evidence despite it having already been admitted;
2. granting the Motion for Leave despite being filed belatedly;
3. denying petitioner due process by granting the Motion and Demurrer to Evidence without giving the prosecution a chance to refute the pleadings;
4. ruling—contrary to the Civil Code—that there could be legal compensation between the judgment debt in Camden's favor and respondent's civil liability arising from a criminal case;
5. ignoring the Court of Appeals Decision that reversed the trial court Decision awarding the judgment debt in Camden's favor;
6. ruling that respondent's obligation to petitioner was a mere loan, despite his liability for violating the Trust Receipts Law;
7. ignoring that respondent's violation of the Trust Receipts Law was *malum prohibitum;* and
8. ruling that the prosecution failed to present proof of Camden's outstanding obligations to petitioner.[57]

In his Comment,[58] respondent counters that this Petition should have been "denied outright for lack of authority."[59] It maintains that petitioner was also appealing the criminal aspect of the case, which was exclusively within the Office of the Solicitor General's authority. Without the conformity or authority of the Office of the Solicitor General, petitioner had no standing to appeal the criminal aspect of the case.[60]

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[57] *Id*. at 67-75.

[58] *Id*. at 1317-1358.

[59] *Id*. at 1324.

[60] *Id*. at 1324-1327.

Respondent also insists that his Motion for Leave was not belatedly filed. Contrary to petitioner's claim, the period of his Motion's filing did not start on September 12, 2014, when the trial court admitted the prosecution's exhibits. Respondent asserts that since the trial court directed him to comment on the evidence in the same Order, the trial court did not yet rule on the evidence's admissibility. If the trial court indeed made a ruling on September 12, 2014, respondent asserts that petitioner should have moved for reconsideration or clarification of the Order, or it could have raised the alleged prematurity of the Motion for Leave earlier in its Opposition—but it did not do either.[61]

Respondent argues that petitioner was not deprived of its opportunity to be heard on both the Motion for Leave and the Demurrer to Evidence. He emphasizes that petitioner was duly represented at the hearing on the Motion for Leave, and that it filed its Opposition to both pleadings. He further argues that petitioner should have moved for reconsideration or clarification of the trial court's November 4, 2014 Order if it believed that the Motion, not the Demurrer, was the only subject for resolution.[62]

Respondent avers that petitioner's other arguments involved an appreciation of evidence, which is not proper in a petition for *certiorari* filed before the Court of Appeals.[63] He reiterated that a Rule 65 petition "cannot be granted to correct mere errors in appreciation of facts or interpretation of law."[64]

Maintaining that his guilt of the accusation in the Information has not been proven,'[65] respondent argues that the prosecution failed to prove that he "was directly and personally responsible

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[61] *Id*. at 1328-1331.

[62] *Id*. at 1331-1335. The November 4, 2014 Order stated that the Demurrer to Evidence would be deemed submitted for resolution after respondent had filed his reply.

[63] *Id*. at 1336-1339.

[64] *Id*. at 1337.

[65] *Id*. at 1339-1354.

for the alleged violation of the Trust Receipts Law[.]"[66] He emphasizes that the prosecution witnesses had no personal knowledge of the trust receipt transactions, and that their testimonies were merely based on available records.[67]

Moreover, respondent claims that the elements of the offense are absent in his case:

> There is no proof that Respondent received the goods subject of the trust receipts (first element). There is no proof that he personally misappropriated such goods or the proceeds of their sale (second element). There is no proof that Respondent performed such act of misappropriation or conversion with abuse of confidence (third element). There is even no proof of demand upon him (fourth element).[68]

Lastly, respondent points out that petitioner did not present any evidence on the alleged reversal of the Pasig civil case. He submits that petitioner did not submit a certified copy of the Court of Appeals Decision despite purportedly obtaining it before filing the Formal Offer of Documentary Evidence.[69]

In its Reply,[70] petitioner maintains that it has personality in filing this case, citing as its bases *Rural Bank of Mabitac, Laguna, Inc. v. Canicon*[71] and *David v. Marquez.*[72] It refutes respondent's claim that its Petition should be dismissed for being filed without the Office of the Solicitor General's authority.[73]

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[66] *Id*. at 1340.

[67] *Id*. at 1343.

[68] *Id*. at 1344.

[69] *Id*. at 1346-1348.

[70] *Id*. at 1363-1382.

[71] G.R. No. 196015, June 27, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64171 > [Per *J*. Jardeleza, First Division].

[72] 810 Phil. 187 (2017) [Per *J*. Tijam, Third Division].

[73] *Rollo,* pp. 1365-1366.

Petitioner insists that the trial court judge committed grave abuse of discretion in issuing the assailed Orders. As such, respondent was not validly acquitted and, consequently, there is no double jeopardy. Petitioner reiterates that it was able to sufficiently show the trial court judge's arbitrariness and abuse of authority in the way he handled the case.[74]

Moreover, petitioner again submits that respondent's Motion for Leave was belatedly filed.[75]

Petitioner reiterates that it was deprived of due process. It insists that the trial court failed to give it an opportunity to present evidence in relation to the Pasig civil case, and on both the Motion for Leave and Demurrer to Evidence.[76]

On the Pasig civil case, petitioner asserts that it was not possible then to include the Court of Appeals Decision in its Formal Offer of Documentary Evidence since it received the copy after it had concluded its presentation of evidence. Nonetheless, it claims that it manifested the Decision and attached its copy to its Opposition before the trial court. Thus, it was able to inform the trial court judge of the Decision.[77]

Petitioner argues that even if it did not include the Court of Appeals Decision in the case records, the Pasig civil case will still be irrelevant to the criminal case since "the trial court Judge [has] already ruled that the Pasig Civil Case will not determine the guilt or innocence of respondent[.]"[78]

The issues for this Court's resolution are:

First, whether or not petitioner BDO Unibank, Inc. has the legal personality to file a Petition for *Certiorari* before the Court of Appeals; and

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[74] *Id*. at 1367-1368.

[75] *Id*. at 1369-1372.

[76] *Id*. at 1372-1374.

[77] *Id*. at 1374-1379.

[78] *Id*. at 1378.

Second, whether or not the Court of Appeals erred in ruling that the trial court judge did not commit grave abuse of discretion when he issued the Order granting respondent Antonio Choa's Demurrer to Evidence.

I

The State has the "inherent prerogative in prosecuting criminal cases and in seeing to it that justice is served."[79] Subsumed under this right is the authority to appeal an accused's acquittal. In *Bautista v. Cuneta-Pangilinan*,[80] this Court elaborated:

> The authority to represent the State in appeals of criminal cases before the Supreme Court and the CA is solely vested in the Office of the Solicitor General (OSG). Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code explicitly provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. It shall have specific powers and functions to represent the Government and its officers in the Supreme Court and the CA, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. The OSG is the law office of the Government.
>
> To be sure, in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. *The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned.* In a catena of cases, this view has been time and again espoused and maintained by the Court. In *Rodriguez v. Gadiane*, it was categorically stated that if the criminal case is dismissed by the trial court or if there is an acquittal, the appeal on the criminal aspect of the case must be instituted by the Solicitor General in behalf of the State. *The capability of the private complainant to question such dismissal or acquittal is limited only to the civil aspect of the case. . .*

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[79] *People v. Subida,* 526 Phil. 115, 128 (2006) [Per *J.* Callejo, Sr., First Division].

[80] 698 Phil. 110 (2012) [Per *J.* Peralta, Third Division].

Worthy of note is the case of *People v. Santiago,* wherein the Court had the occasion to bring this issue to rest. The Court elucidated:

> It is well-settled that in criminal cases where the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability. Thus, in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not take such appeal. *However, the said offended party or complainant may appeal the civil aspect despite the acquittal of the accused.*
>
> *In a special civil action for certiorari filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds.* In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in name of said complainant.

Thus, the Court has definitively ruled that in a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal of the criminal aspect may be undertaken, whenever legally feasible, only by the State through the solicitor general. As a rule, only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not undertake such appeal.[81] (Emphasis supplied, citations omitted)

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[81] *Id*. at 122-124.

Here, although petitioner discussed respondent's criminal liability in its Petition for *Certiorari*, the totality of its arguments concerns the civil aspect of the case. It reinforced its position in its concluding paragraph:

> All told, public respondent Judge clearly committed grave abuse of discretion amounting to lack and/or excess of jurisdiction in holding that the prosecution was not able to prove private respondent Choa's liability in the total amount of ₱7,875,904.96 as stated in the Information as well as CAMDEN's total outstanding obligation to petitioner BDO as of 31 March 2011 in the amount of ₱23,806,788.11.[82]

Thus, petitioner has the legal personality to file a special civil action questioning the Regional Trial Court Orders insofar as the civil aspect of the case is concerned.

II

This Court will first resolve the procedural issue of whether the trial court erred in not dismissing outright respondent's Motion for Leave and Demurrer to Evidence for being filed out of time.

Demurrer to evidence in criminal cases is governed by Rule 119, Section 23 of the Revised Rules of Criminal Procedure:

RULE 119
Trial

SECTION 23. *Demurrer to Evidence.* — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

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[82] *Rollo,* p. 964.

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment.

In *Valencia v. Sandiganbayan,*[83] this Court clarified:

A demurrer to evidence tests the sufficiency or insufficiency of the prosecution's evidence. As such, a demurrer to evidence or a motion for leave to file the same must be filed after the prosecution rests its case. But before an evidence may be admitted, the rules require that the same be formally offered, otherwise, it cannot be considered by the court. A prior formal offer of evidence concludes the case for the prosecution and determines the timeliness of the filing of a demurrer to evidence.[84]

A review of the case records reveals that when the prosecution filed its Formal Offer of Documentary Evidence[85] on August 20, 2014, it included a reservation in its Prayer, which states:

PRAYER

WHEREFORE, it is respectfully prayed that plaintiff People of the Philippines' Exhibits "A" to "P-I", inclusive of their submarkings, be admitted in evidence for the purposes for *(sic)* which they have been offered. *With the admission of the foregoing exhibits and the testimonies of Messrs. Gerard Santiago and Froilan Carada, for the purposes for (sic) which they are offered, plaintiff People of the Philippines hereby rests its case.*

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[83] 510 Phil. 70 (2005) [Per *J.* Ynares-Santiago, First Division].

[84] *Id.* at 80.

[85] *Rollo,* pp. 683-696.

In the event that the Honorable Court will deny the admission of any of the foregoing exhibits offered, it is respectfully prayed that the Honorable Court grant plaintiff People of the Philippines an opportunity to present additional evidence.

Other reliefs just and equitable are likewise prayed for.[86] (Emphasis supplied)

The prayer itself indicates that the prosecution would rest its case depending on whether the trial court admitted its evidence. If the trial court did not admit its evidence, the prosecution would present additional evidence; otherwise, it would rest its case. Due to this reservation, the five (5)-day period for the filing of a Motion for Leave had not yet started when petitioner filed its Formal Offer of Documentary Evidence.

The prosecution is deemed to have rested its case on September 12, 2014, when the trial court admitted its documentary evidence. In *Cabador v. People,*[87] this Court held that "only after [the court ruled on the prosecution's formal offer of documentary evidence] could the prosecution be deemed to have rested its case."[88]

However, the counting of the five (5)-day period did not commence on August 20, 2014, when the prosecution filed its Formal Offer of Documentary Evidence; or on September 12, 2014, when the trial court admitted the evidence. Instead, it started upon respondent's receipt of the September 12, 2014 Order, for only then was he notified that the prosecution had rested its case.

Nonetheless, respondent filed his Motion for Leave and Demurrer to Evidence on October 13, 2014. To recall, the September 12, 2014 Order had also directed respondent to

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[86] *Id*. at 694.

[87] 617 Phil. 974 (2009) [Per J. Abad, Second Division].

[88] *Id*. at 982. See also *Magleo v. Judge De Juan-Quinagoran,* 746 Phil. 552, 560 (2014) [Per J. Mendoza, Second Division].

submit his comment/opposition, which he then submitted on September 25, 2014. Even if there is no record of when respondent received a copy of the Order, it can be surmised that he received it before September 25, 2014. It follows that the Motion for Leave and the Demurrer to Evidence were filed beyond the five (5)-day period under Rule 119, Section 23 of the Rules of Court. The trial court, then, should have denied these pleadings outright.

III

Nevertheless, even if the Motion for Leave and the Demurrer to Evidence were filed on time, the trial court judge still committed grave abuse of discretion in granting the Demurrer to Evidence.

Presidential Decree No. 115, or the Trust Receipts Law, defines a trust receipt transaction:

> SECTION 4. *What constitutes a trust receipt transaction.* — A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as the entrustee, whereby the entruster, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the entrustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the entrustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, documents or instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt, or for other purposes substantially equivalent to any of the following:
>
> 1. In the case of goods or documents, (a) to sell the goods or procure their sale; or (b) to manufacture or process the goods with the purpose of ultimate sale: Provided, That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over

the goods whether in its original or processed form until the entrustee has complied fully with his obligation under the trust receipt; or (c) to load, unload, ship or transship or otherwise deal with them in a manner preliminary or necessary to their sale; or

2. In the case of instruments, (a) to sell or procure their sale or exchange; or (b) to deliver them to a principal; or (c) to effect the consummation of some transactions involving delivery to a depository or register; or (d) to effect their presentation, collection or renewal.

The sale of goods, documents or instruments by a person in the business of selling goods, documents or instruments for profit who, at the outset of the transaction, has, as against the buyer, general property rights in such goods, documents or instruments, or who sells the same to the buyer on credit, retaining title or other interest as security for the payment of the purchase price, does not constitute a trust receipt transaction and is outside the purview and coverage of this Decree.

Simply put, "a trust receipt transaction imposes upon the entrustee the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the same to the entruster."[89] *Gonzalez v. Hongkong & Shanghai Banking Corporation*[90] explained:

There are thus two obligations in a trust receipt transaction: the first, refers to money received under the obligation involving the duty to turn it over *(entregarla)* to the owner of the merchandise sold, while the second refers to merchandise received under the obligation to "return" it *(devolvera)* to the owner. A violation of any of these undertakings constitutes estafa defined under Art. 315 (1) (b) of the Revised Penal Code, as provided by Sec. 13 of Presidential Decree 115[.][91] (Citations omitted)

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[89] *Gonzalez v. Hongkong & Shanghai Banking Corporation,* 562 Phil. 841, 858 (2007) [Per *J.* Chico-Nazario, Third Division].

[90] 562 Phil. 841 (2007) [Per *J.* Chico-Nazario, Third Division].

[91] *Id*. at 858.

In granting respondent's Demurrer to Evidence, the trial court consequently acquitted him of violation of the Trust Receipts Law. The Decision was based on grounds that: (1) petitioner owed Camden, which was represented by respondent, ₱90 million, while Camden owed petitioner ₱20 million, and both amounts can be legally compensated; (2) petitioner failed to provide evidence that respondent was liable for ₱7,875,904.96 as alleged in the Information, or that this amount formed part of the ₱20 million trust receipt; and (3) petitioner failed to provide evidence of respondent's criminal intent in not paying or turning over the goods.

On the first ground, the trial court held:

> In the instant case, what is evidently proved is that the complainant and CAMDEN, represented by the accused have earlier litigated on the issue of trust receipt. Accordingly, complainant BDO was decided on that case a judgment debtor in favor of the (sic) CAMDEN. It was testified that BDO is obligated to the accused Antonio Choa by as much as ₱90M more or less. On the other hand, CAMDEN, represented by the accused Antonio Choa, is claimed to have failed to pay and/or turn over the goods amounting to ₱20M.
>
> . . . . . .
>
> What is clear from the record is that the accused is obligated to pay the private complainant BDO for the purchase of the goods.
>
> Under this *(sic)* circumstances, the transaction is a mere loan extended to the accused who in turn is to pay the loan by way of remittance of the proceeds of the sale. If the goods are unsold or surrender *(sic)* the collateral[,] no criminal liability arises. Hence, accused should not be held liable for violation of Presidential Decree No. 115 [p]roviding for the Regulation of the Trust Receipts Transactions.
>
> . . . . . .
>
> ... The mass of trust receipts subject of this case in the amount of ₱20M interspersed with the claim of ₱90M accused have against the complainant. Hence, the case is subject to compensatory action, which is civil in nature.[92]

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[92] *Rollo,* pp. 811-814.

However, the judgment in the Pasig civil case is irrelevant here. Again, the issue here is whether Camden violated the Trust Receipt Agreements when it failed to deliver the proceeds of the sale of the goods to petitioner, or to return the goods should the merchandise remain unsold. Moreover, the Pasig civil case, which held petitioner as a judgment debtor of Camden, has yet to attain finality.[93] As such, it cannot be the basis of a judgment.

On the second ground, the trial court held:

> However, a review of the information filed by 4th Assistant City Prosecutor, Ma. Dinna Paulino, reveals that the amount at issue is ₱7,875,904.96....
>
> . . . . . .
>
> There is nothing on record that the information of the prosecution even mentioned the specific amount of ₱7,875,904.96. All that testified is the ₱20M liability of the accused without specific proof of obligation how the accused was able to accumulate the ₱20M.
>
> To the mind of the court, there is not even a probable cause sufficient to indict the accused for his minimal liability of ₱7,875,904.96. So far, the prosecution was able to advance an imaginary liability of ₱20M. There is even no proof posited that the ₱7,875,904.96 mentioned in the information, forms part of that ₱20M trust receipt.[94]

Contrary to the trial court's ruling, the prosecution was able to show how it computed the amount of ₱7,875,904.96. In its Formal Offer of Documentary Evidence, the prosecution offered the following Trust Receipt Agreements and their corresponding amounts, which respondent received as Camden's representative:

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[93] There is no Entry of Judgment of the Pasig civil case attached to the *rollo*.

[94] *Rollo,* p. 812.

Trust Receipt Agreement No. 006, dated March 12, 1999	₱ 711,385.00
Trust Receipt Agreement No. 007, dated March 12, 1999	₱ 662,660.00
Trust Receipt Agreement No. 008, dated May 7, 1999	₱ 883,035.00
Trust Receipt Agreement No. 009, dated May 17, 1999	**₱1,532,113.20**
Trust Receipt Agreement No. 024, dated May 17, 1999	**₱1,037,458.40**
Trust Receipt Agreement No. 025, dated May 17, 1999	₱1,148,201.76
Trust Receipt Agreement No. 046, dated May 20, 1999	₱ 644,810.00
Trust Receipt Agreement No. 047, dated May 20, 1999	₱1,256,241.60[95]

These amounts total ₱7,875,904.96. The trial court, then, cannot rule that the prosecution was not able to provide evidence. In addition, whether this amount formed part of the alleged ₱20 million trust receipt obligation of respondent is irrelevant. That is not the issue in this case, which deals with the violation of the Trust Receipts Law.

On the third ground, the trial court held:

> Finally, records show that the prosecution failed to elicit strong evidence that the accused has criminal intent not to pay or turn over the goods to the private complainant.[96]

Criminal intent is irrelevant in prosecuting the violation of the Trust Receipts Law. In *Gonzalez:*

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[95] *Id*. at 683-691, Formal Offer of Documentary Evidence, and 697-710, Trust Receipt Agreements.

[96] *Id*. at 814.

That petitioner Gonzalez neither had the intent to defraud respondent HSBC nor personally misused/misappropriated the goods subject of the trust receipts is of no moment. The offense punished under Presidential Decree No. 115 is in the nature of *malum prohibitum. A mere failure to deliver the proceeds of the sale or the goods if not sold, constitutes a criminal offense that causes prejudice not only to another, but more to the public interest.* This is a matter of public policy as declared by the legislative authority. Moreover, this Court already held previously that failure of the entrustee to turn over the proceeds of the sale of the goods, covered by the trust receipt, to the entruster or to return said goods if they were not disposed of in accordance with the terms of the trust receipt shall be punishable as estafa under Art. 315(1)(b) of the Revised Penal Code *without need of proving intent to defraud.*[97] (Emphasis supplied, citations omitted)

Thus, in granting the Demurrer to Evidence, the trial court judge committed grave abuse of discretion. Its Orders, therefore, should be reversed.

IV

As a consequence, this Court will now resolve the merits of the case based on petitioner's evidence. This is in line with the ruling in *Siayngco v. Costibolo:*[98]

The rationale behind the rule and doctrine is simple and logical. The defendant is permitted, without waiving his right to offer evidence in the event that his motion is not granted, to move for a dismissal (i.e. demur to the plaintiff's evidence) on the ground that upon the facts as thus established and the applicable law, the plaintiff has shown no right to relief. If the trial court denies the dismissal motion, i.e., finds that plaintiff's evidence is sufficient for an award of judgment in the absence of contrary evidence, the case still remains before the trial court which should then proceed to hear and receive the defendant's evidence so that all the facts and evidence of the contending parties may be properly placed before it for adjudication as well as before the appellate courts, in case of appeal. Nothing is lost. This doctrine is but in line with the established procedural precepts in the

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[97] 562 Phil. 841, 860 (2007) [Per *J.* Chico-Nazario, Third Division].

[98] 136 Phil. 475 (1969) [Per *J.* Teehankee, *En Banc*].

conduct of trials that the trial court liberally receive all preferred *(sic)* evidence at the trial to enable it to render its decision with all possibly relevant proofs in the record, thus assuring that the appellate courts upon appeal have all the material before them necessary to make a correct judgment, and avoiding the need of remanding the case for retrial or reception of improperly excluded evidence, with the possibility thereafter of still another appeal, with all the concomitant delays. *The rule, however, imposes the condition by the same token that if his demurrer is granted by the trial court, and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf and he shall have been deemed to have elected to stand on the insufficiency of plaintiff's case and evidence. In such event, the appellate court which reverses the order of dismissal shall proceed to render judgment on the merits on the basis of plaintiff's evidence.*[99] (Emphasis supplied)

In the more recent case of *Duque v. Spouses Yu:*[100]

In short, defendants who present a demurrer to the plaintiffs' evidence retain the right to present their own evidence, if the trial court disagrees with them; if it agrees with them, but on appeal, the appellate court disagrees and reverses the dismissal order, the defendants lose the right to present their own evidence. *The appellate court shall, in addition, resolve the case and render judgment on the merits,* inasmuch as a demurrer aims to discourage prolonged litigations.[101] (Emphasis supplied, citation omitted)

Based on the prosecution's evidence, this Court cannot grant petitioner's Complaint.

The prosecution's evidence consists of copies of: (1) Trust Receipt Agreement Nos. 006, 007, 008, 009, 024, 025, 046, and 047 between Equitable PCI Bank, Inc.—petitioner's predecessor-in-interest—and Camden, with respondent signing as its representative; (2) a copy of the Demand Letter dated May 22, 2003 addressed to Camden and respondent;

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[99] *Id*. at 488.

[100] G.R. No. 226130, February 19, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63883 > [Per *J*. Velasco, Jr., Third Division].

[101] *Id*.

(3) Camden's Statement of Account as of March 31, 2011; (4) the Certificate of Filing of the Articles and Plan of Merger dated May 25, 2007 between petitioner and Equitable PCI Bank, Inc.; (5) the Plan of Merger dated December 28, 2006 between petitioner and Equitable PCI Bank, Inc.; (6) Santiago's Judicial Affidavit; and (7) Carada's Judicial Affidavit.[102]

Although these pieces of evidence show that respondent signed the Trust Receipt Agreements, they do not show that he signed them in his personal capacity. On the bottom right corner of the agreements are two (2) lines: one for the "NAME OF CORPORATION," and the other for "AUTHORIZED SIGNATURE." In all agreements, "Camden Inds." was handwritten as the name of the corporation, while respondent's signature appeared as the authorized signature. Clearly, respondent affixed his signature only as Camden's representative.

Moreover, there was no guaranty clause or a similar clause on the page that he signed that would have made him personally liable in case of default of the company.[103] In *Tupaz IV v. Court of Appeals:*[104]

> A corporation, being a juridical entity, may act only through its directors, officers, and employees. Debts incurred by these individuals, acting as such corporate agents, are not theirs but the direct liability of the corporation they represent. As an exception, directors or officers are personally liable for the corporation's debts only if they so contractually agree or stipulate.[105] (Citations omitted)

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[102] *Rollo,* pp. 683-694.

[103] See *Tupaz IV v. Court of Appeals,* 512 Phil. 47, 56-64 (2005) [Per *J.* Carpio, First Division]; *Ong v. Court of Appeals,* 449 Phil. 691, 709-711 (2003) [Per *J.* Carpio, First Division]; and *Prudential Bank v. Intermediate Appellate Court,* 290-A Phil. 1, 17-21 (1992) [Per *J.* Davide, Jr., Third Division].

[104] 512 Phil. 47 (2005) [Per *J.* Carpio, First Division].

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

Without any evidence that respondent personally bound himself to the debts of the company he represented, this Court cannot hold him civilly liable under the Trust Receipt Agreements.

WHEREFORE, the Petition is **DENIED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 239331. July 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDSON BARBAC RETADA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); REQUIREMENTS UNDER SECTION 21, ARTICLE II THEREOF.— In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction. It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty. Thus, in order to obviate any unnecessary doubt on their identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. In this 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 Department of Justice (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.**

2. **ID.; ID.; ID.; FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE LAID OUT THEREIN DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID 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; CASE AT BAR.—** 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 and 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, 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 the case at bar, the police officers utterly failed to comply with the requirements of Section 21. *First*, although there were two elected officials present during the inventory at the police station, the two other mandatory witnesses were not present. x x x *Second*, they did not conduct the marking, inventory, and photography of the seized items at the place of arrest. Instead, they delayed the proceedings and supposedly accomplished them only at the police station. When asked why they did so, they offered a flimsy excuse that there were several persons in the place where they conducted the buy-bust operation. x x x It bears stressing that the prosecution has the burden of (1) proving the police officers' compliance with Section 21, RA 9165 and (2) providing a sufficient explanation in case of non-compliance. As the Court *en*

banc unanimously held in the recent case of *People v. Lim*, It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as: (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention;** or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.** Undeniably, none of the abovementioned circumstances was attendant in the case. Their excuse for non-compliance is unconvincing. x x x All told, the prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug, thus the integrity and evidentiary value of the seized drug have been compromised. Accordingly, Retada should be acquitted of the crime of Illegal Sale of Dangerous Drugs.

3. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— [T]he elements of illegal possession of drugs were not satisfactorily proven by the prosecution. The successful prosecution of illegal possession of drugs necessitates the following facts to be proved, namely: (a) the accused was in possession of the dangerous drugs, (b) such possession was not authorized by law, and (c) the accused was freely and consciously aware of being in possession of the dangerous drugs. For both offenses, it is crucial that the prosecution establishes the identity of the seized dangerous drug in a way that the integrity thereof has been well-preserved from the time of seizure or confiscation from the accused until the time of presentation as evidence in court. In this case, the prosecution

utterly failed to prove that the integrity and evidentiary value of the seized drug were preserved. The same breaches of procedure in the handling of the illegal drug subject of the illegal sale charge equally apply to the illegal drug subject of the illegal possession charge. Corollary, the prosecution was not able to overcome the presumption of innocence of Retada.

4. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; IN CASE THE WARRANTLESS ARREST OF THE ACCUSED IS ILLEGAL, THE SUBSEQUENT WARRANTLESS SEARCH RESULTING IN THE RECOVERY OF DANGEROUS DRUGS FROM THE ACCUSED'S POSSESSION IS INVALID AND THE SEIZED ITEM IS INADMISSIBLE IN EVIDENCE BEING UNDER THE LAW, "FRUIT OF THE POISONOUS TREE."—** [C]onsidering that the warrantless arrest of the accused was illegal, the subsequent warrantless search resulting in the recovery of one more plastic sachet of *shabu* from Retada's possession is invalid and the seized *shabu* is inadmissible in evidence being under the law, "fruit of the poisonous tree." Even more telling is the fact that they only conducted the thorough body search of the accused at the police station when they could have immediately done it at the place of arrest. Thus, Retada must perforce also be acquitted of the charge of violating Section 11 of RA 9165.

APPEARANCES OF COUNSEL

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

CAGUIOA, *J.*:

This is an Appeal[1] under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02101, which

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[1] See Notice of Appeal dated December 15, 2017, *rollo*, pp. 17-18.

[2] *Rollo*, pp. 4-16. Penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Gabriel T. Ingles and Geraldine C. Fiel-Macaraig, concurring.

affirmed the Omnibus Decision[3] dated July 23, 2015 rendered by the Regional Trial Court, Branch 62, Oslob, Cebu (RTC) in Criminal Case No. OS-12-743 and Criminal Case No. OS-12-744, finding accused-appellant Edson Barbac Retada (Retada) guilty beyond reasonable doubt of violating Sections 5 and 11(3), Article II of Republic Act No. (RA) 9165,[4] otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

The Facts

The two separate Informations[5] filed against Retada for violation of Sections 5 and 11(3), Article II of RA 9165 pertinently read:

[Criminal Case No. OS-12-743 (Illegal Sale of Dangerous Drugs)]

That on April 7, 2012, at 8:00 o'clock in the evening, more or less, at Barangay Poblacion, Municipality of Ginatilan, Province of Cebu, 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 deliver and sell to the poseur[-]buyer of Ginatilan Police Station, one (1) heat-sealed transparent plastic sachet with label "EBR-1" containing white crystalline substance weighing **0.05** gram of white crystalline substance (*sic*) for **two (2) pieces of Two Hundred [P]eso bills bearing Serial Nos. JW970202** and **EL143390**, when subjected to laboratory examination gave positive results for the presence of Methamphetamine Hydrochloride (shabu), a dangerous drug.

CONTRARY TO LAW. [6]

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[3] CA *rollo*, pp. 38-45. Penned by Presiding Judge James Stewart Ramon E. Himalaloan.

[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 (Criminal Case No. OS-12-743 and Criminal Case No. OS-12-744), p. 1.

[6] Records (Criminal Case No. OS-12-743), p. 1.

[Criminal Case No. OS-12-744 (Illegal Possession of Dangerous Drugs)]

That on April 7, 2012, at 8:00 o'clock in the evening, more or less, at Barangay Poblacion, Municipality of Ginatilan, Province of Cebu, 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 have in his possession, custody and control one **(1) heat-sealed transparent plastic sachet with label "EBR-2" containing white crystalline substance weighing 0.05; gram**, when subjected to laboratory examination gave **POSITIVE** results for the presence of **Methamphetamine [H]ydrochloride**, a dangerous drug.

CONTRARY TO LAW.[7]

Upon arraignment, Retada pleaded not guilty to both charges.[8]

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

On April 7, 2012, after confirming that one Edson Retada (accused) is engaged in illegal drug activities, Police Inspector Christopher Castro conducted a buy-bust briefing. It was agreed that PO2 Catubig would act as poseur-buyer while PO2 Dela Peña and PO1 Dialemas were the immediate back-up. PO1 Mansueto, PO2 Fernandez and PO1 Ferrater were also present during the briefing. PO1 Mansueto (who conducted the test buy), informed the team that accused was in Chicken Inasal in Poblacion. Thereafter, the buy-bust team proceeded to the target area. Upon arrival thereat, PO2 Catubig saw accused standing near the *Chicken Inasal* in front of MLhuillier. PO2 Catubig approached the accused and told the latter that he was going to buy shabu. PO2 Catubig gave two (2) pieces of Php200.00 marked money to the accused. In exchange thereof, accused gave one (1) plastic sachet of shabu to PO2 Catubig and got the money. PO2 Catubig raised his right hand as the pre-arranged signal to inform the other members of the team that the sale has been consummated. PO2 Dela

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[7] Records (Criminal Case No. OS-12-744), p. 1.

[8] *Rollo*, p. 6.

Peña and PO1 Dialemas immediately approached them. PO2 Catubig arrested the accused and the latter was apprised of his constitutional rights. Upon arrival at the police station, PO2 Catubig made a thorough body search on the accused and recovered on the latter one (1) plastic sachet of suspected shabu, buy-bust money, coins in different denominations and a cellphone.[9]

Version of the Defense

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

On April 7, 2012 at around 9:00 o'clock in the evening accused was attending a procession together with his children. During the procession, he saw the police officers involved in this case at the check point at Brgy. San Roque near the Poblacion. After the procession, he stood in a store named W. Singco. Without knowing, the police suddenly arrived and invited him to the police station. He brought with him his 2-year old child. When they arrived, the police immediately placed him inside the Chief of Police Office and bodily searched him but he refused. The police then handcuffed him while his child was brought outside the office. The police officers continued searching him until they showed him two (2) sachets of shabu and money amounting to Php 44.75 allegedly from his pocket. Thereafter, he was placed inside the detention cell and the barangay officials arrived and signed the document.[10]

Ruling of the RTC

In the assailed Omnibus Decision dated July 23, 2015, the RTC ruled that the defense of alibi and frame-up of the accused must simply fail.[11] It further ruled that the prosecution was able to prove the arresting officers' compliance with the procedural safeguards under RA 9165.[12] The prosecution clearly established an unbroken chain of custody.[13]

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

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

[11] CA *rollo*, p. 43.

[12] *Id*.

[13] *Id*. at 44.

The dispositive portion of the Omnibus Decision reads:

WHEREFORE, premises considered, the court finds accused Edson Barbac Retada GUILTY beyond reasonable doubt of the offenses of Illegal Sale of Dangerous Drug and Illegal Possession of Dangerous Drug in accordance with Sec. 5 and Sec. 11(3), respectively, both of Article II of RA 9165.

The court sentences him to a penalty of life imprisonment without eligibility of parole and a fine of Five Hundred Thousand Pesos (₱500,000.00) for Sec. 5; and an imprisonment of twelve (12) years and one (1) day to twelve (12) years and one (1) month and a fine of Three Hundred Thousand Pesos (₱300,000.00) for Sec. 11.

x x x x x x x x x

SO ORDERED.[14]

Aggrieved, Retada appealed to the CA.

Ruling of the CA

In the assailed Decision dated November 29, 2017, the CA affirmed Retada's conviction. The dispositive portion of the Decision reads:

WHEREFORE, the Omnibus Decision dated July 23, 2015 rendered by the Regional Trial Court, Branch 62, Oslob, Cebu in Criminal Case No. OS-12-743 and Criminal Case No. OS-12-744 convicting accused-appellant Edson Barbac Retada of Violation of Section 5 and Section 11(3) respectively, of Article II of R.A 9165 as amended or the Dangerous Drugs Act is hereby **AFFIRMED** with **MODIFICATION** on the penalty in Criminal Case No. OS-12-744. Accused-appellant is sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

With costs against the accused-appellant.

SO ORDERED.[15] (emphasis in the original)

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[14] *Id*. at 45.

[15] *Rollo*, pp. 15-16.

The CA ruled that all the elements of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs were duly proven by the prosecution.[16] It further ruled that the prosecution established an unbroken chain of custody, thus the integrity and evidentiary value of the seized drugs were properly preserved.[17] Lastly, it ruled that since the police officers found one plastic sachet of *shabu* when they bodily searched the accused, the presumption of *animus possidendi* exists.

Hence, the instant appeal.

Issue

Whether Retada's guilt for violation of Sections 5 and 11(3) of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is granted. Retada is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[18] and the fact of its existence is vital to sustain a judgment of conviction.[19] It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.[20] Thus, in order to obviate any unnecessary doubt on their identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[21]

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[16] *Id*. at 10 and 13.

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

[18] *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

[19] *Derilo v. People*, 784 Phil. 679, 686 (2016).

[20] *People v. Alvaro*, G.R. No. 225596, January 10, 2018, accessed at <http://elibrary.judiciary.gov.ph/ thebookshelf/showdocs/1/63871>.

[21] *People v. Manansala*, G.R. No. 229092, February 21, 2018, accessed at <http://elibrary.judiciary. gov.ph/thebookshelf/showdocs/1/63936>.

In this connection, the Court has repeatedly held that Section 21,[22] 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 Department of Justice (DOJ).[23]

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**

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[22] The said section reads as follows:

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

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

[23] 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>.

considering that the buy-bust operation is, by its nature, a planned activity.[24]

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[25] and 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, 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.[26]

However, in the case at bar, the police officers utterly failed to comply with the requirements of Section 21.

First, although there were two elected officials present during the inventory at the police station, the two other mandatory witnesses were not present. To reiterate, the law requires that the following witnesses should be present during the physical inventory and photography of the seized drugs: (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.[27] However, only two councilors were present. Thus, it is clear that they failed to comply with the mandatory requirement of the law. Also, the mere fact that they tried to contact a media representative and a DOJ representative when they arrived at the police station is not the earnest effort that is contemplated by the law. As testified by PO2 Ruben M. Catubig (PO2 Catubig):

Q Who were present during the inventory, Mr. Witness?
A Two councilors.

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[24] *People v. Angeles*, G.R. No. 237355, November 21, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64869>.

[25] *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[26] *People v. Ceralde*, G.R, No. 228894, August 7, 2017, 834 SCRA 613, 625.

[27] See RA 9165, Art. II, Sec. 21.

Q Who else?
A Only the two councilors.

Q What about you were you also present?
A Yes, ma'am and also our Chief of Police.

Q Aside from the Chief of Police who else were present?
A The back-up policemen.

Q Are there any representatives from the media, Mr. Witness?
A None.

Q The DOJ?
A None.

Q Why there were none? (*sic*)
A Usually we got the witness from the Local Officials, ma'am.

Q But you tried to contact the media and the DOJ?
A Yes, ma'am.

Q Who conducted the inventory, Mr. Witness?
A Me.[28]

Second, they did not conduct the marking, inventory, and photography of the seized items at the place of arrest. Instead, they delayed the proceedings and supposedly accomplished them only at the police station. When asked why they did so, they offered a flimsy excuse that there were several persons in the place where they conducted the buy-bust operation. As testified by PO2 Catubig:

Q And after recovering those items what happened next?
A We conducted an inventory.

Q Where was it done?
A At the police station.

Q Why?
A Since there were several persons in the place where we conducted the buy bust operation inquiring about our operation and per instruction by our Chief of Police, we conducted the inventory at the police station.[29]

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[28] TSN, November 28, 2013, pp. 9-10.

[29] *Id*. at 9.

It bears stressing that the prosecution has the burden of (1) proving the police officers' compliance with Section 21, RA 9165 and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*,[30]

> It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
>
> (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention;** or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**[31] (Emphasis in the original and underscoring supplied)

Undeniably, none of the abovementioned circumstances was attendant in the case. Their excuse for non-compliance is unconvincing. The police officers' mere allegation that there were other people in the buy-bust area without any indication that these people posed a threat to them or that such occurrence would substantially affect the success of their operation is a frail justification.

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[30] G.R. No. 231989, September 4, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>.

[31] *Id*., citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64255>.

In addition, the police officers admitted that they only tried to "call-in" the mandatory witnesses when they were already at the police station. Time and again, the Court has held that the practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the 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.[32]

All told, the prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug, thus the integrity and evidentiary value of the seized drug have been compromised. Accordingly, Retada should be acquitted of the crime of Illegal Sale of Dangerous Drugs.

Also, the elements of illegal possession of drugs were not satisfactorily proven by the prosecution. The successful prosecution of illegal possession of drugs necessitates the following facts to be proved, namely: (a) the accused was in possession of the dangerous drugs, (b) such possession was not authorized by law, and (c) the accused was freely and consciously aware of being in possession of the dangerous drugs.[33] For both offenses, it is crucial that the prosecution establishes the identity of the seized dangerous drug in a way that the integrity thereof has been well-preserved from the time of seizure or confiscation from the accused until the time of presentation as evidence in court.[34] In this case, the prosecution utterly failed to prove that the integrity and evidentiary value of the seized drug were preserved. The same breaches of

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[32] *People v. Tomawis*, G.R. No. 228890, April 18, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241>.

[33] *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012).

[34] *Id*.

procedure in the handling of the illegal drug subject of the illegal sale charge equally apply to the illegal drug subject of the illegal possession charge. Corollary, the prosecution was not able to overcome the presumption of innocence of Retada.

Moreover, considering that the warrantless arrest of the accused was illegal, the subsequent warrantless search resulting in the recovery of one more plastic sachet of *shabu* from Retada's possession is invalid and the seized *shabu* is inadmissible in evidence being under the law, "fruit of the poisonous tree."[35] Even more telling is the fact that they only conducted the thorough body search of the accused at the police station when they could have immediately done it at the place of arrest. Thus, Retada must perforce also be acquitted of the charge of violating Section 11 of RA 9165.

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 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.[36]

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[35] *People v. Alicando*, 321 Phil. 656, 712 (1995).

[36] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63908>.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated November 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 02101, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **EDSON BARBAC RETADA** is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the Leyte Regional Prison, Abuyog, Leyte, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 207152. July 15, 2019]

HEIRS OF PABLITO ARELLANO, namely, ELENA ARELLANO, REYNANTE ARELLANO, and RUBY ARELLANO, *petitioners, vs.* **MARIA TOLENTINO,** *respondent.*

SYLLABUS

1. CIVIL LAW; TENANCY; IMPLIED TENANCY; REQUISITES.— Time and again, this Court has ruled that cultivation of an agricultural land will not *ipso facto* make one

a *de jure* tenant. Independent and concrete evidence is necessary to prove personal cultivation, sharing of harvest, and consent of the landowner. Also, while implied tenancy is recognized in this jurisdiction, for it to arise, it is also necessary that all the essential requisites of tenancy must be proven to be present, to wit: (1) [T]he parties are the landowner and the tenant; (2) [T]he subject matter is agricultural land; (3) [T]here is consent between the parties to the relationship; (4) [T]he purpose the relationship is to bring about agricultural production; (5) [T]here is personal cultivation on the part of the tenant or agricultural lessee; and (6) [T]he harvest is shared between landowner and tenant or agricultural lessee.

2. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 3844 (AGRICULTURAL LAND REFORM CODE); PERSONAL CULTIVATION; DOES NOT ONLY MEAN ACTUAL PHYSICAL CULTIVATION BY THE TENANT, BUT IT COULD ALSO MEAN CULTIVATION WITH THE AID OF LABOR FROM WITHIN HIS IMMEDIATE HOUSEHOLD; MEMBERS OF THE FAMILY OF THE LESSEE ARE CONSIDERED AS IMMEDIATE FARM HOUSEHOLD WHO COULD AID THE AGRICULTURAL LESSEE IN PERSONALLY CULTIVATING THE LAND; CASE AT BAR.— As correctly held by the CA, the mere fact that Pablito is the one who "physically" cultivates the subject land does not, by itself, make him the lawful tenant thereof. Under Chapter XI, Section 166(13) of R.A. No. 3844, the concept of "personal cultivation" has a specific definition. It does not only mean actual physical cultivation by the tenant, but it could also mean cultivation "with the aid of labor from within his immediate household." Under Section 166(8) of the same Chapter, "members of the family of the lessee" are considered as "immediate farm household" who could aid the agricultural lessee in personally cultivating the land. Allowing, thus, Pablito, Timoteo's stepson, to cultivate the land in his stead still comes within the purview of "personal cultivation" on the part of Timoteo in legal contemplation. It cannot, by itself, be considered as a violation of Timoteo's obligation as a tenant, much less, an abandonment of his tenancy rights. Consistently, an "agricultural lessee" is defined under Section 166(2) of the said Code as "a person who, *by himself and with the aid available*

from within his immediate farm household, cultivates the land belonging to, or possessed by, another with the latter's consent for purposes of production, for a price certain in money or in produce or both." At most, therefore, Pablito could only be considered as a farmhand, helping in the cultivation of the land tenanted by his stepfather.

3. ID.; ID.; AGRICULTURAL LEASEHOLD RELATION IS NOT EXTINGUISHED BY DEATH; DISPOSSESSION OF THE LANDHOLDING SHOULD BE COURT-AUTHORIZED AFTER DUE DETERMINATION OF THE EXISTENCE OF ANY OF THE GROUNDS UNDER THE LAW; CASE AT BAR.— Being the lawful agricultural lessee or tenant, therefore, Timoteo is entitled to security of tenure. In fact, not even death can extinguish his agricultural leasehold relation with the Songcos. He may only be dispossessed of the landholding on the grounds provided by law, *i.e.*, Section 36 of R.A. No. 3844. It bears stressing that physical cultivation of the land *per se* would not warrant the lawful tenant to automatically be dispossessed of the tenanted land. The dispossession should be court-authorized after due determination of the existence of any of the grounds under R.A. No. 3844. While there may be implied tenancy, there can be no implied dispossession of a landholding, nor can there be an implied rescission of an agricultural leasehold agreement. This Court is, thus, one with the CA in ruling that Timoteo cannot be considered to have failed to perform his duties as agricultural lessee or tenant, nor could he be considered to have abandoned his tenancy rights, to result to the extinguishment of the leasehold relation. The continuance of Timoteo's tenancy rights over the subject land being established, the CA correctly concluded that there can be no implied tenancy when there is another express tenancy on the same landholding. Upon Timoteo's death, therefore, the leasehold shall continue between the Songcos and the respondent, Timoteo's surviving spouse, in accordance with Section 9 of R.A. No. 3844.

APPEARANCES OF COUNSEL

Maglalang Lagman & Maglalang Law Offices for petitioners.
Romulo L. Palma for respondent.

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 October 1, 2012 and the Resolution[2] dated April 29, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 115597.

The Factual Antecedents

Subject of this case is a 2.5-hectare parcel of agricultural land situated in Barangay Mambog, Hermosa, Bataan, covered by Transfer Certificate of Title (TCT) No. 3530. This land was owned by Bartolome Songco[3] (Bartolome), who was later on succeeded by his son Enrique Songco[4] (Enrique).[5]

Timoteo Tolentino (Timoteo), deceased husband of Maria Tolentino (respondent), executed a leasehold agreement with Bartolome entitled *Kasunduan Buwisan sa Sakahan* dated February 5, 1973. In January 1985, said leasehold contract was renewed, this time, with Enrique. In the said contracts, Timoteo undertook to cultivate *palay* during the rainy season and to make annual rental payments in the amount of 21 cavans of *palay* (1973 leasehold contract) and 22 cavans of *palay* (1985 contract).[6]

During Timoteo's lifetime, he permitted Pablito Arellano (Pablito), respondent's son from a former marriage, to assist

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[1] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Rosmari D. Carandang (now a Member of the Court) and Leoncia Real-Dimagiba, concurring; *rollo*, pp. 29-40.

[2] *Id*. at 41.

[3] Also referred to as "Bartolome Sangco" in some parts of the *rollo*.

[4] Also referred to as "Enrique Sangco" in some parts of the *rollo*.

[5] *Rollo*, pp. 11 and 30.

[6] *Id*. at 30-31.

him in cultivating the subject land and remitting the landowner's share to the produce.[7]

Upon Timoteo's death in 2004, a conflict arose between family members as to who was the lawful successor to Timoteo's tenancy in the subject land. On one hand, respondent claims that she and her children as heirs of Timoteo, designated Juanito Tolentino (Juanito), respondent and Timoteo's son, to be the successor of Timoteo's tenancy rights. On the other, Pablito claims that he is the rightful tenant as his continuous cultivation of the subject land, known to the Songcos, was tantamount to his stepfather's abandonment of his tenancy rights and relinquishment thereof to him.[8]

The controversy was then brought to the Provincial Agrarian Reform Adjudicator (PARAD) through a Complaint for Recovery of Possession[9] filed by respondent, represented by Juanito, against Pablito.

On December 22, 2007, the PARAD rendered its Decision[10] in respondent's favor, upholding the leasehold contracts evidencing Timoteo's tenancy rights; and ruling that Pablito cannot claim that his stepfather abandoned said rights when the very reason why he was allowed to cultivate the subject property was the liberality of his stepfather. The PARAD concluded that in case of death or permanent incapacity of the agricultural lessor, the leasehold shall bind his legal heirs. It disposed, thus:

WHEREFORE, premises considered, judgment is hereby rendered:

1. DECLARING x x x Juanit[o] Tolentino as the legitimate agricultural lessee/tenant on the subject landholding;

2. ORDERING the x x x [legal heirs of x x x Pablito Arellano] and all other person[s] acting for and in his behalf to surrender and

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[7] *Id*. at 11 and 31.

[8] *Id*. at 12 and 31.

[9] *Id*. at 69-70.

[10] *Id*. at 127-132.

return the possession and cultivation of the subject landholding in favor of x x x Juanit[o] Tolentino.

SO ORDERED.[11]

On appeal to the Department of Agrarian Reform Adjudication Board (DARAB), Pablito was substituted by his heirs, Romero Arellano, Rosella Arellano, and herein petitioners Elena Arellano, Reynante Arellano, and Ruby Arellano.

The DARAB, in its Decision[12] dated March 9, 2010, reversed and set aside the PARAD's Decision. Finding that it was Pablito who has been personally cultivating the subject land and remitting rentals to the Songcos, the DARAB ruled that Timoteo failed to meet the requisites of a tenancy relationship. Further, the DARAB found that an implied tenancy agreement arose between Pablito and the Songcos by virtue of the latter's continuous acceptance of the rentals from the former. Thus, the DARAB disposed as follows:

WHEREFORE, premises considered, the Decision dated December 22, 2007 is hereby REVERSED and SET ASIDE, and a new judgment is hereby rendered as follows:

1. DISMISSING the instant complaint for lack of merit;

2. DECLARING Pablito Arellano as the lawful agricultural tenant of the subject landholding in question; and

3. DIRECTING the MARO of Hermosa, Bataan to assist the Heirs of Pablito Arellano and the owner of the subject landholding in the preparation and execution of a leasehold contract.

SO ORDERED.[13]

In its October 1, 2012 assailed Decision,[14] the CA reverted to the PARAD's ruling, upholding Timoteo's tenancy rights and rejecting petitioners' contention as to Timoteo's alleged

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[11] *Id*. at 132.

[12] *Id*. at 151-156.

[13] *Id*. at 155-166.

[14] *Id*. at 29-40.

failure to personally cultivate the subject land. The CA explained the concept of an agricultural lessee and personal cultivation citing the Republic Act (R.A.) No. 3844 or the Agricultural Land Reform Code, *viz.*:

"**Agricultural lessee**" means a person who, by himself and with the aid available from within his immediate farm household, cultivates the land belonging to, or possessed by, another with the latter's consent for purposes of production, for a price certain in money or in produce or both.

"**Personal cultivation**" means cultivation by the lessee or lessor in person and/or with the aid of labor from within his immediate household.

"Immediate farm household" means the members of the family of the lessee or lessor and other persons who are dependent upon him for support and who usually help him in his activities.[15]

From the foregoing legal definitions, the CA explained that a tenant is still considered to be undertaking personal cultivation despite assistance from an immediate farm household in cultivating the land. Here, Pablito is Timoteo's stepson and as such, his assistance in cultivating the land did not divest Timoteo of his tenancy rights. According to the CA, Pablito's act of cultivating the subject land was not done in his own capacity, but merely to complement Timoteo's act of cultivation. The CA emphatically ruled that at no point did Pablito acquire the status of a lawful tenant because he was merely a helper of the registered tenant. Besides, the CA added, a tenant has neither the right nor the prerogative to create another tenant in the same landholding without the consent of the landholder.[16]

The CA concluded that as Timoteo's tenancy stands, there is no question that his wife and children, as his legal heirs, are his lawful successor to the tenancy.[17] The dispositive portion of the CA's assailed Decision reads as follows:

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[15] *Id*. at 36.

[16] *Id*. at 36-37.

[17] *Id*. at 38.

WHEREFORE, premises considered, the Petition is GRANTED. The assailed Decision of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 15927 is hereby REVERSED and SET ASIDE. The Decision of the Office of the Provincial Agrarian Reform Adjudicator dated 22 December 2007 is hereby REINSTATED.

SO ORDERED.[18]

Petitioners' motion for reconsideration was denied by the CA in its April 29, 2013 Resolution:[19]

WHEREFORE, the motion for reconsideration is DENIED for lack of merit.

SO ORDERED.[20]

Hence, this Petition.

Undaunted, petitioners essentially contend that their predecessor-in-interest, Pablito, has validly succeeded Timoteo in his tenancy rights in the subject land through the latter's abandonment thereof and/or failure to perform his obligation as a tenant, *i.e.*, to personally cultivate the land, and the former's fulfillment thereof.[21]

The Issue

In the main, the resolution of the instant controversy boils down to the question of whether or not Pablito can be considered as a lawful tenant of the subject land.

The Court's Ruling

The petition has no merit. The CA correctly ruled that Timoteo, not Pablito, is the lawful tenant to the Songcos' agricultural land. As such, upon Timoteo's death, his legal heirs shall succeed to his tenancy rights.

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[18] *Id*. at 39-40.

[19] *Id*. at 41.

[20] *Id*.

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

Timoteo's tenancy in the subject land by virtue of the leasehold agreements with the Songcos is undisputed. That Timoteo allowed Pablito to aid him in cultivating the subject land is likewise admitted. Petitioners argue that by allowing Pablito to actually cultivate the land, Timoteo fell short of the requirement of "personal cultivation" to be a lawful tenant. As such, petitioners argue that Timoteo should be considered to have effectively abandoned his tenancy rights and had been replaced by Pablito as tenant.

This contention is erroneous.

Time and again, this Court has ruled that cultivation of an agricultural land will not *ipso facto* make one a *de jure* tenant. Independent and concrete evidence is necessary to prove personal cultivation, sharing of harvest, and consent of the landowner. Also, while implied tenancy is recognized in this jurisdiction, for it to arise, it is also necessary that all the essential requisites of tenancy must be proven to be present, to wit:

(1) [T]he parties are the landowner and the tenant;

(2) [T]he subject matter is agricultural land;

(3) [T]here is consent between the parties to the relationship;

(4) [T]he purpose the relationship is to bring about agricultural production;

(5) [T]here is personal cultivation on the part of the tenant or agricultural lessee; and

(6) [T]he harvest is shared between landowner and tenant or agricultural lessee.[22]

In this case, Pablito failed to prove that he has successfully replaced Timoteo in the latter's tenancy rights over the subject land.

First, there is no proof that Pablito "personally cultivates" the subject land.

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[22] *Caluzor v. Llanillo*, 762 Phil. 353, 365-366 (2015).

As correctly held by the CA, the mere fact that Pablito is the one who "physically" cultivates the subject land does not, by itself, make him the lawful tenant thereof.

Under Chapter XI, Section 166(13)[23] of R.A. No. 3844, the concept of "personal cultivation" has a specific definition. It does not only mean actual physical cultivation by the tenant, but it could also mean cultivation "with the aid of labor from within his immediate household." Under Section 166(8)[24] of the same Chapter, "members of the family of the lessee" are considered as "immediate farm household" who could aid the agricultural lessee in personally cultivating the land. Allowing, thus, Pablito, Timoteo's stepson, to cultivate the land in his stead still comes within the purview of "personal cultivation" on the part of Timoteo in legal contemplation. It cannot, by itself, be considered as a violation of Timoteo's obligation as a tenant, much less, an abandonment of his tenancy rights.

Consistently, an "agricultural lessee" is defined under Section 166(2) of the said Code as "a person who, *by himself and with the aid available from within his immediate farm household*, cultivates the land belonging to, or possessed by, another with the latter's consent for purposes of production, for a price certain in money or in produce or both."

At most, therefore, Pablito could only be considered as a farmhand, helping in the cultivation of the land tenanted by his stepfather.

Second, there was no proof of a harvest sharing relationship between Pablito and the Songcos.

It should be emphasized that harvest sharing is a vital element of every tenancy.[25] In this case, Pablito presented receipts to

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[23] Sec. 166(13) "Personal cultivation" means cultivation by the lessee or lessor in person and/or with the aid of labor from within his immediate household.

[24] Sec. 166(8) "Immediate farm household" means the members of the family of the lessee or lessor and other persons who are dependent upon him for support and who usually help him in his activities.

[25] *Caluzor v. Llanillo*, *supra* note 22, at 368.

prove his claimed harvest sharing relationship with the Songcos. Unfortunately, said receipts are not sufficient to serve such purpose. Such receipts cannot sufficiently and persuasively prove that Pablito and the Songcos have a definite sharing arrangement in their supposed tenancy relationship. Neither would such receipts sufficiently prove that the Songcos consented to have a tenancy relationship with Pablito. At most, such receipts could only prove the fact of delivery of shares to the Songcos, but as to whether such shares were recognized to be delivered under the terms of an arrangement between Pablito and the Songcos, or whether the same were delivered merely on behalf of Timoteo under the terms of their existing leasehold agreements, such receipts are clearly insufficient.

Notably, the number of shares delivered to the Songcos stated in the receipts is consistent with the terms under the leasehold agreement between Timoteo and the Songcos. Thus, not only are the receipts insufficient to prove a harvest sharing agreement between Pablito and the Songcos, the fact that the receipts were consistent with the terms of Timoteo's leasehold agreement with the Songcos made it worse for petitioners' case. Such fact only bolsters the conclusion that Pablito was only acting on behalf of Timoteo.

Being the lawful agricultural lessee or tenant, therefore, Timoteo is entitled to security of tenure. In fact, not even death can extinguish his agricultural leasehold relation with the Songcos.[26] He may only be dispossessed of the landholding

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[26] Republic Act No. 3844, Chapter 1, Sec. 9. *Agricultural Leasehold Relation Not Extinguished by Death or Incapacity of the Parties* – In case of death or permanent incapacity of the agricultural lessee to work his landholding, the leasehold shall continue between the agricultural lessor and the person who can cultivate the landholding personally, chosen by the agricultural lessor within one month from such death or permanent incapacity, from among the following: (a) the surviving spouse; (b) the eldest direct descendant by consanguinity; or (c) the next eldest descendant or descendants in the order of their age: *Provided*, That in case the death or permanent incapacity of the agricultural lessee occurs during the agricultural year, such choice shall be exercised at the end of that agricultural year: *Provided, further*, That in the event the agricultural lessor fails to exercise his choice

on the grounds provided by law, *i.e.*, Section 36[27] of R.A. No. 3844. It bears stressing that physical cultivation of the

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within the periods herein provided, the priority shall be in accordance with the order herein established.

In case of death or permanent incapacity of the agricultural lessor, the leasehold shall bind his legal heirs.

[27] Republic Act No. 3488, Chapter I, Sec. 36. *Possession of Landholding; Exceptions* – Notwithstanding any agreement as to the period or future surrender of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purposes: *Provided*; That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, except when the land owned and leased by the agricultural lessor is not more than five hectares in which case instead of disturbance compensation the lessee may be entitled to an advanced notice of at least one agricultural year before ejectment proceedings are filed against him: *Provided, further*, That should the landholder not cultivate the land himself for three years or fail to substantially carry out such conversion within one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and recover damages for any loss incurred by him because of said dispossession;
(2) The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of this Code unless his failure is caused by fortuitous event or *force majeure*;
(3) The agricultural lessee planted crops or used the landholding for a purpose other than what had been previously agreed upon;
(4) The agricultural lessee failed to adopt proven farm practices as determined under paragraph 3 of Section twenty-nine;
(5) The land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee;
(6) The agricultural lessee does not pay the lease rental when it falls due: *Provided*, That if the non-payment of the rental shall be due to crop failure to the extent of seventy-five *per centum* as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or

land *per se* would not warrant the lawful tenant to automatically be dispossessed of the tenanted land. The dispossession should be court-authorized after due determination of the existence of any of the grounds under R.A. No. 3844.[28] While there may be implied tenancy, there can be no implied dispossession of a landholding, nor can there be an implied rescission of an agricultural leasehold agreement.

This Court is, thus, one with the CA in ruling that Timoteo cannot be considered to have failed to perform his duties as agricultural lessee or tenant, nor could he be considered to have abandoned his tenancy rights, to result to the extinguishment of the leasehold relation.

The continuance of Timoteo's tenancy rights over the subject land being established, the CA correctly concluded that there can be no implied tenancy when there is another express tenancy on the same landholding.

Upon Timoteo's death, therefore, the leasehold shall continue between the Songcos and the respondent, Timoteo's surviving spouse, in accordance with Section 9 of R.A. No. 3844.

WHEREFORE, premises considered, the Petition is **DENIED**. The Decision dated October 1, 2012 and the Resolution dated April 29, 2013 of the Court of Appeals in CA-G.R. SP No. 115597 are hereby **AFFIRMED**.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

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(7) The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section twenty-seven.

[28] *Id*.

SECOND DIVISION

[G.R. No. 223318. July 15, 2019]

CESAR V. PURISIMA, in his capacity as Secretary of the Department of Finance and Emmanuel F. Dooc, in his capacity as Insurance Commissioner, *petitioners, vs.* **SECURITY PACIFIC ASSURANCE CORPORATION, VISAYAN SURETY & INSURANCE CORPORATION, FINMAN GENERAL ASSURANCE CORPORATION, MILESTONE GUARANTY & ASSURANCE CORPORATION, R&B INSURANCE CORPORATION, INDUSTRIAL INSURANCE COMPANY INCORPORATED, PHILIPPINE PHOENIX SURETY & INSURANCE INCORPORATED, MERCANTILE INSURANCE COMPANY INCORPORATED, GREAT DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES, INCORPORATED, and INSURANCE OF THE PHILIPPINE ISLANDS COMPANY INCORPORATED,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; INSURANCE; REPUBLIC ACT NO. 10607 (AMENDED INSURANCE CODE); PASSAGE THEREOF RENDERED MOOT AND ACADEMIC THE ISSUANCE OF DEPARTMENT ORDER NO. 27-06 AND DEPARTMENT ORDER NO. 15-2012 AS REGARDS THE NEW CAPITALIZATION REQUIREMENT FOR ALL LIFE AND NON-LIFE INSURANCE COMPANIES.— On August 15, 2013, Republic Act (R.A.) No. 10607 or the Amended Insurance Code was signed into law. Among others, it provides for the new capitalization requirement for all life and non-life insurance companies, to wit: Section 194. Except as provided in Section 289, no new domestic life or non-life insurance company shall, in a stock corporation, engage in business in the Philippines unless possessed of a paid-up capital equal to at least One billion pesos (₱1,000,000,000.00): *Provided*, That a domestic insurance company already doing business in the

Philippines shall have a net worth by June 30, 2013 of Two hundred fifty million pesos (₱250,000,000.00). Furthermore, said company must have by December 31, 2016, an additional Three hundred million pesos (₱300,000,000.00) in net worth; by December 31, 2019, an additional Three hundred fifty million pesos (₱350,000,000.00) in net worth; and by December 31, 2022, an additional Four hundred million pesos (₱400,000,000.00) in net worth. Thus, it is clear that the issuance of DO No. 27-06 and DO No. 15-2012 as regards the capitalization requirement has been rendered moot and academic by the passage of the aforementioned law.

2. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL POWER; EXERCISE THEREOF INCLUDES THE DUTY OF THE COURTS TO SETTLE ACTUAL CONTROVERSY; MOOT AND ACADEMIC CASE OR ISSUE, DEFINED.— "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." No less than the Constitution requires that the exercise of judicial power includes the duty of the courts to settle *actual* controversies, *viz.*: The Constitution provides that judicial power 'includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable.' The exercise of judicial power requires an actual case calling for it. The courts have no authority to pass upon issues through advisory opinions, or to resolve hypothetical or feigned problems or friendly suits collusively arranged between parties without real adverse interests. Furthermore, courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging. As a condition precedent to the exercise of judicial power, an actual controversy between litigants must first exist. An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution, as distinguished from a hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. It must be highlighted that even the petitioners and respondents in this case recognize the mootness of the issues raised in the petition before us in their Petition and Comment, respectively. Hence, this Court, deems it proper to abstain from ruling on the merits of the case.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Antonio L. Zamora for respondents.

D E C I S I O N

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

Assailed before this Court, through a Petition for Review on *Certiorari*,[1] are the Decision[2] dated May 15, 2015 and Resolution[3] dated February 29, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 129905, which upheld the issuance of a writ of preliminary injunction issued by the trial court.

The Relevant Antecedents

On September 1, 2006, Department Order (DO) No. 27-06, ordering the increase in the minimum paid-up capital stock requirement of life, non-life, and reinsurance companies, was issued. Superseding several memorandum circulars, DO No. 27-06 suspended the adoption of risk-based capital framework for non-life insurance and integrated the compliance standards for fixed capitalization under the DO and the risk-based capital framework.[4]

As a consequence, members of the Philippine Insurers and Reinsurers Association, Inc. (PIRAI) received a letter from the Deputy Insurance Commissioner, reminding them that their paid-up capital must be at least equal to the amount scheduled by DO No. 27-06. Similarly, an advisory was sent to them by Commissioner Emmanuel Dooc (Commissioner Dooc) after

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[1] *Rollo*, pp. 10-43.

[2] Penned by Associate Justice Stephen C. Cruz , with Associate Justice Fernanda Lampas Peralta and then Associate Justice, now Supreme Court Associate Justice, Ramon Paul L. Hernando, concurring; *id*. at 46-54.

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

[4] *Id*. at 47.

having failed to comply with the minimum paid-up capital of ₱175 Million by the end of December 2011.[5]

This prompted Security Pacific Assurance Corporation, Visayan Surety & Insurance Corporation, Finman General Assurance Corporation, Milestone Guaranty & Assurance Corporation, R&B Insurance Corporation, Industrial Insurance Company Incorporated, Philippine Phoenix Surety & Insurance Incorporated, Mercantile Insurance Company Incorporated, Great Domestic Insurance Company of the Philippines, Incorporated, and Insurance of the Philippine Islands Company Incorporated (respondents), to file a complaint with application for the issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI) against the Secretary of Finance, Cesar Purisima, and Commissioner Dooc (petitioners).[6]

In their Complaint, respondents alleged that DO No. 27-06 is unconstitutional because, among others, it vests upon the Secretary of Finance the legislative power to increase the minimum paid-up capital stock requirement, thereby violating the doctrine of non-delegation of legislative power. Plagued with manpower problems and serious business losses, respondents sought for the suspension of the DO and relevant circulars.[7]

In their Answer, petitioners maintained that compliance with DO No. 27-06 is based on yearly assessment, depending on the insurance company's net worth and equity structure. Contrary to the contentions of the respondents, DO No. 27-06 is not oppressive because it is germane to the purpose for which it was created, that is, to keep the solvency of the insurance companies and protect the interest of the public.[8]

In a Resolution[9] dated July 20, 2012, the Regional Trial Court (RTC) of Quezon City, Branch 98, denied the application for

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[5] *Id*.

[6] *Id*. at 47-48.

[7] *Id*.

[8] *Id*. at 48.

[9] Penned by Presiding Judge Evelyn Corpus-Cabochan; *id*. at 157-160.

TRO and WPI for failure of respondents to fully substantiate grounds for the issuance of an injunctive writ. It upheld the validity of the issuance of DO No. 27-06 and relevant memoranda as the Insurance Code expressly grants the Secretary of Finance and the Insurance Commissioner the power to regulate the insurance business in the Philippines.

However, on August 31, 2012, the sitting judge of the RTC, Branch 98, inhibited from the case. The case was then returned to the Office of the Executive Judge for re-raffle.[10]

A supplemental complaint was filed by respondents in view of the passage of DO No. 15-2012 which required the insurance companies to further increase their paid-up capital from ₱250 Million to ₱1 Billion beginning 2012.[11]

After the re-raffling of the case, an Order dated December 5, 2012, granting the application for the issuance of a WPI, was issued. While the trial court recognized the constitutionality of the DOs, it recognized the need to determine the reasonableness of the minimum paid-up capital requirement found therein; more so when Circular Letter No. 18-2012 excluded three respondents as having valid certificates of authority.[12]

Petitioners filed a Motion for Reconsideration, which was denied in an Order dated February 15, 2013.[13]

Aggrieved, petitioners filed a Petition for *Certiorari*, ascribing grave abuse of discretion on the part of RTC in issuing an injunctive writ, before the CA.[14]

In a Decision[15] dated May 15, 2015, the CA denied the petition for lack of merit. In upholding the issuance of a WPI, the CA

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[10] *Id*. at 161.

[11] *Id*. at 49.

[12] *Id*. at 50.

[13] *Id*.

[14] *Id*.

[15] *Supra* note 2.

maintained that respondents have established that they were in a clear danger of closing down should the amount of the paid-up capital mandated under DO No. 15-2012, be implemented, thus:

> **WHEREFORE**, premises considered, the instant petition is hereby **DISMISSED** for lack of merit. Accordingly, the assailed Orders of Branch 80 of the Regional Trial Court of Quezon City dated December 5, 2012 and February 15, 2013, respectively, are **AFFIRMED**.
>
> **SO ORDERED.**[16]

To this, petitioners filed a Motion for Reconsideration, which was denied for lack of merit in a Resolution[17] dated February 29, 2016.

Undaunted, petitioners seek relief from this Court *via* a Petition for Review on *Certiorari*.

The Issue

Summarily, the issue to be determined is the propriety of the issuance of a WPI.

The Court's Ruling

On August 15, 2013, Republic Act (R.A.) No. 10607 or the Amended Insurance Code was signed into law. Among others, it provides for the new capitalization requirement for all life and non-life insurance companies, to wit:

> Section 194. Except as provided in Section 289, no new domestic life or non-life insurance company shall, in a stock corporation, engage in business in the Philippines unless possessed of a paid-up capital equal to at least One billion pesos (₱1,000,000,000.00): *Provided*, That a domestic insurance company already doing business in the Philippines shall have a net worth by June 30, 2013 of Two hundred fifty million pesos (₱250,000,000.00). Furthermore, said company must have by December 31, 2016, an additional Three hundred million

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[16] *Rollo*, p. 54.

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

pesos (₱300,000,000.00) in net worth; by December 31, 2019, an additional Three hundred fifty million pesos (₱350,000,000.00) in net worth; and by December 31, 2022, an additional Four hundred million pesos (₱400,000,000.00) in net worth.

Thus, it is clear that the issuance of DO No. 27-06 and DO No. 15-2012 as regards the capitalization requirement has been rendered moot and academic by the passage of the aforementioned law.

"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."[18] No less than the Constitution requires that the exercise of judicial power includes the duty of the courts to settle *actual* controversies, *viz.*:

> The Constitution provides that judicial power 'includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable.' The exercise of judicial power requires an actual case calling for it. The courts have no authority to pass upon issues through advisory opinions, or to resolve hypothetical or feigned problems or friendly suits collusively arranged between parties without real adverse interests. Furthermore, courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging. As a condition precedent to the exercise of judicial power, an actual controversy between litigants must first exist. An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution, as distinguished from a hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.[19] (Emphases in the original omitted)

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[18] *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, 728 Phil. 535, 540 (2014).

[19] *Republic of the Philippines v. Principalia Management and Personnel Consultants, Inc.*, 768 Phil. 334, 343 (2015), citing *Sps. Arevalo v. Planters Development Bank*, 686 Phil. 236, 248-249 (2012).

It must be highlighted that even the petitioners and respondents in this case recognize the mootness of the issues raised in the petition before us in their Petition and Comment, respectively.

Hence, this Court, deems it proper to abstain from ruling on the merits of the case.

WHEREFORE, premises considered, the petition is **DISMISSED** for being moot and academic.

Let entry of final judgment be issued immediately.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

THIRD DIVISION

[G.R. Nos. 233853-54. July 15, 2019]

CAMILO LOYOLA SABIO (Former Chairman), *petitioner, vs.* **SANDIGANBAYAN (FIRST DIVISION),** *respondent.*

SYLLABUS

1. POLITICAL LAW; REPUBLIC ACT NO. 9184 (GOVERNMENT PROCUREMENT REFORM ACT); AS A RULE, ALL PROCUREMENT BY ALL BRANCHES AND INSTRUMENTALITIES OF GOVERNMENT, ITS DEPARTMENTS, OFFICES AND AGENCIES, INCLUDING GOVERNMENT-OWNED AND/OR CONTROLLED CORPORATIONS AND LOCAL GOVERNMENT UNITS SHALL BE DONE THROUGH COMPETITIVE BIDDING, EXCEPT AS PROVIDED FOR IN ARTICLE XVI

THEREOF; CASE AT BAR.— R.A. No. 9184, or the *Government Procurement Reform Act*, explicitly provides that, as a rule, all procurement shall be done through competitive bidding, except as provided for in Article XVI. x x x One of the primary and basic rules in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. It is clear from the provisions of R.A. No. 9184 that **ALL** procurement by **ALL** branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or controlled corporations and local government units shall be done through Competitive Bidding, except as provided for in Article XVI. This includes procurement by the PCGG, which is an attached agency under the administrative supervision of the Department of Justice. Thus, the PCGG is NOT exempted from the requirements of R.A. No. 9184.

2. ID.; IMMUNITY FROM SUIT; THE PRESIDENT, DURING HIS TENURE OF OFFICE OR ACTUAL INCUMBENCY, IS IMMUNE FROM SUIT AND MAY NOT BE SUED IN ANY CIVIL OR CRIMINAL CASE; PRESIDENTIAL IMMUNITY DOES NOT EXTEND TO HIS ALTER EGOS; CASE AT BAR.— Settled is the doctrine that the President, during his tenure of office or actual incumbency, is immune from suit and may not be sued in any civil or criminal case. However, such immunity does not extend to his alter egos. In *Gloria v. Court of Appeals*, petitioners therein theorized that the petition for prohibition is improper, because the same attacks an act of the President, in violation of the doctrine of presidential immunity from suit. We held that "petitioners' contention is untenable for the simple reason that the petition is directed against petitioners and not against the President. The questioned acts are those of petitioners and not of the President." Thus, Sabio cannot claim immunity from suit for being an alter ego of the President. It was the PCGG, through Sabio and his Commissioners, not the President, who entered into the subject lease agreements without the requisite public bidding. It will be ridiculous to hold that alter egos of the President are, likewise, immune from suit simply because their acts are considered acts of the President if not repudiated. In fact, the 1987 Constitution is replete with provisions on the constitutional principles of

accountability and good governance that should guide a public servant. The rule is that unlawful acts of public officials are not acts of the State and the officer who acts illegally is not acting as such but stands in the same footing as any other trespasser.

3. **CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); SECTION 3 (e) THEREOF; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** The following are the elements of Section 3(e) of R.A. No. 3019: 1. The offender is a public officer; 2. The act was done in the discharge of the public officer's official, administrative, or judicial functions; 3. The act was done through manifest partiality, evidence bad faith, or gross inexcusable negligence; and 4. The public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference. The first element – the offender is a public officer – was established, in that the parties stipulated that Sabio is a public officer. The second element is also present, in that the act was in the discharge of Sabio's function as the Chairman of the PCGG. The third element is, likewise, present. In several cases, We have held that this element may be committed in three ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of R.A. No. 3019 is enough to convict. x x x Moreover, at the time of the execution of the lease agreements, Sabio was a member of the Board of Directors of the UCPB, the parent company of UCPB Leasing. This fact bolstered the presence of the fourth element, that there was unwarranted benefit, advantage or preference given to UCPB Leasing. As correctly ruled by the Sandiganbayan, Sabio's acts unmistakably reflect "a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will."

4. **ID.; ID.; ID.; ID.; PARTIALITY, BAD FAITH AND GROSS NEGLIGENCE, DEFINED; CASE AT BAR.—** Explaining what "partiality," "bad faith" and "gross negligence" mean, We held: "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or

some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." In the instant case, there was bad faith on the part of Sabio in entering into the subject lease agreements based on the following: (1) for not undertaking the required procurement process; and (2) subjecting government funds to unnecessary expenditure without pre-allocation and the necessity for the same.

D E C I S I O N

PERALTA, *J.*:

Before Us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated June 22, 2017 of the Sandiganbayan, First Division, in Criminal Case Nos. SB-12-CRM-0014 to 0015 entitled, *People of the Philippines v. Camilo L. Sabio, Ricardo M. Abcede, Tereso L. Javier, Narciso S. Nario and Nicasio A. Conti*.

The antecedent facts are summarized as follows:

On April 18, 2007, the Presidential Commission on Good Government (*PCGG*) and United Coconut Planters Bank Leasing and Finance Corporation (*UCPB Leasing*) entered into a Lease Agreement for the lease of five (5) motor vehicles. Two years later, or in 2009, another lease contract was executed by the PCGG and UCPB Leasing for six (6) service vehicles.

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[1] Penned by Associate Justice Geraldine Faith Econg, with Associate Justices Efren N. De La Cruz (Chairperson) and Bernelito R. Fernandez concurring; *rollo*, pp. 55-74.

Sometime in November 2012, the Field Investigation Office (*FIO*) of the Office of the Ombudsman filed criminal cases against PCGG Chairman Camilo Sabio (*Sabio*), Commissioners Ricardo M. Abcede, Tereso L. Javier, Narciso S. Nario and Nicasio A. Conti, for violations of Section 3(e) of Republic Act (*R.A.*) No. 3019 and R.A. 9184, or the *Government Procurement Reform Act*, arising from the aforementioned lease of motor vehicles from UCPB Leasing, as those were done without the required public bidding.

On February 13, 2014, two (2) Informations for violation of Section 3(e) of R.A. 3019 were filed before the Sandiganbayan entitled *People of the Philippines v. Camilo L. Sabio, Ricardo M. Abcede, Tereso L Javier, Narciso S. Nario & Nicasio A. Conti*, docketed as SB-12-CRM-0014 and SB-12-CRM-0015. The accusatory portion of the Informations read:

SB-12-CRM-0014

That on 18 April 2007, or sometime prior or subsequent thereto, in Mandaluyong City, Philippines, and within the jurisdiction of this Honorable Court, accused Camilo L. Sabio, a high ranking public officer, being then the Acting Chairman of the Presidential Commission on Good Government (PCGG), conspiring, confabulating, and confederating with Ricardo M. Abcede, Tereso L. Javier, Narciso S. Nario, and Nicasio A. Conti, then PCGG Commissioners, while in the performance of their official functions as such, taking advantage thereof and committing the offense in relation to office, did then and there willfully, unlawfully and criminally give unwarranted benefit, advantage or preference to UCPB Leasing and Finance Corporation, a sequestered company of PCGG, thru gross inexcusable negligence, evident bad faith, or manifest partiality, by entering into and/or cause the entering into a Lease Agreement dated 18 April 2007 with the said leasing corporation for the lease of five (5) service vehicles through negotiated procurement without the required public bidding under Section 10 of Republic Act 9184 (Government Procurement Reform Act) for the total amount of ₱5,393,000.00, to the damage and prejudice of the government and to the detriment of public interest.

SB-12-CRM-0015

That in 2009, or sometime prior or subsequent thereto, in Mandaluyong City, Philippines, and within the jurisdiction of this

Honorable Court, accused Camilo L. Sabio, a high ranking public officer, being then the Acting Chairman of the Presidential Commission on Good Government (PCGG), conspiring, confabulating, and confederating with Ricardo M. Abcede, Tereso L. Javier, Narciso S. Nario, and Nicasio A. Conti, then PCGG Commissioners, while in the performance of their official functions as such, taking advantage thereof and committing the offense in relation to office, did then and there willfully, unlawfully and criminally give unwarranted benefit, advantage or preference to UCPB Leasing and Finance Corporation, a sequestered company of PCGG, thru gross inexcusable negligence, evident bad faith, or manifest partiality, by entering into and/or cause the entering into an undated Lease Agreement with the said leasing corporation for the lease of six (6) service vehicles through negotiated procurement without the required public bidding under Section 10 of Republic Act 9184 (Government Procurement Reform Act) for the total amount of Php6,734,610.00, to the damage and prejudice of the government and to the detriment of public interest.[2]

In a Resolution dated May 29, 2014, the Sandiganbayan dismissed the cases against accused Javier, Nario and Conti, for violation of their constitutional right to a speedy disposition of cases. Accused Abcede, on the other hand, passed away during the pendency of the case. Sabio was arraigned as the sole accused on January 28, 2015 and he entered a plea of not guilty.

During the preliminary conference and the pre-trial, the parties entered into a stipulation of facts, *viz.*: (a) accused Sabio is a public officer, then being the Chairman of the PCGG, who is charged in the cases; (b) the UCPB is a sequestered company of the PCGG; (c) Sabio was appointed Chairman of the Board of Directors of UCPB effective May 10, 2005 until his successor was duly elected and qualified; (d) he was elected OIC Chairman of the Board of Directors of CIIF Oil Mills Group effective May 10, 2005 until his successor was duly elected and qualified; and (e) he was elected Director of the UCPB effective May 12, 2005.[3] The sole issue formulated during pre-trial was whether or not the Sabio is guilty of the offense charged.

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

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

During trial, the prosecution presented six (6) witnesses, namely: Marita B. Villarica, Romulo Siazon, Corinne Joie M. Carillo,* Teresita Avante-Rosal, Marcial V. Flores and Irma S. Carlos.

Villarica, the head of the Administrative Services Division of the PCGG, identified the Personal Data Sheet, Appointment Papers, Oath of Office, Service Records, and Position Description Forms of Sabio. Siazon, a supervising administrative officer/ OIC of the Human Resources Development Division of the PCGG, identified the certified true copies of the said documents which he had issued.

Carillo, an Associate Graft Investigation Officer III of the Office of the Ombudsman, testified that she conducted a fact-finding investigation on the alleged irregularities in the acquisition of new vehicles for top officials of the PCGG without public bidding. During the investigation, she found out that there are sixteen (16) other vehicles issued to different PCGG officials; three (3) of said vehicles were issued to Sabio. She also discovered that the PCGG entered into Lease Agreements with UCPB Leasing for the lease of five (5) vehicles in the total amount of ₱5,393,000.00 in 2007 and six (6) vehicles in the total amount of ₱6,734,610.00 in 2009.

Carillo learned, however, that no fund was appropriated to the PCGG for the purchase of motor vehicles in 2007. She stated that for the years 2006-2009, the procurement (plan) of goods and services of the PCGG did not include the lease/lease purchase of vehicles, and that the lease/lease purchase of the eleven (11) vehicles did not go through public bidding — all in violation of Commission on Audit (*COA*) Circular No. 85-55 and R.A. 9184.

Avante-Rosal, an intelligence officer of the PCGG, testified that she was designated as the Secretary of the Bids and Awards Committee (*BAC*) of the PCGG from 2006 to 2009, and her duties include the taking of minutes of meeting, preparing bidding

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* "Garillo" in some parts of the *rollo*.

guidelines, keeping records of bidding documents and assisting in the conduct of the bidding process. She stated that there were only five services for which the BAC of the PCGG annually conducted public bidding: janitorial, security, copier machine rental, air-condition maintenance, and supply of drinking water. She pointed out that no bidding process was conducted by the BAC for the lease of motor vehicles for the period of 2006 to 2009.

Flores testified that he was designated as OIC of the Finance and Administration Department of the PCGG from 2007 to 2010. In the course of his testimony, he identified a certification that he signed regarding the funds appropriated to the PCGG involving the purchase of motor vehicles from 2007 to 2008. He stated that upon checking the general appropriations for those years, he found out that no fund was appropriated to the PCGG for the purchase of vehicles in the said years.

Carlos, an accounting clerk employed by the PCGG, testified that in 2005, Sabio was issued a 2000 Isuzu Crosswind, a Toyota Innova, and a Toyota Fortuner DSL. She also said that the ownership of the motor vehicles subject of the 2007 lease agreement with UCPB Leasing were transferred to the PCGG after termination of the contract.

For his defense, Sabio testified that he was appointed as PCGG Chairman on April 27, 2005, as Chairman of the Board of Directors of the Coconut Industry Investment Fund (*CIIF*) Oil Mills Group, a sequestered group of coconut companies, as Board Member of UCPB, and as member of the Executive Committee, Trust Committee, and Capital Adequacy Committee of the UCPB. He stated that UCPB was the administrator and trustee of the CIIF Oil Mills Group, a sequestered company, and that UCPB Leasing and Finance Corporation is a wholly-owned subsidiary of the UCPB.

On June 22, 2017, the Sandiganbayan rendered judgment finding Sabio guilty beyond reasonable doubt of violations of Section 3(e) of R.A. No. 3019 in Criminal Case Nos. SB-12-CRM-0014 and SB-12-CRM-0015, the dispositive portion of which reads:

WHEREFORE, judgment is rendered finding Camilo L. Sabio

a. **GUILTY** of the charges in Criminal Case No. SB-12-CRM-0014 and hereby sentences him to suffer an indeterminate sentence of Six Years and One Month[,] as minimum[,] to Ten Years [,] as maximum[,] and to suffer the accessory penalty of perpetual disqualification from holding public office, and

b. **GUILTY** of the charges in SB-12-CRM-0015 and hereby sentences him to suffer an indeterminate sentence of Six Years and One Month[,] as minimum[,] to Ten Years[,] as maximum[,] and to suffer the accessory penalty of perpetual disqualification from holding public office.[4]

On July 6, 2017, Sabio sought the reconsideration of the Decision on these cases.

Sabio argues that as Chair of the PCGG, he held the rank of Cabinet Secretary and, thus, considered as the President's alter ego or political agent. It goes without saying, therefore, that when he approved the contract of lease for the vehicles used by himself and the PCGG Commissioners, it was as if the President approved the same. One of the basic principles of political law is the non-suability of the President of the Republic of the Philippines.

Sabio maintains that because of the PCGG's mandate and task, it is exempt from the requirements of the Procurement Law being vested with extraordinary constitutional, legal powers and authority. For instance, no civil action can be brought against the Commission or any of its member. It cannot be restrained by the courts. The lease agreements do not have to undergo the requirements of the Procurement Law. The PCGG then should be treated as *sui generis*.

Sabio's motion for reconsideration was denied by the Sandiganbayan in a Resolution[5] dated August 25, 2017.

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[4] *Id*. at 72.

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

Dissatisfied, Sabio filed the instant Petition for Review on *Certiorari* on the sole ground that the judgment rendered by the Sandiganbayan is contrary to the provisions of Executive Order No. 1 of 1987 issued by then President Corazon Aquino, creating the PCGG for the purpose of recovering ill-gotten wealth accumulated by former President Ferdinand E. Marcos, theorizing in arguments the following:

1) The PCGG, being *sui generis*, it follows that the laws, rules and regulations involved and relied upon by the complainant did not apply to it;
2) Entering into lease-purchase agreements had been the practice of the PCGG prior to their assumption of office;
3) They had no personal gain in entering into agreements; and
4) Sabio was an alter ego of the President who did not disapprove his acts.

We summarize the issues as follows:

A.) WHETHER OR NOT PCGG, BEING *SUI GENERIS*, IS EXEMPTED FROM THE REQUIREMENTS OF THE PROCUREMENT LAW;

B.) WHETHER OR NOT SABIO, BEING AN ALTER EGO OF THE PRESIDENT, IS IMMUNE FROM SUIT; AND

C.) WHETHER OR NOT THE SANDIGANBAYAN ERRED OR COMMITTED REVERSIBLE ERROR IN FINDING PETITIONER GUILTY OF SECTION 3(E) OF R.A. NO. 3019.

The petition is unmeritorious.

Sabio's contention that the PCGG, being *sui generis*, is exempted from the requirements of the procurement law has no basis in law and jurisprudence.

R.A. No. 9184, or the *Government Procurement Reform Act*, explicitly provides that, as a rule, all procurement shall be

done through competitive bidding, except as provided for in Article XVI.[6]

Sections 4 and 10 of R.A. No. 9184 reads:

Section 4. *Scope and Application*. – This act shall apply to the Procurement of Infrastructure Projects, Goods and Consulting Services, regardless of source of funds, whether local of foreign, by **all** branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or-controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is signatory shall be observed.

Section 10. *Competitive Bidding*. – **All** Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.[7]

One of the primary and basic rules in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[8]

It is clear from the provisions of R.A. No. 9184 that ALL procurement by ALL branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or controlled corporations and local government units shall be done through Competitive Bidding, except as provided for in Article XVI. This includes procurement by the PCGG, which is an attached agency under the administrative supervision of the Department of Justice.

Thus, the PCGG is NOT exempted from the requirements of R.A. No 9184.

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[6] R.A. No. 9184, Sec. 10.

[7] Emphases supplied.

[8] *National Food Authority v. Masada Security Agency, Inc.*, 493 Phil. 241, 250 (2005); *Philippine National Bank v. Garcia, Jr.*, 437 Phil. 289, 291 (2002).

Sabio, who was then the Acting PCGG Chairman, an alter ego of the President of the Philippines, is NOT immune from suit.

Settled is the doctrine that the President, during his tenure of office or actual incumbency, is immune from suit and may not be sued in any civil or criminal case. However, such immunity does not extend to his alter egos.

In *Gloria v. Court of Appeals*,[9] petitioners therein theorized that the petition for prohibition is improper, because the same attacks an act of the President, in violation of the doctrine of presidential immunity from suit. We held that "petitioners' contention is untenable for the simple reason that the petition is directed against petitioners and not against the President. The questioned acts are those of petitioners and not of the President."[10]

Thus, Sabio cannot claim immunity from suit for being an alter ego of the President. It was the PCGG, through Sabio and his Commissioners, not the President, who entered into the subject lease agreements without the requisite public bidding. It will be ridiculous to hold that alter egos of the President are, likewise, immune from suit simply because their acts are considered acts of the President if not repudiated. In fact, the 1987 Constitution is replete with provisions on the constitutional principles of accountability and good governance that should guide a public servant. The rule is that unlawful acts of public officials are not acts of the State and the officer who acts illegally is not acting as such but stands in the same footing as any other trespasser.[11]

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[9] 392 Phil. 536, 541 (2000).

[10] *Id.*

[11] *In The Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Noriel H. Rodriguez; Noriel H. Rodriguez v. Gloria Macapagal-Arroyo*, 676 Phil. 84, 108 (2011).

The Sandiganbayan did not commit any reversible error in finding petitioner Sabio guilty of violating Section 3(e) of R.A. No. 3019

The following are the elements of Section 3(e) of R.A. No. 3019:

1. The offender is a public officer;
2. The act was done in the discharge of the public officer's official, administrative, or judicial functions;
3. The act was done through manifest partiality, evidence bad faith, or gross inexcusable negligence; and
4. The public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[12]

The first element — the offender is a public officer — was established, in that the parties stipulated that Sabio is a public officer.

The second element is also present, in that the act was in the discharge of Sabio's function as the Chairman of the PCGG.

The third element is, likewise, present. In several cases, We have held that this element may be committed in three ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of R.A. No. 3019 is enough to convict.[13]

Explaining what "partiality," "bad faith" and "gross negligence" mean, We held:

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious

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[12] *Sison v. People*, 628 Phil. 573, 583 (2010).

[13] *Id.*

doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." (Citations omitted)[14]

In the instant case, there was bad faith on the part of Sabio in entering into the subject lease agreements based on the following: (1) for not undertaking the required procurement process; and (2) subjecting government funds to unnecessary expenditure without pre-allocation and the necessity for the same.

The lease agreements between the PCGG and UCPB Leasing involving the eleven (11) vehicles in the years 2007-2009 were awarded to the latter without conducting public bidding. This is a clear violation of R.A. No. 9184. Moreover, it was shown that there was no allotment for the lease of the subject vehicles.

Petitioner clearly disregarded the law meant to protect public funds from irregular or unlawful utilization. In fact, petitioner admitted that the lease agreements were not subjected to public bidding, because it is their position that the PCGG is exempted from the procurement law and that they were merely following the practice of their predecessors. This is totally unacceptable, considering that the PCGG is charged with the duty, among others, to institute corruption preventive measures. As such, they should have been the first to follow the law. Sadly, however, they failed.

Moreover, at the time of the execution of the lease agreements, Sabio was a member of the Board of Directors of the UCPB, the parent company of UCPB Leasing. This fact bolstered the presence of the fourth element, that there was unwarranted benefit, advantage or preference given to UCPB Leasing.

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[14] *Id.* at 583-584.

As correctly ruled by the Sandiganbayan, Sabio's acts unmistakably reflect "a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will."

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Decision and Resolution of the Sandiganbayan, dated June 22, 2017 and August 25, 2017, respectively, in Criminal Case Nos. SB-12-CRM-0014 to 0015 are hereby **AFFIRMED**.

SO ORDERED.

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

EN BANC

[A.C. No. 10261. July 16, 2019]

RUFINA LUY LIM, *complainant, vs.* **ATTY. MANUEL V. MENDOZA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; PRACTICE OF LAW; A PRIVILEGE BESTOWED ON THOSE WHO SHOW THAT THEY POSSESS AND CONTINUE TO POSSESS THE LEGAL QUALIFICATION FOR IT; CASE AT BAR.— It has been pronounced, time and again, that the practice of law is a privilege bestowed on those who show that they possess and continue to possess the legal qualifications for it. Lawyers are expected to maintain at all times a high standard of legal proficiency and morality, including honesty, integrity and fair dealing. They must perform a four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms of the legal profession as embodied in

the CPR. x x x The string of offenses committed by respondent betrays his propensity to ignore, disrespect and make a mockery of the judicial institution he has vowed to honor and protect. His violations, in not just one instance, show his recalcitrant character, undeserving of the privilege to practice in the legal profession. It cannot be stressed enough that membership in the Bar is a privilege laden with conditions, granted only to those who possess the strict intellectual and moral qualifications required of lawyers as instruments in the effective and efficient administration of justice. As officers of the courts and keepers of the public's faith, lawyers are burdened with the highest degree of social responsibility. They are mandated to behave at all times in a manner that is consistent with truth and honor and are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing.

2. **ID.; ID.; LAWYER'S OATH; ENJOINS EVERY LAWYER, NOT JUST TO OBEY THE LAWS OF THE LAND, BUT ALSO TO REFRAIN FROM DOING ANY FALSEHOOD IN OR OUT OF COURT OR CONSENTING TO THE DOING OF ANY IN COURT, AND TO CONDUCT HIMSELF ACCORDING TO THE BEST OF HIS KNOWLEDGE AND DISCRETION WITH ALL GOOD FIDELITY TO THE COURTS, AS WELL AS TO HIS CLIENTS.—** The Lawyer's Oath enjoins every lawyer, not just to obey the laws of the land, but also to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts, as well as to his clients. All lawyers are servants of the law, and have to observe and maintain the rule of law, as well as be exemplars worthy of emulation by others. It is by no means a coincidence, therefore, that the CPR emphatically reiterates the core values of honesty, integrity, and trustworthiness.

3. **ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT; CASE AT BAR.—** Canon 10 of the CPR stresses that a lawyer owes candor, fairness and good faith to the court. x x x The flip-flopping averments of respondent in his pleadings betray a lack of forthrightness and transparency

on his part. He initially averred, through the Petition for Intervention and supporting affidavits which he signed and notarized, that the corporations were dummies of Pastor. He now claims, however, that the statements in the Petition were mere hearsay and that the shares of stocks he now owns in the corporations were actually payments to him for his services and advances. With the incompatibility of the two positions, it is clear that respondent has been less than truthful in at least one occasion. This, we cannot countenance. As officers of the court, lawyers are expected to act with complete candor. They may not resort to the use of deception, not just in some, but in all their dealings. The CPR bars lawyers from committing or consenting to any falsehood, or from misleading or allowing the court to be misled by any artifice or guile in finding the truth. Needless to say, complete and absolute honesty is expected of lawyers when they appear and plead before the courts. Any act that obstructs or impedes the administration of justice constitutes misconduct which merits disciplinary action on lawyers. As a lawyer, respondent is expected to be a disciple of truth, having sworn upon his admission to the Bar that he would do no falsehood nor consent to the doing of any in court, and that he would conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients. Respondent should bear in mind that as an officer of the court, his high vocation is to correctly inform the court upon the law and the facts of the case and to aid it in doing justice and arriving at a correct conclusion. Courts meanwhile are entitled to expect only complete honesty from lawyers appearing and pleading before them. This respondent failed to do.

4. REMEDIAL LAW; PLEADINGS; COUNSEL'S SIGNATURE ON THE PLEADING; NEITHER AN EMPTY FORMALITY NOR EVEN A MERE MEANS FOR IDENTIFICATION BUT A SOLEMN COMPONENT OF LEGAL PRACTICE THAT THROUGH IT, A POSITIVE DECLARATION IS MADE.— Respondent also cannot feign ignorance as to the veracity of the statements in the petition because he signed the same. Lest respondent forgot, a counsel's signature on a pleading is neither an empty formality nor even a mere means for identification. It is a solemn component of legal practice that through a counsel's signature, a positive declaration is made. In certifying through his signature that

he has read the pleading, that there is ground to support it, and that it is not interposed for delay, a lawyer asserts his competence, credibility, and ethics.

5. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; SWORN OBLIGATION OF EVERY LAWYER TO RESPECT THE LAW AND THE LEGAL PROCESSES IS A CONTINUING CONDITION FOR RETAINING MEMBERSHIP IN THE LEGAL PROFESSION; CASE AT BAR.—** Respondent also erred in asserting that while the May 11, 1972 Agreement between Rufina and Pastor was "improper for notarial act," it has "binding effect against third persons." The Agreement in essence was a contract entered into by the parties, separating their present and future properties, with Rufina waiving her support from Pastor and both spouses waiving any future action between them, whether civil or criminal. The sworn obligation of every lawyer to respect the law and the legal processes is a continuing condition for retaining membership in the profession. He is also expected to keep abreast of legal developments. To claim that such agreement is binding against third persons shows either respondent's ignorance of the law or his wanton disregard for the laws of the land. Either of which deserves disciplinary sanction.

6. **ID.; ID.; ID.; LAWYER SHALL NOT USE LANGUAGE THAT IS ABUSIVE, OFFENSIVE OR OTHERWISE IMPROPER; VIOLATED IN CASE AT BAR.—** Respondent likewise failed to use temperate and respectful language in his pleading against complainant. In his Comment in Special Proceeding Case No. Q-95-23334 before RTC-QC Branch 77, respondent averred that Rufina collected "BILLIONS OF PESOS" in rent which were "DISSIPATED ON HER GAMBLING VICES." The Code provides that a "lawyer shall not, in his professional dealings, use language that is abusive, offensive or otherwise improper." Lawyers are instructed to be gracious and must use such words as may be properly addressed by one gentleman to another. Our language is rich with expressions that are emphatic but respectful, convincing but not derogatory, illuminating but not offensive. Here, respondent, in his eagerness to advance his client's cause, imputed on Rufina derogatory traits that are damaging to her reputation.

7. **REMEDIAL LAW; LEGAL ETHICS; BAR MATTER NOS. 1132 AND 1922; FAILURE TO INDICATE IN A LAWYER'S**

POSITION PAPER MATERIAL INFORMATION SUCH AS PROFESSIONAL TAX RECEIPT NUMBER, IBP RECEIPT OR LIFETIME NUMBER, ROLL OF ATTORNEYS NUMBER AND HIS/HER MCLE ARE VIOLATIVE THEREOF; CASE AT BAR.— [R]espondent failed to indicate in his Position Paper material information required by the rules. These are the Professional Tax Receipt Number, IBP Receipt or Lifetime Number, Roll of Attorneys Number and his MCLE, in violation of Bar Matter Nos. 1132 and 1922. These requirements are not vain formalities or mere frivolities. Rather, these requirements ensure that only those who have satisfied the requisites for legal practice are able to engage in it. To willfully disregard them is to willfully disregard mechanisms put in place to facilitate integrity, competence and credibility in legal practice.

8. LEGAL ETHICS; ATTORNEYS; MEMBERSHIP IN THE BAR IS A PRIVILEGE LADEN WITH CONDITIONS, GRANTED ONLY TO THOSE WHO POSSESS THE STRICT INTELLECTUAL AND MORAL QUALIFICATIONS REQUIRED OF LAWYERS AS INSTRUMENTS IN THE EFFECTIVE AND EFFICIENT ADMINISTRATION OF JUSTICE; CASE AT BAR.— The string of offenses committed by respondent betrays his propensity to ignore, disrespect and make a mockery of the judicial institution he has vowed to honor and protect. His violations, in not just one instance, show his recalcitrant character, undeserving of the privilege to practice in the legal profession. It cannot be stressed enough that membership in the Bar is a privilege laden with conditions, granted only to those who possess the strict intellectual and moral qualifications required of lawyers as instruments in the effective and efficient administration of justice. As officers of the courts and keepers of the public's faith, lawyers are burdened with the highest degree of social responsibility. They are mandated to behave at all times in a manner that is consistent with truth and honor and are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing.

APPEARANCES OF COUNSEL

Esguerra & Blanco for Rufina Luy Lim.

D E C I S I O N

***PER CURIAM*:**

Before the Court is a Complaint[1] for Disbarment filed by Rufina Luy Lim (Rufina) against Atty. Manuel V. Mendoza (Atty. Mendoza) for violation of Canon 1, Rules 1.01 and 1.02, Canon 7, Rule 7.03, Canon 8, Rule 8.01, Canon 10, Rule 10.01, Canon 11, Rule 11. 03, and Canon 19, Rule 19.01 of the Code of Professional Responsibility (CPR) and Section 20, Rule 138 of the Rules of Court.

Rufina is the surviving spouse of Pastor Y. Lim (Pastor) who died on June 11, 1994. She claimed that during his lifetime, Pastor used conjugal funds to organize several dummy corporations[2] (Skyline International, Inc. (Skyline), Nell Mart, Inc. (Nell Mart), *etc.*) using his mistresses and employees as incorporators and/or stockholders, in order to defeat her claims to said properties.[3]

On March 17, 1995, Rufina filed a Joint Petition before the Regional Trial Court (RTC) of Quezon City for the settlement of Pastor's estate. Miguel Lim (Miguel), brother of Pastor, on behalf of his mother Yao Hiong, filed a Petition for Intervention dated August 17, 1995 categorically stating under oath that Skyline, *etc.*, are dummy corporations and that the persons whose names appear as incorporators, stockholders and officers thereof were mere dummies. The Petition also averred that the parcels

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[1] *Rollo*, Vol. I, pp. 2-11.

[2] These are: Skunac Corporation, Skunac International, Inc., Leslim Corporation, Nell Mart, Inc. formerly Marcas Corporation, Precise Distributing, Inc., Uniwide Distributing, Inc., Accurate Distributing, Inc., Nellim Distributing, Inc., Alliance Marketing, Inc., Speed Distributing, Inc., Skyline Realty, Inc., Autotruck TBA Corporation, Universum Sales Corporation, Active Distributors, Inc., Skyline International, Inc., Skyline Sales Corporation, Terelim Corporation, Action Company and Maganda Marketing; *id.* at 3.

[3] *Id.* at 2.

of lands titled under the names of the corporations were really owned by Pastor.[4]

The Petition for Intervention was executed before Atty. Mendoza, as notary public.[5] He also notarized the affidavits of Teresa T. Lim, Lani G. Wenceslao, Susan Sarcia-Sabado and Miguel, who all admitted under oath that: Pastor created dummy corporations; the purported stockholders thereof did not pay a single centavo for shares under their names; and, the affiants as directors, stockholders, or officers did not have any actual participation in the operation of said companies.[6]

Later, however, Atty. Mendoza, as counsel of Skyline, argued that Skyline is the registered owner of several real properties and that it has all the right to protect its interest against Rufina. Rufina averred that Atty. Mendoza made such allegation despite his knowledge that Skyline is a dummy corporation and it has been judicially declared as conjugal property of Rufina and Pastor.

Rufina also claimed that Atty. Mendoza, acting as Vice-President of Nell Mart demanded from the tenants of lots covered by Transfer Certificates of Title (TCT) Nos. 236236 and 236237 to vacate the property, claiming that Nell Mart owned the same, even while knowing that Nell Mart is a dummy corporation.

Rufina finally averred that Atty. Mendoza used intemperate language in his pleadings particularly when he said that Rufina collected "BILLIONS OF PESOS" as rentals which were "DISSIPATED ON HER GAMBLING VICES."[7]

Atty. Mendoza, in his Answer, countered that Rufina and Pastor were separated for more than 26 years by the time Pastor died. On May 11, 1972, the couple entered into an Agreement

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[4] *Id*. at 3-4.

[5] Registered in his Notarial Books as Doc. No. 309, Page No. 63, Book No. III, Series of 1995, *id*. at 4 and 20.

[6] *Id*. at 4.

[7] *Id*. at 7.

where they already partitioned their conjugal properties. As for the issue on dummy corporations, the RTC of Quezon City, Branch 99 already held in Special Proceeding Case No. Q-95-23334 that "the bank deposits in the names of [Nell Mart] and Skunac Corporation x x x which were found to be properties distinct from the estate, are x x x not properties of the estate of xxx Pastor x x x and are, therefore, ordered excluded therefrom x x x."[8]

While he admitted having filed the Petition for Intervention, he said that it was "pre-arranged between Rufina Luy Lim and Miguel Y. Lim." Unfortunately, Miguel and Yao Hiong died before they could testify, hence the statements made in the Petition for Intervention are mere hearsay.[9]

Atty. Mendoza further pointed out that this is the second complaint filed by Rufina against him before the Integrated Bar of the Philippines (IBP) involving the same issue of ownership of the properties covered by TCT Nos. 236236 and 236237 registered in the name of Nell Mart. He claimed that Rufina filed the disbarment complaints against him in retaliation for her losses in other cases.[10]

IBP Report and Recommendation

On March 4, 2009, Commissioner Norberto B. Ruiz of the IBP Commission on Bar Discipline (IBP-CBD) issued his Report and Recommendation[11] recommending the suspension of Atty. Mendoza from the practice of law for two years.

The Report noted that although Atty. Mendoza admitted that the 1972 Agreement may be improper, he still argues that the same is valid between the parties. Respondent's insistence on

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[8] *Id*. at 131-132.

[9] *Id*. at 133.

[10] *Id*. at 135-137.

[11] *Id*. at 616-622.

the validity of the Agreement only betrays his ignorance of the law which contravenes Canons 1[12] and 5[13] of the CPR.

The Report further observed that assuming that respondent drafted the Petition for Intervention, since he signed the same, the presumption is that the contents thereof are true and correct, as in fact, his client attested to the truthfulness of the contents thereof. To later assail the truthfulness of the Petition for Intervention, alleging that it was a pre-arranged agreement between his client and the complainant, shows that respondent actually lied to the courts.

The Report further noted that despite his knowledge about the irregularity in the issuance of shares in Nell Mart, he still acquired shares of stocks and even claimed to be a buyer in good faith.

As a notary, he notarized affidavits which in effect attested to repeated violations of the Corporation Code, without any showing that he even attempted to caution his clients of the illegality of their acts. Respondent also did not deny using offensive language in his pleadings. Finally, the Report noted that respondent's Position Paper lacked Professional Tax Receipt Number, IBP Receipt or Lifetime Number, Roll of Attorneys Number and his Mandatory Continuing Legal Education (MCLE), in clear violation of Bar Matter Nos. 1132 and 1922.[14]

On April 16, 2013, the IBP Board of Governors passed a Resolution approving and adopting the Commission's report and recommendation.

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[12] Canon 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

[13] Canon 5 – A lawyer shall keep abreast of legal developments, participate in continuing legal education programs, support the efforts to achieve high standards in law schools as well as in the practical training of law students and assist in disseminating information regarding the law and jurisprudence.

[14] *Rollo*, Vol. I, pp. 618-622.

It reads:

RESOLUTION No. XX-2013-510
CBD Case No. 08-2263
Rufina Luy Lim vs.
Atty. Manuel V. Mendoza

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and considering that Respondent violated Canons 1, 5, 10 and Rule 10.01 of the Code of Professional Responsibility, Atty. Manuel V. Mendoza is hereby ***SUSPENDED from the practice of law for two (2) years.***[15]

The Court's Ruling

We adopt the findings of the IBP Board of Governors. Considering however that this is not the respondent's first infraction, the penalty of disbarment, instead of mere suspension, is in order.

It has been pronounced, time and again, that the practice of law is a privilege bestowed on those who show that they possess and continue to possess the legal qualifications for it. Lawyers are expected to maintain at all times a high standard of legal proficiency and morality, including honesty, integrity and fair dealing. They must perform a four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms of the legal profession as embodied in the CPR.[16]

The Lawyer's Oath enjoins every lawyer, not just to obey the laws of the land, but also to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his

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[15] *Id*. at 615.

[16] *Molina v. Atty. Magat*, 687 Phil. 1, 5 (2012).

knowledge and discretion with all good fidelity to the courts, as well as to his clients. All lawyers are servants of the law, and have to observe and maintain the rule of law, as well as be exemplars worthy of emulation by others. It is by no means a coincidence, therefore, that the CPR emphatically reiterates the core values of honesty, integrity, and trustworthiness.[17]

Canon 10 of the CPR stresses that a lawyer owes candor, fairness and good faith to the court.

While Rule 10.01 states:

> Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

As properly observed by the IBP-CBD, respondent drafted and signed the Petition for Intervention which avers in essence that the subject corporations, Skyline, *etc*., were mere dummies created by the late Pastor Lim.[18] He also notarized the affidavits of Teresa Lim, Lani Wenceslao and Susan Sabado stating in essence that they were dummies in the corporations of Pastor.[19]

Respondent in his Position Paper before the IBP-CBD claimed however that the statements in the Petition for Intervention, as well as the Affidavits in support thereto were not his statements. The petition was filed pursuant to "agreed arrangements" between complainant and the late Miguel Lim and that the assignment of shares of stock by Miguel to him, was a "pre-arranged agreement as payments for attorney's fees and for reimbursements of whatever litigations [sic] expenses advanced by the respondent."[20]

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[17] *Samonte v. Jumamil*, A.C. No. 11668, July 17, 2017, 831 SCRA 180, 188, citing *Spouses Umaguing v. Atty. De Vera*, 753 Phil. 11, 19 (2015).

[18] *Rollo*, Vol. I, pp. 14-21.

[19] *Id*. at 22-24.

[20] *Id*. at 431.

The flip-flopping averments of respondent in his pleadings betray a lack of forthrightness and transparency on his part. He initially averred, through the Petition for Intervention and supporting affidavits which he signed and notarized, that the corporations were dummies of Pastor. He now claims, however, that the statements in the Petition were mere hearsay and that the shares of stocks he now owns in the corporations were actually payments to him for his services and advances.

With the incompatibility of the two positions, it is clear that respondent has been less than truthful in at least one occasion. This, we cannot countenance.

As officers of the court, lawyers are expected to act with complete candor. They may not resort to the use of deception, not just in some, but in all their dealings. The CPR bars lawyers from committing or consenting to any falsehood, or from misleading or allowing the court to be misled by any artifice or guile in finding the truth. Needless to say, complete and absolute honesty is expected of lawyers when they appear and plead before the courts. Any act that obstructs or impedes the administration of justice constitutes misconduct which merits disciplinary action on lawyers.[21]

As a lawyer, respondent is expected to be a disciple of truth, having sworn upon his admission to the Bar that he would do no falsehood nor consent to the doing of any in court, and that he would conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients.[22]

Respondent should bear in mind that as an officer of the court, his high vocation is to correctly inform the court upon the law and the facts of the case and to aid it in doing justice and arriving at a correct conclusion. Courts meanwhile are entitled

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[21] *Heirs of the late Romero v. Atty. Reyes, Jr.*, 499 Phil. 624, 630-631 (2005).

[22] *Apolinar-Petilo v. Maramot*, A.C. No. 9067, January 31, 2018.

to expect only complete honesty from lawyers appearing and pleading before them.[23]

This respondent failed to do.

Respondent also cannot feign ignorance as to the veracity of the statements in the petition because he signed the same.[24] Lest respondent forgot, a counsel's signature on a pleading is neither an empty formality nor even a mere means for identification. It is a solemn component of legal practice that through a counsel's signature, a positive declaration is made. In certifying through his signature that he has read the pleading, that there is ground to support it, and that it is not interposed for delay, a lawyer asserts his competence, credibility, and ethics.[25]

Respondent also erred in asserting that while the May 11, 1972 Agreement between Rufina and Pastor was "improper for notarial act," it has "binding effect against third persons." The Agreement in essence was a contract entered into by the parties, separating their present and future properties, with Rufina waiving her support from Pastor and both spouses waiving any future action between them, whether civil or criminal.[26]

The sworn obligation of every lawyer to respect the law and the legal processes is a continuing condition for retaining membership in the profession.[27] He is also expected to keep abreast of legal developments.[28] To claim that such agreement is binding against third persons shows either respondent's ignorance of the law or his wanton disregard for the laws of the land. Either of which deserves disciplinary sanction.

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[23] *Id*.

[24] See *rollo*, Vol. I, p. 20.

[25] *Intestate Estate of Jose Uy v. Atty. Maghari*, 768 Phil. 10, 22 (2015).

[26] *See rollo*, Vol. I, p. 617.

[27] *Ortigas Plaza Development Corp. v. Tumulak*, A.C. No. 11385, March 14, 2017, 820 SCRA 232, 246.

[28] *See* Code of Professional Responsibility, Canon 5.

Respondent likewise failed to use temperate and respectful language in his pleading against complainant. In his Comment in Special Proceeding Case No. Q-95-23334 before RTC-QC Branch 77, respondent averred that Rufina collected "BILLIONS OF PESOS" in rent which were "DISSIPATED ON HER GAMBLING VICES."[29]

The Code provides that a "lawyer shall not, in his professional dealings, use language that is abusive, offensive or otherwise improper." Lawyers are instructed to be gracious and must use such words as may be properly addressed by one gentleman to another. Our language is rich with expressions that are emphatic but respectful, convincing but not derogatory, illuminating but not offensive.[30]

Here, respondent, in his eagerness to advance his client's cause, imputed on Rufina derogatory traits that are damaging to her reputation.

Finally, respondent failed to indicate in his Position Paper material information required by the rules. These are, the Professional Tax Receipt Number, IBP Receipt or Lifetime Number, Roll of Attorneys Number and his MCLE, in violation of Bar Matter Nos. 1132 and 1922.

These requirements are not vain formalities or mere frivolities. Rather, these requirements ensure that only those who have satisfied the requisites for legal practice are able to engage in it. To willfully disregard them is to willfully disregard mechanisms put in place to facilitate integrity, competence and credibility in legal practice.[31]

In *Sosa v. Atty.Mendoza*,[32] this Court found respondent guilty of violating Rule 1.01 of the CPR, for his willful failure to pay

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[29] *Rollo*, Vol. I, pp. 122-123.

[30] *Washington v. Atty. Dicen*, A.C. No. 12137, July 9, 2018.

[31] *Intestate Estate of Jose Uy v. Maghari*, *supra* note 25, at 26.

[32] 756 Phil. 490 (2015).

a loan in the amount of ₱500,000.00. The Court ordered his suspension from the practice of law for one year with a stern warning that a commission of the same or similar offense will result in the imposition of a more severe penalty. In said case, the Court declared that Atty. Mendoza's "failure to honor his just debt constitutes dishonest and deceitful conduct x x x [which is] compounded by Atty. Mendoza's act of interjecting flimsy excuses that only strengthened the conclusion that he refused to pay a valid and just debt."[33]

The string of offenses committed by respondent betrays his propensity to ignore, disrespect and make a mockery of the judicial institution he has vowed to honor and protect. His violations, in not just one instance, show his recalcitrant character, undeserving of the privilege to practice in the legal profession.

It cannot be stressed enough that membership in the Bar is a privilege laden with conditions, granted only to those who possess the strict intellectual and moral qualifications required of lawyers as instruments in the effective and efficient administration of justice. As officers of the courts and keepers of the public's faith, lawyers are burdened with the highest degree of social responsibility. They are mandated to behave at all times in a manner that is consistent with truth and honor and are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing.[34]

WHEREFORE, Atty. Manuel V. Mendoza is **DISBARRED** from the practice of law for violation of Canons 1, 5, and 10 and Rule 10.01 of the Code of Professional Responsibility, and his name is ordered **STRICKEN OFF** the Roll of Attorneys.

This Decision shall be immediately executory.

Let copies of this Decision be furnished the Office of the Court Administrator for its distribution to all courts of the land;

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[33] *Id*. at 499.

[34] *Cobalt Resources, Inc. v. Atty. Aguado*, 784 Phil. 318, 332-333 (2016).

the Integrated Bar of the Philippines; and the Office of the Bar Confidant, to be entered into Atty. Mendoza's personal records as a member of the Philippine Bar.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, and *Inting, JJ.*, concur.

Del Castillo and *Perlas-Bernabe*, on official leave.

EN BANC

[A.M. No. 17-12-02-SC. July 16, 2019]

RE: CONSULTANCY SERVICES OF HELEN P. MACASAET

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT PROCUREMENT REFORM ACT (R.A. NO. 9184); EXECUTIVE ORDER NO. 423; GOVERNMENT CONTRACT ENTERED INTO THROUGH ALTERNATIVE METHODS OF PROCUREMENT; THE HEAD OF THE PROCURING ENTITY SHALL HAVE FULL AUTHORITY TO GIVE FINAL APPROVAL AND/OR ENTER INTO BINDING GOVERNMENT CONTRACTS, WHEN SUCH CONTRACTS ARE ENTERED INTO THROUGH ALTERNATIVE METHODS OF PROCUREMENT SUCH AS DIRECTLY NEGOTIATED CONTRACTS; THIS FULL AUTHORITY MAY BE DELEGATED IN WRITING FOR GOVERNMENT CONTRACTS INVOLVING AN AMOUNT BELOW FIVE HUNDRED MILLION PESOS (₱500 MILLION) ENTERED INTO THROUGH ALTERNATIVE METHODS OF PROCUREMENT.— Atty. Candelaria stated that since the then Chief Justice had already approved the contract with Ms. Macasaet and the Office of the Chief Justice had already prepared the contract, she took it as an "**implied authority**" to sign on behalf of the Court. Even assuming for the sake of argument that there was an "implied authority," as in fact nothing of such authority can be implied from the contract, an "implied

authority" is not the "**full authority**" in writing required under Sections 4 and 5 of Executive Order (EO) No. 423. EO No. 423 dated 20 April 2005 prescribed the rules and procedures on the review and approval of all government contracts to conform with the Government Procurement Reform Act. EO No. 423 was issued in accordance with Section 75 of the Government Procurement Reform Act x x x. Specifically, Sections 4 and 5 of EO No. 423 provide: Section 4. Approval of Government Contract Entered Into Through Alternative Methods of Procurement.– x x x b. For Government Contracts Involving An Amount Below Five Hundred Million Pesos (₱500 Million). — Except for Government contracts required by law to be acted upon and/or approved by the President, **the Heads of the Procuring Entities shall likewise have full authority to give final approval and/or to enter into Government contracts of their respective agencies, entered into through alternative methods of procurement allowed by law.** x x x. **The Heads of the Procuring Entities may delegate in writing this *full authority* to give final approval and/or to enter into Government contracts involving an amount below Five Hundred Million Pesos (₱500 Million) entered into through alternative methods of procurement allowed by law, as circumstances may warrant** x x x. **All Government contracts entered into in violation of the provisions of law, rules and regulations, and of this Executive Order shall be considered contracts entered into without authority and are thus invalid and not binding on the Government.** From the foregoing, it is clear that it is the Head of the Procuring Entity who is authorized to enter into binding government contracts, **when such contracts are entered into through alternative methods of procurement such as directly negotiated contracts like the Contracts of Services with Ms. Macasaet.** This authority may be delegated, but this must be done only "**in writing**" with "**full authority**" to give "final approval and/or to enter into" the contract delegated to such duly authorized official. **Since the alternative method of procurement is an exception to the general rule that procurement shall be through public bidding, the written "full authority" cannot be general, but must refer specifically to the particular contract being entered into through the alternative method of procurement.**

2. ID.; ID.; ID.; ID.; ID.; ANY GOVERNMENT CONTRACT BELOW ₱500 MILLION PESOS ENTERED INTO BY THE SUPREME COURT THROUGH ALTERNATIVE METHODS

OF PROCUREMENT SHOULD BE APPROVED BY THE SUPREME COURT *EN BANC* AS HEAD OF THE PROCURING ENTITY; AS THE COURT IS A COLLEGIAL BODY, ABSENT A PROPER AUTHORIZATION BY THE COURT *EN BANC*, EVEN THE CHIEF JUSTICE WHO IS *PRIMUS INTER PARES* CANNOT ACT ON HIS OR HER OWN.— In this case, the Procuring Entity is the Supreme Court. The Head of the Supreme Court is the Supreme Court *En Banc*. Thus, any government contract below ₱500 Million entered into by the Supreme Court through alternative methods of procurement should be approved by the Supreme Court *En Banc* as Head of the Procuring Entity. Article VIII, Section 6 of the Constitution provides that the Supreme Court "**shall have administrative supervision over all courts and the personnel thereof**." Thus, the administrative powers of the Court – which include entering into government contracts in the exercise of these powers of administration – are vested in the members of the Supreme Court sitting *en banc*, as a collegial body. To repeat, any government contract entered into on and in behalf of the Supreme Court must be authorized by the Supreme Court *En Banc*. The powers of the Supreme Court – whether judicial or administrative supervision – are exercised by the members of the Court sitting *en banc* or by the members sitting in their respective Divisions. Rule 2, Section 1 of the Internal Rules of the Supreme Court provides: Section 1. *Exercise of judicial and administrative functions*. – **The Court exercises its judicial functions and its powers of administrative supervision over all courts and their personnel through the Court *en banc* or its Divisions.** x x x. The Supreme Court is first and foremost a collegial body, with one vote for each Justice, including the Chief Justice, in all judicial or administrative matters for decision. The Supreme Court exercises its functions through the Court *En Banc* or its Divisions. As the Court is a collegial body, absent a proper authorization by the Court *En Banc*, even the Chief Justice who is *primus inter pares* cannot act on his or her own.

3. ID.; ID.; ID.; ID.; ID.; THE SUPREME COURT *EN BANC* MAY DELEGATE SOME OF ITS ADMINISTRATIVE POWERS TO THE COURTS AND ITS PERSONNEL THROUGH A RESOLUTION ISSUED BY THE SUPREME COURT *EN BANC* BECAUSE THE POWER OF ADMINISTRATIVE SUPERVISION IS VESTED IN THE SUPREME COURT *EN BANC* AS A COLLEGIAL BODY.—

While the powers are vested in the Supreme Court as a collegial body, such powers may be delegated by the Supreme Court *En Banc*. In A.M. No. 99-12-08-SC (Revised), the Supreme Court *En Banc* delegated some of its administrative functions to the Divisions of the Court, the Chief Justice, and the Chairpersons of the Divisions. The delegation of these administrative powers over all courts and its personnel was done through a resolution issued by the Supreme Court *En Banc* because the power of administrative supervision is vested in the Supreme Court *En Banc* as a collegial body. In particular, A.M. No. 99-12-08-SC (Revised) authorized the Divisions, the Chief Justice, and the Chairpersons of the Divisions, to act on certain administrative matters to relieve the Supreme Court *En Banc* from additional burden brought about by the considerable number of administrative matters or judicial cases. x x x.

4. **ID.; ID.; ID.; ID.; ID.; WHILE THE CHIEF JUSTICE MAY APPROVE PROCUREMENT REQUESTS IF IT MEETS THE THRESHOLD AMOUNT APPROVED BY THE SUPREME COURT *EN BANC* THROUGH ITS RESOLUTION, THIS AUTHORITY TO APPROVE IS STILL DELEGATED BY THE SUPREME COURT *EN BANC* AND IS NOT INHERENT IN THE POSITION OF CHIEF JUSTICE; THE CHIEF JUSTICE IS NOT AUTHORIZED BY THE COURT *EN BANC* TO INDEPENDENTLY ACT ON BEHALF OF THE SUPREME COURT TO ENTER INTO GOVERNMENT CONTRACTS THAT ARE HIGHLY TECHNICAL, PROPRIETARY, PRIMARILY CONFIDENTIAL OR POLICY DETERMINING SUCH AS THE SUBJECT CONTRACTS OF SERVICES, AS THE POWER TO ENTER INTO SUCH CONTRACTS WAS NOT DELEGATED BY THE SUPREME COURT *EN BANC* TO THE CHIEF JUSTICE.—** [I]n A.M. No. 10-1-10-SC, the Supreme Court *En Banc* authorized the Clerk of Court *En Banc*, the Court Administrator, the Chief Justice, the Chairpersons of the Divisions to approve certain procurement requests, subject to certain threshold amounts. A.M. No. 10-1-10-SC also stated which **procurement requests** must be approved by the Supreme Court *En Banc*. x x x. Thus, while the Chief Justice may approve **procurement requests** if it meets the threshold amount approved by the Supreme Court *En Banc* through its resolution, this authority to approve is still delegated by the Supreme Court *En Banc* and is not inherent in the position of Chief Justice.

To repeat, even the authority to approve **procurement requests** is delegated by the Supreme Court *En Banc*. Without such delegated authority from the Supreme Court *En Banc*, the Chief Justice simply cannot approve any **procurement requests** on behalf of the Supreme Court. **It is with more reason that the Chief Justice cannot approve *procurement contracts*, as distinguished from *procurement requests*, without the delegated authority from the Supreme Court *En Banc*.** Based on the foregoing, it is clear that the Chief Justice is not authorized by the Court *En Banc* to independently act on behalf of the Supreme Court to enter into government contracts that are highly technical, proprietary, primarily confidential or policy determining such as the subject Contracts of Services. The power to enter into such contracts was clearly not delegated by the Supreme Court *En Banc* to the Chief Justice. Thus, the Contracts of Services should have been authorized by the Supreme Court *En Banc* which has administrative power over all courts and personnel thereof, and not merely by the then Chief Justice. **A.M. No. 99-12-08-SC (Revised) expressly provides that those administrative matters not referred in the said resolution shall be acted upon by the Court *En Banc*,** to wit: All other administrative matters or cases which are either expressly declared above to be cognizable by the Court *En Banc* **or are not covered by the foregoing referrals shall be acted upon or resolved by the Court *En Banc*.** The Chief Justice may likewise refer to the Court *En Banc* for its action or resolution any other matter which, in his opinion, should be resolved by it.

5. ID.; ID.; ID.; ID.; THE FULL WRITTEN AUTHORITY TO APPROVE OR SIGN TO BE GIVEN TO THE AUTHORIZED OFFICIAL BY THE HEAD OF THE PROCURING ENTITY SHOULD REFER TO A SPECIFIC GOVERNMENT CONTRACT TO BE ENTERED INTO BY THE PROCURING ENTITY THROUGH AN ALTERNATIVE METHOD OF PROCUREMENT, AS A GENERAL AUTHORITY TO SIGN CONTRACTS ON BEHALF OF A GOVERNMENT ENTITY IS INSUFFICIENT. — [I]t is important to note that the full written authority to approve or sign to be given to the authorized official by the Head of the Procuring Entity should refer to a specific government contract to be entered into by the Procuring Entity through an alternative method of procurement. A general authority to sign contracts on behalf of a government entity is insufficient for

the official to sign a government contract entered into through any of the alternative methods of procurement. A government contract procured through any of the alternative methods of procurement is an exceptional method of entering into government contracts because the policy of the government is to conduct public bidding in all procurements in order to extend equal opportunity to all eligible and qualified private parties to participate in government procurement. Thus, the alternative methods of procurement such as negotiated contracts are an exception to the general practice of procurement of government contracts which generally involves public bidding. As such, the law explicitly requires the Head of the Procuring Entity to be responsible for such government contract. Thus, the law requires that it should be the Head of the Procuring Entity who approves or signs the government contract or in the alternative, an official who is duly authorized by the Head of the Procuring Entity through a written delegation of full authority to enter into the government contract. The requirement of a written authority is to ensure that the Head of the Procuring Entity or his or her respective duly authorized representative is responsible and accountable for the government contracts entered into on behalf of the Procuring Entity, and prevent unauthorized officials from signing and approving contracts. In this case, however, the written authority delegated to Atty. Candelaria, the alleged authorized official, is **non-existent**.

6. ID.; ID.; ID.; ID.; ID.; THE CHIEF JUSTICE HAS NO AUTHORITY TO DELEGATE THE POWER TO ENTER INTO THE CONTRACTS OF SERVICES WITH A CONSULTANT, FOR SUCH POWER IS VESTED ONLY WITH THE SUPREME COURT *EN BANC* AND NOT WITH THE CHIEF JUSTICE .— Atty. Candelaria alleges in her Comment that her authority to enter into the Contracts of Services with Ms. Macasaet on behalf of this Court was the Joint Memorandum recommending Ms. Macasaet to be hired as ICT consultant and that steps be undertaken to execute a contract for consultancy services between the Court and Ms. Macasaet. This is not the written "full authority" required by EO No. 423. As expressly stated in Section 4 of EO No. 423, "**full authority**" must be delegated in writing to the authorized official by the Head of the Procuring Entity. **Being a special authority availed as an exception to the general rule on public bidding, the written "full authority" must refer specifically**

to the particular contract that is being entered into through the alternative method of procurement. The Joint Memorandum dated 20 May 2014 prepared for then Chief Justice Sereno and signed by Atty. Ocampo and Mr. Davis cannot be considered as a delegation by the Supreme Court *En Banc* of full authority to Atty. Candelaria to act and sign on behalf of the Supreme Court. The Joint Memorandum was not even addressed to the Supreme Court *En Banc* – it was prepared only for then Chief Justice Sereno. Thus, the other members of the Supreme Court were not informed of the subject Contracts of Services. The Supreme Court *En Banc* was notified of the existence of the Contracts of Services only upon the filing of the letter-request of Atty. Gadon. Since the other members of the Supreme Court *En Banc* were clearly unaware of the Contracts of Services with Ms. Macasaet, it is obvious that the power to enter into such contracts was not delegated to anyone. **The Supreme Court *En Banc* could not have delegated the power to enter into such contracts which it did not know even existed.** While then Chief Justice Sereno signed the Joint Memorandum dated 20 May 2014 to signify her approval to the Joint Memorandum prepared by Atty. Ocampo and Mr. Davis, it does not vest any authority on Atty. Candelaria to sign the Contracts of Services with Ms. Macasaet. **To repeat, then Chief Justice Sereno had no authority to delegate the power to enter into the Contracts of Services with Ms. Macasaet. Such power is vested only with the Supreme Court *En Banc* and not with the Chief Justice.** Likewise, under Section 4 of EO No. 423, only the Head of the Procuring Entity may delegate in writing the full authority to give approval and/or enter into government contracts. Thus, the Supreme Court *En Banc*, as Head of the Procuring Entity, exercises the power to delegate the signing of government contracts entered into through alternative methods of procurement as allowed by law. The delegated official could have been the Chief Justice, another member or members of the Supreme Court *En Banc*, or any other official of the Court. However, in this case, it is clear that the Supreme Court *En Banc* did not delegate such power to anyone because it was not informed of the Contracts of Services with Ms. Macasaet.

7. ID.; ID.; ID.; ID.; WHILE THE SUPREME COURT *EN BANC* MAY DELEGATE ITS ADMINISTRATIVE POWERS TO ANOTHER SUCH AS ITS DIVISIONS, THE

CHAIRPERSONS OF THE DIVISIONS OR THE CHIEF JUSTICE, THE DELEGATES MAY NO LONGER RE-DELEGATE SUCH POWER TO ANOTHER OFFICIAL; WHAT HAS BEEN DELEGATED CAN NO LONGER BE FURTHER DELEGATED OR RE-DELEGATED BY THE ORIGINAL DELEGATE TO ANOTHER.— [E]ven assuming that the Supreme Court *En Banc* had delegated to the then Chief Justice the power to enter into the Contracts of Services, then Chief Justice Sereno could no longer re-delegate such power to another official. It is well-settled that what has been delegated can no longer be further delegated or re-delegated by the original delegate to another – *Delegata potestas non potest delegari*. The power of administrative supervision over all courts and its personnel is vested by the Constitution in the Supreme Court *En Banc*. It is the Supreme Court *En Banc* which exercises administrative power over the courts and personnel, which includes the authority to enter into government contracts through alternative methods of procurement allowed by law. While the Supreme Court *En Banc* may delegate its administrative powers to another such as its Divisions, the Chairpersons of the Divisions or the Chief Justice – as it has done in A.M. No. 99-12-08-SC (Revised) – the delegates may no longer re-delegate the authority or power delegated to them. Therefore, even assuming that the Supreme Court *En Banc* delegated to the then Chief Justice the power to enter into the government contracts with Ms. Macasaet, then Chief Justice Sereno could no longer re-delegate such authority.

8. **ID.; ID.; ID.; ID.; ANY WRITTEN AUTHORITY, IF SUCH AUTHORITY COULD BE DELEGATED BY A CHIEF JUSTICE, SHOULD BE GIVEN BY THE CHIEF JUSTICE AT THE TIME THE CONTRACTS WERE ENTERED INTO, AND NOT BY ANY OTHER PREVIOUS CHIEF JUSTICES, AS PREVIOUS CHIEF JUSTICES HAVE NO AUTHORITY TO SIGN, MUCH LESS DELEGATE THE AUTHORITY TO SIGN, GOVERNMENT CONTRACTS AFTER THEIR TERM OF OFFICE.—** Even assuming for the sake of argument, although incorrectly, that then Chief Justice Sereno had the authority to delegate the power to enter into the Contracts of Services, Atty. Candelaria still failed to show any written authority from the then Chief Justice authorizing her to enter into the said Contracts of Services. Atty. Candelaria attached several Memoranda where authority was given to her to sign

for and in behalf of ***previous*** Chief Justices. This is not the full written delegation of authority required by Section 4 of EO No. 423. Evidently, any written authority, if ever such authority could be delegated by a Chief Justice, should have been given by then Chief Justice Sereno, who was the Chief Justice at the time the contracts were entered into with Ms. Macasaet, and not by any other previous Chief Justices. Previous Chief Justices had no authority to sign, much less delegate the authority to sign, government contracts after their term of office. More importantly, the authority given to Atty. Candelaria by the previous Chief Justices, which was also the same authority given to her by then Chief Justice Sereno, referred only to the authority to sign for and in behalf of their communications with other government agencies and the transmittal of Court *En Banc* Resolutions to concerned agencies, as well as to "**internal personnel matters**."

9. ID.; ID.; ID.; ID.; THE CONTRACTS OF SERVICES MUST BE DECLARED INVALID AND NOT BINDING ON THE GOVERNMENT WHERE THE PERSON WHO SIGNED THE SAME IS WITHOUT THE WRITTEN "FULL AUTHORITY" OF THE SUPREME COURT *EN BANC* OR EVEN THE THEN CHIEF JUSTICE. — x x x **[T]here is no mention whatsoever in the Joint Memorandum that Atty. Candelaria or the Chief Administrative Officer and Deputy Clerk of Court is authorized to sign the Contract of Services. The name of Atty. Candelaria or the Chief Administrative Officer and Deputy Clerk of Court is not even mentioned in the Joint Memorandum. *In fact, there is no one named in the Joint Memorandum as the authorized signatory to sign the Contract of Services*. Indisputably, all of the Contracts of Services with Ms. Macasaet were signed by Atty. Candelaria without the written "full authority" of the Supreme Court *En Banc* or even the then Chief Justice. There was a blatant violation of Section 4 of EO No. 423. Thus, these Contracts of Services must be declared "*invalid and not binding on the Government*," as expressly mandated in Section 5 of EO No. 423.**

10. ID.; ID.; ID.; ID.; A GENERAL BUSINESS AND MANAGEMENT CONSULTANCY SERVICES PROVIDED BY THE CONSULTANT CANNOT BE CONSIDERED HIGHLY TECHNICAL CONSULTANCY SERVICES FOR

THE PURPOSE OF REVIEWING AND IMPLEMENTING THE UPDATED ENTERPRISE INFORMATION SYSTEMS PLAN (EISP) PROJECT AND RELATED INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT) AND COMPUTERIZATION PROJECTS; THUS, IT WOULD NOT JUSTIFY THE PROCUREMENT OF HER CONSULTANCY SERVICES THROUGH DIRECT NEGOTIATION.— A highly technical project requires a highly technical consultant. To require in the alternative that a consultant may **only have a business management degree and a certification as a Customer Relationship Management specialist** truly defies reason or logic. **Simply put, this is a tell-tale sign that the Terms of Reference for the consultancy was expressly tailor-made for Ms. Macasaet who is merely a general business consultant and who does not possess the qualifications to handle a highly technical ICT project.** One cannot rely on a business management degree holder for the implementation of a highly technical ICT project. This is simply absurd. For the implementation of a highly technical project such as the EISP, a consultant with highly technical qualifications is required. **For the Terms of Reference to substitute *an advanced degree in ICT with an advanced degree in business management* is highly irregular and inconsistent requirement. This Court cannot give its imprimatur to such a contract.** x x x. **Any highly technical consultancy agreement, if needed, should have been for specific and highly specialized ICT consultancy services, such as for security of information systems, which the MISO may identify as an area where it needs special assistance during the implementation of the Updated EISP Project.** General business and management consultancy services, such as those provided by Ms. Macasaet, cannot be considered highly technical consultancy services for the purpose of reviewing and implementing the Updated EISP Project and related ICT and computerization projects. As the services that Ms. Macasaet provided, based on her qualifications and experience, were mere general business and management services, these services do not fall under the requirement of being a highly technical ICT consultant which would justify the procurement through direct negotiation. Thus, the procurement of her services and the method through which such services were procured – direct negotiation – were unnecessary and unwarranted.

11. ID.; ID.; ID.; ID.; DBM CIRCULAR LETTER NO. 2000-11; THE MAXIMUM AMOUNT THAT MAY BE PAID TO INDIVIDUAL PROFESSIONAL CONSULTANTS AS COMPENSATION SHOULD BE NOT MORE THAN 120% OF THE MINIMUM BASIC SALARY OF THE EQUIVALENT POSITION IN THE AGENCY; THE MONTHLY CONSULTANCY FEES PAID TO THE TECHNICAL CONSULTANT TO IMPLEMENT THE UPDATED EISP PROJECT UNDER THE CONTRACT OF SERVICES WERE UNREASONABLE AND EXCESSIVE AS THE SAME WERE MORE THAN 120% OF THE BASIC MINIMUM MONTHLY SALARY OF THE CHIEF OF MISO WHICH IS THE EQUIVALENT POSITION IN THE SUPREME COURT.— When the Contracts of Services were entered into with Ms. Macasaet, DBM Circular Letter No. 2000-11 dated 1 June 2000 was applicable in determining the ceiling or maximum amount of compensation that may be paid to individual professional consultants such as Ms. Macasaet. Thus, DBM Circular Letter No. 2000-11 sets the maximum amount that may be paid to individual consultants as compensation – **not more than 120% of the minimum basic salary of the equivalent position in the agency.** In this case, to determine the maximum amount of compensation that may be paid to Ms. Macasaet under the Contracts of Services, the equivalent position to the consultant must be determined. As correctly found by the OCAt Report, based on the various positions in the Supreme Court, the equivalent position of Ms. Macasaet as a technical consultant to implement the Updated EISP Project is the post of Chief of the MISO. The Chief of the MISO is a highly technical or policy determining position, and one that requires knowledge and expertise in computer science or information and communications technology. x x x. [T]he position of Chief of the MISO in the Supreme Court is equivalent to the position of the consultant under the Contracts of Services. Thus, the remuneration of Ms. Macasaet should not be more than 120% of the basic minimum monthly salary of the Chief of MISO. At the time the first Contract of Services was entered into with Ms. Macasaet, the basic monthly salary of the MISO Chief of Office was ₱73,099.99. Thus, the ceiling, or maximum amount of compensation for a consultant in relation to the implementation of the Updated EISP Project, was 120% of this amount or ₱87,718.80. The monthly consultancy fees of Ms. Macasaet which was ₱100,000.00 monthly under the first Contract of

Services, and ₱250,000.00 monthly for the seven succeeding Contracts of Services, far exceeded this amount. The monthly consultancy fees of Ms. Macasaet were clearly unreasonable and excessive.

12. ID.; ID.; ID.; ID.; WHILE THE ANNUAL PROCUREMENT PLAN (APP) MAY BE REVISED IN ACCORDANCE WITH THE APPLICABLE GUIDELINES, SUCH REVISION SHOULD PRECEDE THE PROCUREMENT OF SERVICES NOT FOUND IN THE ORIGINAL APP FOR THE APPLICABLE FISCAL YEAR; THUS, THE INCLUSION OF THE LINE ITEM FOR "TECHNICAL AND POLICY CONSULTANTS" IN THE REVISED APP MUST HAVE FIRST BEEN APPROVED BEFORE ANY CONTRACT WITH TECHNICAL AND POLICY CONSULTANTS COULD BE ENTERED INTO BY THE COURT. — There was a violation of Section 7 of the Government Procurement Reform Act when the second Contract of Services was entered into on 23 May 2014 without the proper Annual Procurement Plan (APP). x x x. Section 7 of the Government Procurement Reform Act provides that all procurements shall be included in the APP, and the APP must be consistent with the yearly approved budget of the Procuring Entity. x x x. In this case, when the second Contract of Services dated 23 May 2014 was entered into, the APP for the year 2014 did not include the line item for "Technical and Policy Consultants" for purposes of procurement. This was only included when the APP was subsequently revised, in accordance with the Memorandum of the Procurement Planning Committee (PPC), where the PPC requested the amendment of the APP with the inclusion of the line item for "Technical and Policy Consultants" to be sourced from the savings of the Court. **The recommendation to include the line item for "Technical and Policy Consultants" in the addendum to the 2014 Annual Procurement Plan was only approved by the Court in A.M. No. 10-1-10-SC dated 23 September 2014. Clearly, when the Contract of Services dated 23 May 2014 was entered into with Ms. Macasaet, the APP did not cover the hiring of services of a technical and policy consultant for procurement purposes.** While it is true that the APP refers to and pertains to the entire fiscal year, and that an APP may be revised in accordance with the guidelines set forth in the IRR, **the fact remains that *before* procurement is actually undertaken, such procurement must have been**

included in the existing APP of the Procuring Entity. Thus, the inclusion of the line item for "Technical and Policy Consultants" in the revised APP must have first been approved before any contract with technical and policy consultants could be entered into by the Court. To repeat, while the APP may be revised in accordance with the applicable guidelines, such revision should precede the procurement of services not found in the original APP for the applicable fiscal year.

13. ID.; ID.; ID.; ID.; IN ORDER THAT A TRANSFER OF APPROPRIATION WITH THE CORRESPONDING FUNDS MAY LEGALLY BE EFFECTED, TWO ESSENTIAL REQUISITES MUST BE COMPLIED WITH – FIRST, THERE MUST BE SAVINGS IN THE PROGRAMMED APPROPRIATION OF THE TRANSFERRING AGENCY, AND SECOND, THERE MUST BE AN EXISTING ITEM, PROJECT OR ACTIVITY WITH AN APPROPRIATION IN THE RECEIVING AGENCY TO WHICH THE SAVINGS WILL BE TRANSFERRED. — [I]t is doubtful that the savings of the Court could be transferred to the hiring of a technical and policy consultant, **which was a non-existent item before the APP was amended.** In *Sanchez v. Commission on Audit*, the Court held that for a transfer of appropriation, two essential requisites must be complied with – first, there must be savings in the programmed appropriation of the transferring agency, and second, there must be an ***existing*** item, project or activity with an appropriation in the receiving agency to which the savings will be transferred. x x x. In this case, there was no item, project or activity for the hiring of the technical and policy consultants in 2014 before the APP was amended to include such line item. Thus, clearly, any savings from the budget of the Supreme Court could not have been transferred to a then non-existent item.

14. ID.; ID.; ID.; ID.; THERE MUST FIRST BE AN APPROPRIATION BEFORE ANY CONTRACT INVOLVING EXPENDITURE OF PUBLIC FUNDS IS ENTERED INTO, AND ANY CONTRACT ENTERED INTO IN VIOLATION OF THIS REQUIREMENT RENDERS SUCH CONTRACT VOID; THE PROCUREMENT OF CONSULTANCY SERVICES WITHOUT THE PRIOR AMENDMENT OF THE ANNUAL PROCUREMENT PLAN (APP) RENDERS VOID THE CONTRACT OF SERVICES

WITH THE TECHNICAL CONSULTANT. — The funds for the proposed line item for "Technical and Policy Consultants" were to be ***sourced from the savings of the Court.*** However, before the approval of the revised APP, there was no appropriation for the consultancy agreement of Ms. Macasaet that could be augmented from the savings of the Court. The procurement of consultancy services without the prior amendment of the APP clearly renders void the Contract of Services dated 23 May 2014 with Ms. Macasaet. To hold otherwise would be to contravene the requirement that there must first be a proper appropriation before public funds are expended. Under Presidential Decree No. 1445 or the Government Auditing Code of the Philippines, the expenditure of public funds without the required appropriation renders the contract void: x x x. Sections 85 and 87 of PD No. 1445 implement Section 29(1), Article VI of the Constitution, which mandates: Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law. A violation of Section 85 of PD No. 1445 constitutes at the same time a violation of Section 29(1), Article VI of the Constitution. It is clear that there must first be an appropriation before any contract involving expenditure of public funds is entered into, and any contract entered into in violation of this requirement renders such contract void. In this case, before the approval of the revised APP, there was no proper appropriation for the Contract of Services dated 23 May 2014.

15. **ID.; ID.; ID.; ID.; NO GOVERNMENT OFFICIAL SHALL SIGN A CONTRACT UNLESS THE CERTIFICATE OF AVAILABILITY OF FUNDS (CAF) IS ATTACHED TO THE PROPOSED CONTRACT SO AS TO BECOME AN INTEGRAL PART THEREOF; THE LACK OF CAF ATTESTING TO THE AVAILABILITY OF FUNDS AT THE TIME OF THE SIGNING OF THE CONTRACTS, BEFORE THE SAME WERE ENTERED INTO, RENDERS THESE CONTRACTS VOID.—** [W]e address the lack of Certificate of Availability of Funds (CAF) for the Contracts of Services with Ms. Macasaet. The CAF was issued only for the first two Contracts of Services in the amounts of ₱600,000.00 and ₱1,500,000.00, respectively. **The rest of the six Contracts of Services, which had a consultancy fee of ₱1,500,000.00 each, were not covered by any CAF.** The absence of the CAF for the procurement of the consultancy services of Ms. Macasaet is in blatant violation of Sections 86 and 87 of PD

No. 1445 x x x. **Section 86 of PD No. 1445 is clear and categorical: "*no contract xxx shall be entered into*" without the required CAF being "*attached to and become an integral part of the proposed contract.*"** This means that no government official shall sign a contract unless the CAF is "**attached**" to the "**proposed contract**" so as to "**become an integral part**" of the proposed contract. The CAF must be attached to the "**proposed contract**," at the latest, **at the time of the signing of the contract, before the "proposed contract" is entered into by the signing of the contract.** The CAF cannot be attached to the contract after the contract is entered into because Section 86 expressly requires that "***no contract x x x shall be entered into*" without the required CAF being "*attached to x x x the proposed contract.*"** Unless the CAF is so attached to the contract so as to become an integral part of the contract before the signing of the contract, the contract "**shall be void**" as expressly declared in Section 87 of PD No. 1445. In the present case, no CAF was attached to the third and subsequent contracts at the time these contracts were entered into, rendering these contracts clearly void. x x x. This Court has consistently held that the absence of the proper appropriation and the CAF attesting to the availability of such funds shall render the government contract void.

16. ID.; ID.; ID.; ID.; AN OBLIGATION REQUEST OR A DISBURSEMENT VOUCHER CANNOT REPLACE THE CERTIFICATE OF AVAILABILITY OF FUNDS (CAF) AS THE LAW REQUIRES A CAF BEFORE ANY OBLIGATION CHARGEABLE AGAINST ANY AUTHORIZED ALLOTMENT IS INCURRED, NOT THEREAFTER WHEN THE OBLIGATION IS PAID.— [W]hat is required by law is a CAF **before** any obligation chargeable against any authorized allotment is incurred. This also means that the CAF must be secured **before** the services are performed or the goods are delivered. That there were an Obligation Request and a Disbursement Voucher before payment was made to Ms. Macasaet is entirely irrelevant and immaterial because the law requires the CAF **before the obligation is incurred** – not thereafter when the obligation is paid. Clearly, when payment is made, the obligation had already been incurred and performed. The Obligation Request and Disbursement Voucher, while made before payment, are issued after the obligation chargeable against the authorized allotment is incurred. Even if the law does not require the CAF to be in

any particular form, an Obligation Request or a Disbursement Voucher cannot replace the CAF required by law because the law clearly states that there must be a CAF **before** such obligation is actually incurred or authorized.

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

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT PROCUREMENT ACT (REPUBLIC ACT NO. 9184); NO GOVERNMENT PROCUREMENT SHALL BE UNDERTAKEN UNLESS IT IS IN ACCORDANCE WITH THE APPROVED APP OF THE PROCURING ENTITY; THE COURT SHOULD RECOGNIZE THE ABILITY OF THE AMENDED 2014 APP TO COVER THE SECOND CONTRACT OF SERVICE THAT WAS ENTERED INTO WITHIN THE FISCAL YEAR AS IT IS WITHIN THE AMBIT OF THE PROCURING ENTITY'S POWER UNDER R.A. 9184 TO REVISE THE APP APPLICABLE FOR A GIVEN FISCAL YEAR, AS ADOPTING A DIFFERENT STANCE TO THE EFFECT THAT AN AMENDED APP WOULD NOT BE ABLE TO SUFFICIENTLY COVER A PRIOR PROCUREMENT ACTIVITY WOULD RENDER FUTILE USELESS, AND NUGATORY THE POWER SPECIFICALLY GRANTED TO PROCURING ENTITIES UNDER SECTION 7, ARTICLE II OF R.A. 9184 TO REVISE AND UPDATE THEIR RESPECTIVE APPS.— Under Section 7, Article II of R.A. 9184, no government procurement shall be undertaken unless it is in accordance with the approved APP of the Procuring Entity x x x Applying the foregoing provision of the law to the Second Contract of Services, it must be emphasized that **in the 2014 APP, which was approved by the Court *en banc* in A.M. No. 10-1-10-SC, a total of ₱436,448,080.00 was already specifically allotted for the EISP. Further, in the approved budget under the 2014 APP, funds were allotted for the further development of infrastructure and application systems under the EISP.** To stress, the engagement of technical and policy consultants was part and parcel of the 2014 APP's allocation for the further development of infrastructure and application systems under the EISP. The very rationale and underlying purpose for the hiring of consultancy services under the subject contracts was precisely the further development of

the EISP system. Hence, it cannot be said that the execution of the Second Contract of Services was without any basis in the 2014 APP as it was pursued for the further development of infrastructure and application systems under the EISP — an item provided for in the 2014 APP. Otherwise stated, even without the amended 2014 APP, with the 2014 APP having already provided allotments for the further development of infrastructure and application systems under the EISP, the Second Contract was entered into in accordance with an approved APP. More importantly, even assuming *arguendo* that the 2014 APP did not cover the Second Contract of Services, the OCAt Report itself readily acknowledged that **in another Resolution dated September 23, 2014 in A.M. No. 10-1-10-SC, the Court *en banc* approved an amended procurement plan for 2014 (amended 2014 APP), which provided additional funds for infrastructure and application systems development for the implementation of the EISP**: **With the OCAt Report expressly recognizing that an amended 2014 APP sufficiently covered the hiring of consultancy services under the Second Contract of Services**, even assuming *arguendo* that the previously approved 2014 APP failed to cover the Second Contract, it cannot reasonably be said that there is no procurement plan that supports the execution of the Second Contract in violation of R.A. 9184 because **the amended 2014 APP refers and pertains to the entire fiscal year, and not only the period subsequent to its issuance**. It must be noted that under R.A. 9184, the law states that APPs relate to the entire duly approved yearly budget. It must be emphasized as well that Section 7, Article II of R.A. 9184 specifically grants procuring entities (in this case, the Court) the power to revise and update their respective APPs that govern the procuring entities' spending in a fiscal year. Thus, the Court should recognize the ability of the amended 2014 APP to cover the Second Contract of Services that was entered into within the fiscal year as it is within the ambit of the Procuring Entity's power under R.A. 9184 to revise the APP applicable for a given fiscal year. Adopting a different stance to the effect that an amended APP would not be able to sufficiently cover a prior procurement activity would render futile, useless, and nugatory the power specifically granted to procuring entities under Section 7, Article II of R.A. 9184 to revise and update their respective APPs. Therefore, it is certainly the intent of the law that an amended APP refers and pertains to the entire fiscal

year, and not only the period subsequent to its issuance. x x x. Hence, with both the 2014 APP covering the further development of the EISP and the amended 2014 APP providing additional funds for infrastructure and application systems development for the implementation of the EISP, x x x the findings of the OCAt and the *ponencia* that there is no procurement plan supporting the execution of the Second Contract of Services is indubitably erroneous.

2. ID.; ID; ID.; ALL PROCUREMENTS SHALL BE DONE THROUGH COMPETITIVE BIDDING; EXCEPTIONS.— In determining whether the BAC-CS failed to observe procedural and documentary requirements for the procurement of consultancy services that are highly technical in nature and primarily require trust and confidence, a careful examination of the applicable procurement law is necessary. R.A. 9184 applies to the procurement of infrastructure projects, goods, and consulting services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, including the Court. On the method of procurement, the general rule is that all procurements shall be done through Competitive Bidding. **Competitive Bidding** is defined as a method of procurement which is open to participation by any interested party and which consists of the following processes: **advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification**, and **award of contract**, the specific requirements and mechanics of which are defined in the law's IRR. However, this general rule admits of exceptions. Under Section 10 of R.A. 9184, the procurement process under Competitive Bidding need not be followed in instances provided by Article XVI of the law. Otherwise stated, **in the instances identified under Article XVI, another mode of procurement that follows a different set of procedures than Competitive Bidding may be pursued by the Procuring Entity**. R.A. 9184 provides that the BAC has the power to recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided in Article XVI.

3. ID.; ID.; ID.; ID.; A PROCURING ENTITY MAY RESORT TO ALTERNATIVE METHODS OF PROCUREMENT, SUBJECT TO THE PRIOR APPROVAL OF THE HEAD OF THE PROCURING ENTITY OR HIS DULY

AUTHORIZED REPRESENTATIVE, AND WHENEVER JUSTIFIED BY THE CONDITIONS PROVIDED IN THE LAW; NEGOTIATED PROCUREMENT, WHEN ALLOWED.— Section 48, Article XVI of R.A. 9184 states that a Procuring Entity may resort to alternative methods of procurement, subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in the law. One of the identified alternative methods of procurement is **Negotiated Procurement**, defined as a method of procurement that may be resorted to under (1) the extraordinary circumstances provided for in Section 53 of the law, and (2) other instances specified in the IRR, whereby **the Procuring Entity *directly* negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant**. Taking together Section 53 of R.A. 9184 and Section 53 of the 2009 IRR, negotiated procurement — whereby the procuring entity ***directly*** negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant — may be pursued in any of the following cases: (1) two failed biddings, (2) emergency cases, (3) take-over of contracts, (4) adjacent or contiguous contracts, (5) agency-to-agency procurement, (6) request for a procurement agent, (7) **highly technical consultants**, (8) defense cooperation agreement, (9) small value procurement, (10) lease of real property, (11) NGO participation, (12) community participation, and (13) procurement from specialized agencies of the United Nations.

4. ID.; ID.; ID.; ID.; NEGOTIATED PROCUREMENT, WHICH ENTAILS THE DIRECT NEGOTIATION OF A CONTRACT, MAY BE DONE BY THE PROCURING ENTITY IN THE CASE OF INDIVIDUAL CONSULTANTS OR PARTNERSHIPS 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.— One of the identified instances wherein the alternative method of Negotiated Procurement may be pursued by a Procuring Entity is the procurement of **Highly Technical Consultants**. Under Section 53.7 of the 2009 IRR, Negotiated Procurement, which entails the direct negotiation of a contract, may be done by the

Procuring Entity in the case of **individual consultants or partnerships hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant**. It is not disputed that the subject contracts were and could be subjected to the alternative method of procurement of Negotiated Procurement of Highly Technical Consultants. As previously mentioned, the subject contracts were recommended by the BAC-CS to be subjected to Negotiated Procurement ***based on its finding*** **that the subject contracts were highly technical in nature and primarily requiring trust and confidence, owing to the fact that it is a priority program of the Supreme Court.** This recommendation was approved by the Head of the Procuring Entity, which in this case was the former Chief Justice.

5. ID.; ID.; ID.; ID.; THE NATURE OF THE FUNCTIONS ATTACHING TO AN OFFICE OR A POSITION ULTIMATELY DETERMINES WHETHER SUCH POSITION IS POLICY-DETERMINING, PRIMARILY CONFIDENTIAL OR HIGHLY TECHNICAL; THE EISP PROJECT IS A HIGHLY TECHNICAL AND POLICY-DETERMINING ENDEAVOR WHERE TRUST AND CONFIDENCE ARE SIGNIFICANT FACTORS.— As regards the classification of the work required under the subject contracts, it is inaccurate for the *ponencia* to classify the implementation, review, assessment, and updating of the EISP — the very task assigned to Ms. Macasaet under the subject contracts — as mere "general ICT services." Surely, it cannot be sufficiently argued that the nature of the work covered by the subject contracts is not highly technical, which does not require the engagement of a highly technical consultant. Jurisprudence holds that the nature of the functions attaching to an office or a position ultimately determines whether such position is policy-determining, primarily confidential, or highly technical. In the instant case, the functions pertaining to Ms. Macasaet under the subject contracts do not merely refer to conducting an in-depth, critical, exhaustive, and comprehensive review and assessment of the EISP project and other related ICT and computerization projects. Part of Ms. Macasaet's functions under the subject contracts was the making of actual recommendations for the updating of this complex and multifaceted technological system. **The highly technical nature**

of the review and updating of the EISP project was, in fact, recognized and underscored by the Court *en banc* itself when, in its June 23, 2009 Resolution in A.M. No. 08-11-09-SC, the Court *en banc* described the EISP as a comprehensive framework of several ICT initiatives, involving the development of new information systems and provision of state-of-the-art IT equipment. It must be stressed that the project pertains **not only to the Court alone, but to the entire judiciary**, composed of all the courts and its adjunct offices around the Philippines. x x x Aside from the Court *en banc* manifestly saying that the project involves an in-depth assessment of "functional and technical requirements of the systems," the fact that the EISP project is a highly technical and policy-determining endeavor, where trust and confidence are significant factors, is further underscored by the Court *en banc*'s own explanation that the EISP is an initiative that goes into the fulfillment of the judiciary's "mandate, objectives, and programs." Hence, as **the EISP is a priority program of the Court**, being an innovative initiative that would greatly aid the judiciary in achieving its mandate, Ms. Macasaet's functions under the subject contracts to assess and update the EISP clearly entailed work that was highly technical and primarily confidential or policy determining, where trust and confidence is necessarily required. x x x [C]onsidering that the EISP involves the development and implementation of a complex web of IT systems that will cover the entire judiciary, including the provision of state-of-the-art IT equipment, designed to assist the judiciary in achieving its very mandate, any pronouncement that the EISP is a "simple" IT project that can be reviewed by any IT consultant fails to fully comprehend the intricacy, complexity, and importance of the EISP.

6. **ID.; ID.; ID.; ID.; IN PROCURING GOODS OR SERVICES THROUGH NEGOTIATED PROCUREMENT, THE NEGOTIATION PROCESS IS DIRECTLY MANAGED AND FACILITATED BY THE PROCURING ENTITY ITSELF, AND NOT BY THE BIDS AND AWARDS COMMITTEE (BAC).—** Upon close examination of the applicable law and rules applicable to Negotiated Procurement of Highly Technical Consultants, the OCAt's findings on the supposed failure of the BAC-CS to actively participate in the subject procurement are egregiously mistaken. First and foremost, it must be reiterated that Negotiated Procurement is defined by

R.A. 9184 as an alternative method of procurement whereby "**the Procuring Entity *directly* negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant**." It is a cardinal rule of statutory construction that where the terms of the statute are clear and unambiguous, no interpretation is called for, and the law is applied as written. Hence, it is clear that in procuring goods or services through Negotiated Procurement, the negotiation process is ***directly*** managed and facilitated by the Procuring Entity itself, **and not by the BAC as alleged by the OCAt Report**. Consistent with the clear and unequivocal provision of law that it is the Procuring Entity that directly negotiates in a Negotiated Procurement, **there is nothing in the prevailing provisions governing alternative methods of procurement that even remotely suggests that the BAC shall be responsible for the actual negotiation process in a Negotiated Procurement**. What R.A. 9184 provides is that the BAC shall recommend to the Procuring Entity if an alternative mode of procurement should be pursued. In the instant case, it is undisputed that the BAC-CS indeed issued such recommendations for the procurement of the subject contracts via Negotiated Procurement of Highly Technical Consultants. **Thus, the overall theory posed by the OCAt that the BAC-CS should have "taken the lead" in the process of Negotiated Procurement of the subject contracts is completely lacking in legal basis**.

7. ID.; ID.; ID.; ID.; REQUIRING THE BAC TO PARTICIPATE IN THE NEGOTIATED PROCUREMENT DOES NOT MEAN THAT IT IS REQUIRED TO CONDUCT THE NEGOTIATION PROCESS ITSELF; OTHERWISE, THE CLEAR AND UNEQUIVOCAL PROVISION OF R.A. 9184 THAT THE PROCURING ENTITY DIRECTLY NEGOTIATES WITH THE CONSULTANT IN A NEGOTIATED PROCUREMENT IS SUBROGATED.— The OCAt Report made the argument that since the Manual of Procedures expressly identified the BAC as a party that must participate in the Negotiated Procurement process, then it should have actively participated in the actual negotiation process. **This reasoning by the OCAt is an unjustified leap in logic and fatally flawed**. There is no serious dispute that even as Negotiated Procurement involves direct negotiations between the Procuring Entity and the consultant, the BAC still has some level of participation in the process. That participation, however, is, as

previously discussed, confined to merely recommending that the procurement of consultancy services may undergo Negotiated Procurement. In the case at hand, the BAC-CS did participate in the Negotiated Procurement of the subject contracts when it made such recommendation to the Procuring Entity. The OCAt, however, committed false equivalency in making its argument; it equated "participation" with "negotiation" — *without* any legal basis. Simply stated, requiring the BAC to participate in the Negotiated Procurement does not mean that it is required to conduct the negotiation process itself. **Otherwise, the clear and unequivocal provision of R.A. 9184 that the Procuring Entity directly negotiates with the consultant in a Negotiated Procurement is subrogated.**

8. ID.; ID.; ID.; THE POSTING BY THE BAC OF THE INVITATION TO APPLY FOR ELIGIBILITY AND TO BID IS EXPRESSLY EXCLUDED FOR NEGOTIATED PROCUREMENT OF HIGHLY TECHNICAL CONSULTANTS.— To further bolster the fact that the procedures found in the Manual of Procedures do not apply to Negotiated Procurement of Highly Technical Consultants, it is worthy to mention that one of the procedures found in the cited list of procedures, *i.e.*, item no. 6 or the posting by the BAC of the Invitation to Apply for Eligibility and to Bid, was **expressly excluded** for Negotiated Procurement of Highly Technical Consultants under the 2009 IRR. The rationale of this exclusion of the posting requirement with respect to Negotiated Procurement of Highly Technical Consultants is obvious — because in such a mode of procurement, the Procuring Entity directly and personally negotiates with the consultant based on his/her qualifications, skills, and other personal circumstances, with trust and confidence being the primary considerations. **Hence, the OCAt's finding that the BAC-CS violated the procurement law because it failed to show "posting of opportunity in the PhilGEPS website, SC website, and the SC bulletin boards x x x" is terribly erroneous.**

9. ID.; ID.; ID.; THE REQUIREMENT OF THE BAC RECOMMENDATION OF AWARDING CONTRACTS APPLIES ONLY TO PROCUREMENT INVOLVING BIDDING AND NOT TO NEGOTIATED PROCUREMENT OF HIGHLY TECHNICAL CONSULTANTS.— With respect to the OCAt's allegation that the BAC-CS was required to issue

a resolution recommending not only the resort to an alternative method of procurement, but the actual awarding of the subject contracts to Ms. Macasaet, it cites a certain Non-Policy Opinion of the GPPB to that effect. However, it bears stressing that such a stand fails to find any legal support under R.A. 9184 and its IRR. [T]here is absolutely no provision under R.A. 9184 and its 2009 IRR which requires or otherwise compels the BAC to recommend the actual awarding of the contract when a Negotiated Procurement is pursued by the Procuring Entity. While R.A. 9184 identifies the recommendation of the awarding of contracts to the Head of the Procuring Entity or his duly authorized representative as a function of the BAC, such provision is read together with the applicable provision on the awarding of contracts under Section 37 of R.A. 9184 x x x. **It is clear from this provision that the requirement of the BAC recommendation of awarding contracts applies only to procurement involving bidding and not to Negotiated Procurement of Highly Technical Consultants**. In fact, it is significant to note that even in the list of procedures for Negotiated Procurement under the Manual of Procedures, there is no requirement for the BAC to recommend the awarding of the contract, aside from recommending the resort to an alternative mode of procurement.

10. ID.; ID.; ID.; IT IS THE PROCURING ENTITY AND NOT THE BAC WHO SHALL ISSUE THE NOTICE OF AWARD AND NOTICE TO PROCEED.— As regards the supposed failure of the BAC-CS to issue a Notice of Award and Notice to Proceed, again, the OCAt Report has no legal basis to support its assertion. **In the list of procedures applicable to Negotiated Procurement under the Manual of Procedures, there is no requirement for the BAC to issue a Notice of Award and Notice to Proceed. *Moreover, according to Section 37 of R.A. 9184, it is the Procuring Entity and not the BAC who shall issue the Notice of Award and Notice to Proceed***: "x x x In case of approval, **the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award** to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid. x x x **The Procuring Entity shall issue the Notice to Proceed** to the winning bidder not later than seven (7) calendar days from the date of approval of the contract by the appropriate authority. x x x" Hence, contrary to the position of the OCAt, there is no

fault in the manner by which the BAC-CS participated in the Negotiated Procurement on the subject contracts.

11. ID.; ID.; ID.; CONTRACTS PROCURED THROUGH NEGOTIATED PROCUREMENT OF HIGHLY TECHNICAL CONSULTANTS MAY BE RENEWABLE AT THE OPTION OF THE APPOINTING HEAD OF THE PROCURING ENTITY.— Under Section 53.7 of the 2009 IRR, contracts procured through Negotiated Procurement of Highly Technical Consultants may be renewable at the option of the appointing Head of the Procuring Entity: ***Highly Technical Consultants.*** In the case of individual consultants or partnerships hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant: Provided, however, That the term of the individual consultants or partnerships shall, at the most, be on a six month basis, **renewable at the option of the appointing Head of the Procuring Entity**, but in no case shall exceed the term of the latter. The OCAt Report itself acknowledged that the subject contracts are not "extensions" but renewals under the abovementioned provision of the 2009 IRR. The OCAt likewise conceded, citing GPPB NPM 111-2004, that "it is sufficient for the end-user unit to submit the renewal of contract of the individual consultant to the head of the procuring entity for approval." **Thus, with the renewal of the subject contracts having been duly approved by the Head of the Procuring Entity, *i.e.*, the Chief Justice, the renewals were in line with the prevailing rules on procurement**.

12. ID.; ID.; ID.; THE BAC IS REQUIRED TO POST, FOR INFORMATION PURPOSES, THE NOTICE OF AWARD IN THE PHILGEPS WEBSITE, THE WEBSITE OF THE PROCURING ENTITY CONCERNED, AND AT ANY CONSPICUOUS PLACE RESERVED FOR THIS PURPOSE IN THE PREMISES OF THE PROCURING ENTITY IN INSTANCES INVOLVING COMPETITIVE BIDDING AND ALTERNATIVE METHODS OF PROCUREMENT WHICH ENTAIL COMPETITIVE BIDDING OR A SEMBLANCE THEREOF.— The requirement for the issuance of a formal Notice of Award as a prerequisite for the entering of a contract is governed by Section 37 of R.A. 9184 x x x. A reading of the aforesaid provision makes it apparent that the issuance of a Notice of Award in the procurement process refers to contracts

procured through the bidding process. Under the law, the required period for the issuance of the Notice of Award is within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid. Further, the said provision requires the Head of the Procuring Entity or his duly authorized representative to immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid. Furthermore, within ten (10) calendar days from receipt of the Notice of Award, the law refers to the winning bidder formally entering into contract with the Procuring Entity. As already explained, under R.A. 9184, the concept of bidding is divergent from the concept of procurement under Negotiated Procurement of Highly Technical Consultants where, instead of undergoing a bidding procedure wherein interested parties may participate, the Procuring Entity and the consultant directly engage each other in negotiation, owing to the highly technical nature of the contact, as well as the factor of trust and confidence involved. Moreover, it must be reiterated that Section 5(d) of R.A. 9184 defines a **bid** as a signed offer or proposal submitted by a supplier, manufacturer, distributor, contractor or consultant **in response to the Bidding Documents**. As acknowledged by the OCAt Report itself, the procurement of the subject contracts, as it involves Negotiated Procurement of a Highly Technical Consultant, is **a "special case" wherein the "tender of the usual bid documents" is "done away" with**. Consequently, it is admitted that the concept of a bid does not apply as regards the subject contracts which were procured *via* Negotiated Procurement of Highly Technical Consultants. **Hence, the foregoing provision on the issuance of a Notice of Award and, corollarily, the posting requirement under the 2009 IRR, should not be applied with respect to the Negotiated Procurement of Highly Technical Consultants, which obviates any semblance of competitive or public bidding.** A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. In short, every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter. Thus, in order to harmonize the 2009 IRR requirement of public posting of Notices of Award with

the provision on when a Notice of Award is required under R.A. 9184, the rule should be construed to mean that the BAC is required to post, for information purposes, the notice of award in the PhilGEPS website, the website of the Procuring Entity concerned, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity in instances involving **Competitive Bidding and alternative methods of procurement which entail Competitive Bidding or a semblance thereof**. Such interpretation is more in harmony, not only with R.A. 9184 itself, but also with the Manual of Procedures. In the steps for conducting Negotiated Procurement found in the Manual of Procedures, the requirement of posting of the award is **NOT** imposed on the procurement of the services of individual consultants under special cases, such as in the instant case where there is Negotiated Procurement of a Highly Technical Consultant.

13. ID.; ID.; ID.; THE RULES REFERRING TO BIDDING SHOULD NOT BE SLAVISHLY MADE TO APPLY TO ALTERNATIVE METHODS OF PROCUREMENT THAT DO NOT INVOLVE BIDDING PROCEDURES OR DO NOT HAVE A SEMBLANCE THEREOF, SUCH AS THE NEGOTIATED PROCUREMENT OF HIGHLY TECHNICAL CONSULTANTS; THE FAILURE OF THE BAC-CS TO PUBLICLY POST THE AWARDING OF THE SUBJECT CONTACTS TO MS. MACASAET IN THE PHILGEPS, THE COURT'S WEBSITE, AND THE COURT'S BULLETIN BOARD SHOULD NOT LEAD TO THE NULLIFICATION OF THE VALIDITY OF THE CONTACTS.— [I]n its Resolution No. 30-2013, the GPPB opined that while registration by the supplier or consultant with PhilGEPS is still required for procurements through alternative methods in order to ensure the widest dissemination of the procurement activity, it nonetheless identified Negotiated Procurement of Highly Technical Consultants and other alternative modes of procurement that preclude any semblance of Competitive Bidding procedure as procurement methods where registration with PhilGEPS would be impractical and unnecessary. Furthermore, in its Non-Policy Opinion NPM 068-2004, the GPPB explained that the task of the BAC to recommend the award of contracts apply only in cases where the agency procures through competitive bidding or under the alternative methods of procurement where public bidding procedures are observed.

On the other hand, the GPPB held that with respect to those alternative methods of procurement where the public bidding procedures are not mandated to be undertaken, there is no need for the aforementioned rule to apply. **Hence, it is evidently clear that the rules referring to bidding should not be slavishly made to apply to alternative methods of procurement that do not involve bidding procedures or do not have a semblance thereof, such as the Negotiated Procurement of Highly Technical Consultants.** Therefore, the failure of the BAC-CS to publicly post the awarding of the subject contracts to Ms. Macasaet in the PhilGEPS, the Court's website, and the Court's bulletin board should not lead to the nullification of the validity of the subject contracts.

14. ID.; ID.; ID.; THE REIMBURSEMENT OF ACCOMMODATION AND TRANSPORTATION EXPENSES ACTUALLY SPENT BY A TECHNICAL CONSULTANT DOES NOT RESULT IN VIOLATION OF THE RULE ON FIXED-PRICE CONTRACT.— The OCAt Report stated that in determining the budget for a consultancy contract, Ms. Macasaet's travel and accommodation expenses should have been included or factored in her contract. It observed that Section 4.1 of the subject contracts expressly excluded the reimbursable "travel" and "accommodation" costs from her consultancy fees of ₱600,000.00 and ₱1,500,000.00, respectively. The OCAt thus concludes that the contractual provisions which exclude the reimbursable travel and accommodation fees from the consultancy fees violate Section 61, 61.1 and Annex F of the Revised IRR of R.A. 9184 pertaining to fixed price consultancy contracts. However, contrary to the OCAt's findings, the Manual of Procedures, which was allegedly violated because of the exclusion of reimbursable costs from the consultancy fees, in fact provides that the reimbursement of accommodation and transportation expenses *actually spent* by a technical consultant does not result in violation of the rule on fixed-price contract. It states that "the cost of a consultancy shall consist of [remuneration and **reimbursable costs, which can either be based on agreed fixed rates or actual costs**] **and shall be presented in the agreement in the like manner.**" Thus, it allows payment of reimbursable expenses based on actual cost and not on fixed rate as part of the contract price as long as this arrangement is put in writing and forms part of the contract with the consultant. As correctly argued by Atty. Ocampo, even

if one talked of fixed rates for travel and accommodation, it is clear that they need not be integrated into the consultancy fees fixed in the contract. x x x Thus, given that the Manual of Procedures allows the payment of reimbursable travel expenses based on actual cost, the subject contracts cannot be voided based on the allegation of the OCAt that the rule on fixed price contracts was violated.

15. ID.; ID.; ID.; PROCUREMENT MANUAL ON CONSULTING SERVICES; THE FACTORS TO CONSIDER IN DETERMINING THE COST OF CONSULTING SERVICES ARE THE SALARY HISTORY, INDUSTRY RATES, AND TWO HUNDRED PERCENT OF THE EQUIVALENT RATE IN THE PROCURING ENTITY AS THE FLOOR.— The OCAt Report also stated that the proposed consultancy fee of Ms. Macasaet should have been subjected to the ceiling of compensation provided under DBM Circular Letter No. 2000-11. Under paragraphs 3 and 4 of DBM Circular Letter No. 2000-11 on the subject of *Compensation of Contractual Personnel and Individual Professional Consultants*, the ceiling for remuneration is fixed at 120% of the minimum basic salary of his equivalent position. Upon this premise, the OCAt adopted the basic monthly salary of the MISO Chief (*i.e.*, ₱73,099.00) in view of the latter's classification as highly technical and policy-determining. After considering the MISO Chief as a comparable position, the OCAt then concludes that the maximum limit of the compensation of the consultant should have been ₱87,718.80, which was exceeded by the subject contracts covering the period of 2013-2016. x x x It is noteworthy that DBM Circular Letter No. 2000-11 was issued almost three (3) years before the effectivity date of R.A. 9184, which was the basis for the procurement of Ms. Macasaet's Consultancy. **The OCAt should not have relied on DBM Circular Letter No. 2000-11 since it was no longer in line with R.A. 9184, which became effective in 2003, as well as the Procurement Manual on Consulting Services issued under Section 6 of R.A. No. 9184**, x x x As can be gleaned from above, the GPPB was mandated to prepare the standardized procurement manuals. Thus, on June 14, 2006, the GPPB adopted and approved the Generic Procurement Manuals (including the Manual of Procedures), which states that all government offices are mandated to use the procurement manuals issued by the GPPB as a reference guide in the conduct of its actual procurement operations effective

January 2007. Verily, at the time of the procurement of the First Contract of Services with Ms. Macasaet, government offices were already mandated by Section 6 of R.A. 9184 to use the procurement manuals issued by GPPB. In this regard, it must be pointed out that the GPPB is chaired by the DBM Secretary himself. In relation to this, Section 2 of the Manual of Procedures discusses how to compute the cost of consultancy. It states that the following factors should be considered in determining the basic rates: (i) salary history; (ii) industry rates; and (iii) two hundred percent (200%) of the equivalent rate in the Procuring Entity as the floor. Thus, it is obvious that the 120% ceiling cited by the OCAt based on DBM Circular Letter No. 2000-11 and the Manual of Procedures issued by the GPPB are contradictory to each other. It must also be noted that it was Atty. Ocampo's contention that under the Manual of Procedures, the procurement entity will not just use the 200% salary rate as floor (as opposed to a ceiling), but may also consider the previous salary history of the consultant and industry market rates. Indeed, with respect to the latter, the Manual of Procedures states that "[t]he end-user must estimate the cost of consulting services through cost research in the local market." Since the Manual of Procedures issued by the GPPB is a later rule and it is wholly inconsistent with the earlier rule stated in DBM Circular Letter No. 2000-11, as a rule of construction, DBM Circular Letter No. 2000-11 is deemed repealed by the Manual of Procedures. Moreover, the Manual of Procedures was issued under the statutory authority of R.A. 9184, which cannot be overridden by a mere administrative issuance of the DBM, especially a prior one.

16. **ID.; ID.; ID.; R.A. 9184, ITS IMPLEMENTING RULES AND REGULATIONS, AND THE MANUAL OF PROCEDURES GOVERN THE DETERMINATION OF THE COST OF CONSULTANCY, NOT THE DB, CIRCULAR LETTER NO. 2000-11.—** The *ponencia* fails to appreciate the import and clarification made in DBM Circular Letter No. 2017-9 which plainly and quite categorically states that the provisions of DBM Circular Letter No. 2000-11 were inconsistent with RA 9184, its IRR, and the Manual of Procedure. To reiterate, DBM Circular Letter No. 2000-11 has already been repealed by R.A. No. 9184. **Needless to say, the DBM itself acknowledged that it is not DBM Circular Letter No. 2000-11 which governs the determination of the cost of consultancy,**

rather it is governed by R.A. 9184, its IRR, and the Manual of Procedures. In this connection, it should be emphasized that R.A. 9184 took effect on January 23, 2003, its IRR on September 2, 2009, and the Manual on Consulting Services in January 2007. Evidently, the OCAt was incorrect in implying that it was DBM Circular Letter No. 2017-9 which gave effect to the abovementioned rules. **These rules did not become valid only in 2017, but on the respective dates of their effectivity as provided by law**. Therefore, contrary to the *ponencia*'s holding, even before the express revocation of DBM Circular Letter No. 2000-11, the guidelines provided for in the Manual of Procedures were already applicable to the consultancy agreements with Ms. Macasaet.

17. ID.; ID.; ID.; 20% PREMIUM REQUIREMENT APPLICABLE ONLY TO PAYMENT OF SERVICE UNDER JOB ORDER, NOT TO INDIVIDUALS HIRED THOUGH CONTRACT OF SERVICES WHICH SHALL BE PAID THE PREVAILING MARKET RATES.— As for ceilings, the 20% premium used by the OCAt to say that the compensation for the subject contracts are unreasonable had been recognized as only applicable to payment of services under job order, thus: **9.0 Payment of Services under Job Order** Individuals hired through job order shall be paid wages equivalent to the daily wage/salary of comparable positions in government and ***a premium of up to 20% of such wage/salary.*** x x x. Specifically, for individual contracts of service, as the subject contracts, Joint Circular No. 1, s. 2017 provides: 8.0 **Payment of Services under Individual Contract of Service** Individuals hired through contract of service shall be paid the ***prevailing market rates***, subject to the provisions of RA 9184 and its Implementing Rules and Regulations. x x x Thus, it was erroneous for the OCAt to apply the 20% premium requirement to the subject contracts.

18. ID.; ID.; ID.;CERTIFICATE OF AVAILABILITY OF FUND (CAF) REQUIREMENTS; NO PARTICULAR FORM IS REQUIRED TO BE FOLLOWED FOR THE ISSUANCE OF CAF AND A CERTIFICATE SHOWING APPROPRIATION IS NOT REQUIRED, AS THE CERTIFICATION BY THE CHIEF ACCOUNTANT AS TO AVAILABILITY OF FUNDS BE DONE BEFORE THE FUNDS ARE DISBURSED AND EXPENDITURES OR

OBLIGATIONS CHARGEABLE AGAINST AUTHORIZED ALLOTMENTS ARE INCURRED OR AUTHORIZED; THE 3RD AND 8TH CONTRACT OF SERVICES COMPLIED WITH THE CAF REQUIREMENT.— As regards the **CAF**, the OCAt Report found that there were no CAFs issued for the 3rd to 8th Contracts. This was belied by Atty. Ocampo, however, who claimed that the availability of funds had been certified in various financial documents. It is undisputed that there were CAFs issued by the FMBO Budget Division prior to the execution of the 1st and 2nd Contracts. x x x As found by the OCAt, no similar certification had been issued prior to entering into the 3rd to 8th Contracts. ***However*, this does not necessarily mean that there is non-compliance** with Section 40, Chapter 5 of the Administrative Code **on the CAF requirement**. [T]he provision on CAF requires that "[n]o funds shall be disbursed, and no expenditures or obligations chargeable against any authorized allotment shall be incurred or authorized in any department, office or agency without first securing the certification of its Chief Accountant or head of accounting unit as to the availability of funds and the allotment to which the expenditure or obligation may be properly charged." Two things are apparent: *first*, there is **no particular form required** to be followed for the issuance of the CAF; and *second*, unlike the Certificate Showing Appropriation which is required to be issued before entering into the contract, no such requirement appears regarding the CAF. On the contrary, a plain reading of Section 40 readily reveals that the certification by the chief accountant as to availability of funds must be **done *before funds are disbursed* and *expenditures or obligations* chargeable against authorized allotments *are incurred or authorized*.** Based on these premises, it appears that the 3rd to 8th Contracts duly complied with the CAF requirement. x x x Nonetheless, the *ponencia* is of the position that the certification required by law cannot be replaced by mere Obligation Requests and Disbursement Vouchers as they serve different purposes from that of a CAF which certifies that there are funds actually appropriated for the contract to be executed and that such funds are actually available to be expended. However, as mentioned earlier, the law does not require a specific form for the CAF. As such, the certifications by the Chief Accountant (as to the availability of appropriation and funds) contained in the **Obligation Requests** and **Disbursement Vouchers**, **which were issued before the payments were made to Ms.**

Macasaet should be deemed, as they are, compliant with the CAF requirement under Section 40, Chapter 5 of the Administrative Code.

19. ID.; ID.; ID.; IMPLEMENTING RULES AND REGULATION OF RA NO. 9184; THE CONTRACTS FOR HIGHLY TECHNICAL, PRIMARILY CONFIDENTIAL OR POLICY DETERMINING CONSULTANTS BE LIMITED TO A SIX-MONTH TERM; TO DETERMINE WHETHER THE DIVISION OR BREAKING UP OF GOVERNMENT CONTRACTS INTO SMALLER QUALITIES OR AMOUNTS AMOUNTED TO SPLITTING OF CONTRACTS, IT MUST BE CLEARLY SHOWN THAT THE ACT MUST HAVE BEEN DONE FOR THE PURPOSE OF CIRCUMVENTING OR EVADING LEGAL AND PROCEDURAL REQUIREMENTS, THE CONTINUOUS RENEWAL AND/OR EXTENSION OF THE SUBJECT CONTRACT OF SERVICES EVERY AFTER SIX MONTHS DOES NOT AMOUNT TO SPLITTING OF CONTRACTS AS THERE WAS NO SHOWING THAT THE SAME WAS DONE TO CIRCUMVENT OR EVADE THE LEGAL AND PROCEDURAL REQUIREMENTS UNDER R.A. NO. 9184.— The OCAt also found that the continuous renewal and/or extension of the subject contracts after every six months amounted to splitting of contracts as defined under the 2009 IRR x x x. The OCAt averred that the division of five-year EISP implementation period into a series of short term consultancy contracts of six months may be disadvantageous to the government. Contrary to this allegation, the following observations can be made: *First*, it bears stressing that it is the 2009 IRR that imposes the time limitation of six months for directly negotiated contracts: 53.7. Highly Technical Consultants. In the case of individual consultants hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant: Provided, however, That **the term of the individual consultants shall, at the most, be on a six month basis, renewable at the option of the appointing Head of the Procuring Entity**, but in no case shall exceed the term of the latter. Hence, the IRR itself specifically mandates that contracts for highly technical, primarily confidential or policy determining consultants be limited to a six-month term. This allows the end-user to evaluate every six months whether

there is a further need for the consultant's service. This is consistent with the GPPB clarification as to the meaning of splitting of contracts in GPPB NPM 136-2014 issued on December 6, 2014, which states: **Clarification on the interpretation the term splitting of contracts under Section 53.1 of the IRR of RA 9184.** [I]t does not follow that once a contract is divided into smaller quantities or phases, there is splitting of contract. In order to determine whether the division of the procurement project into two (2) packages amounts to splitting of contract, **it must be clearly shown that the act must have been done for the purpose of circumventing or evading legal and procedural requirements** x x x. Clearly, the renewal of the subject contracts cannot be described as prohibited splitting because there is no showing that the repeated renewals were done to circumvent or evade the legal and procedural requirements under RA. 9184. **In fact, given that the appropriate modality for the services required is direct negotiation, the Court as the Procuring Entity had no other choice but to enter into the subject contracts with terms not longer than six months as provided under Section 53.7 of the 2009 IRR**.

20. ID.; ID.; ID.; THE SITTING CHIEF JUSTICE IS GENERALLY AND TRADITIONALLY REGARDED AS THE HEAD OF THE PROCURING ENTITY, NOT THE SUPREME COURT *EN BANC*.— The *ponencia* finds that "the records fail to show that [Atty. Candelaria] was authorized in writing by the Supreme Court *En Banc* to act as signatory of the Court in entering into these Contracts of Services with Ms. Macasaet." According to the *ponencia*, the Procuring Entity is the Supreme Court and the head of the Supreme Court is the Supreme Court *en banc*. Thus, the subject contracts should have been approved by the Supreme Court *en banc* as Head of the Procuring Entity, not the Chief Justice alone. Since the former Chief Justice was not given the authority to enter into the subject contracts by the Supreme Court *en banc*, she, in turn, had no authority to further delegate said power to Atty. Candelaria. x x x. In support of this position, the *ponencia* cited A.M. No. 99-12-08-SC (Revised) dated April 22, 2003 on the Referral of Administrative Matters and Cases to the Divisions of the Court, the Chief Justice, and to the Chairmen of the Divisions for Appropriate Action or Resolution. x x x Based on this, the *ponencia* posits that the Chief Justice is not authorized by

the Court *en banc* to independently act on behalf of the Supreme Court to enter into government contracts that are highly technical, proprietary, primarily confidential, or policy determining such as the subject contracts. Thus, according to the *ponencia*, the subject contracts should have been authorized by the Supreme Court *en banc* which has administrative power over all courts and personnel thereof, and not merely by the former Chief Justice. On this note, however, attention is invited to the latter part of the above-quoted provision, to wit: "(i) [s]uch other matters where the decision, action, or resolution thereon or approval thereof is vested in the Chief Justice x x x or those which are traditionally vested in the **Chief Justice as head of the Judiciar**y." Evidently, the provision relied upon by the *ponencia* itself expressly recognizes the Chief Justice as *the* head of the Judiciary. Thus, contrary to the *ponencia*'s erroneous assertion that the Head of the Procuring Entity is the Supreme Court *en banc*, there is already an express recognition that the Chief Justice *is* the head of the Judiciary. This interpretation is not novel as the sitting Chief Justice has been generally and traditionally regarded as the Head of the Procuring Entity. Even the Supreme Court *en banc* made this recognition in its Resolution dated December 4, 2012 in A.M. No. 12-9-4-SC. x x x **Even at present**, the bidding documents released by the SC-BAC refers to the Chief Justice as the Head of the Procuring Entity. Accordingly, that the Chief Justice *is* the Head of the Procuring Entity is, as it should be, indisputable. To insist otherwise is totally nonsensical.

21. ID.; ID.; ID.; THE DEPUTY CLERK OF COURT AND CHIEF ADMINISTRATIVE OFFICER IS AUTHORIZED TO SIGN CONTRACTS FOR INFRASTRUCTURE PROJECTS RECOMMENDED BY THE BAC AND TO SIGN DOCUMENTS ON BEHALF OF THE COURT OR THE CHIEF JUSTICE; THE CHIEF ADMINISTRATIVE OFFICER IS EXPRESSLY AUTHORIZED BY THE FORMER CHIEF JUSTICE, AS THE HEAD OF THE PROCURING ENTITY, TO SIGN THE CONTRACT OF SERVICES ON HER BEHALF IN CASE AT BAR.— Atty. Candelaria explained in her Comment that the functions of the Deputy Clerk of Court and Chief Administrative Officer is to plan, recommend and implement personnel management and development programs and administrative service functions of the Court. According to her, it is for this purpose that she had

requested from the former Chief Justice the authority to sign for and in behalf of the Chief Justice and Associate Justices the documents involving internal personnel matters. x x x As the Deputy Clerk of Court and Chief Administrative Officer, she is likewise authorized to sign Contracts for Infrastructure Projects recommended by the BAC. Aside from these is the all-encompassing duty to do related tasks that may from time to time be assigned by the Chief Justice, Associate Justices, or the Clerk of Court. With respect to the subject contracts, Atty. Candelaria explained that the former Chief Justice, as Head of the Procuring Entity, already approved the award of the subject contracts to Ms. Macasaet and that the said contracts were already prepared by the OCJ indicating the Deputy Clerk of Court and the Chief Administrative Office as the Court's representatives. If this is not an implied authority and designation to act as a signatory for and in behalf of the Court, then what is? More importantly, aside from the abovementioned implied authority and designation to act as signatory, it is undisputed that she was also given the written authority required by law. An action slip was issued to Atty. Candelaria by Atty. Ocampo of the OCJ stating that the former Chief Justice is authorizing Atty. Candelaria to sign the contract of services of Ms. Macasaet, to wit: I am pleased to furnish your office a copy of the Contract of Services between the Supreme Court and Ms. Helen Macasaet. **A<u>lso attached for your reference is the authorization from the Chief Justice to execute the said Contract of Services</u>.** Despite the obvious, the *ponencia* posits that said action slip issued by Atty. Ocampo cannot be considered as "proof that full written authority was issued by the Head of the Procuring Entity. The *ponencia* further states that the action slip merely stated that an authorization from the former Chief Justice was attached to it, "without expressly stating what the attachment was". However, contrary to this, it is evident from the above-quoted action slip that the attachment refers to the written authorization issued by the former Chief Justice to "**<u>execute</u>** said Contracts of Services", which by plain reading of the first paragraph of the action slip, refers to the Contracts of Services between Ms. Macasaet and the Court. Thus, contrary to the finding of the *ponencia* that Atty. Candelaria was not given the express authority to sign the Contracts of Services with Ms. Macasaet, the above-quoted action slip is proof that she was in fact given express written authority by the former Chief Justice to sign

and execute the Contracts of Services on the latter's behalf. Atty. Candelaria maintained that her act of signing the subject contracts is a valid exercise of her task of acting as signatory thereto for and in behalf of the Court, in which she exercised due diligence and acted within the authority given to her by the former Chief Justice as Head of the Court. Hence, the *ponencia* seriously erred when it failed to hold that Atty. Candelaria, in her capacity as Deputy Clerk of Court, is indeed authorized to sign the subject contracts. As the Chief Administrative Officer of the Court, there is no question that she may be authorized to sign documents on behalf of the Court or the Chief Justice. Moreover, she was expressly authorized by the former Chief Justice, as Head of the Procuring Entity, to sign the subject contracts on her behalf. Therefore, there is no reason to declare the subject contracts null and void on the ground that there was lack of authority on the part of the signing officer.

APPEARANCES OF COUNSEL

MR Reyes and Associates Law Firm for Helen P. Macasaet.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This administrative matter involves the legality of the Contracts of Services between the Court and Ms. Helen P. Macasaet (Ms. Macasaet) for her rendition of consultancy services for the Enterprise Information Systems Plan (EISP) for the years 2010-2014.

The Facts

The EISP is intended to serve as the framework of the Information and Communications Technology (ICT) initiatives of the Judiciary. INDRA Sistemas S.A. (INDRA) was designated to provide Management and Consultancy Services for the development of the Judiciary's ICT Capability as part of the

Judicial Reform Support Project financed by the World Bank. In the 23 June 2009 Resolution in A.M. No. 08-11-09-SC,[1] the Court approved the EISP submitted by INDRA. However, the 2009 Budget did not include a budget for the judiciary-wide technical infrastructure, nationwide connectivity, and network security, which are prerequisites to the nationwide implementation of the EISP and on-going ICT projects like the eCourts.[2] Thus, there was a need to hire the services of an ICT consultant to review the status of the implementation of the EISP and related ICT and computerization projects.

In its 10 September 2013 Memorandum,[3] the Bids and Awards Committee for Consultancy Services (BAC-CS) considered the procurement **as highly technical in nature** and primarily requires trust and confidence owing to the fact that the EISP is a priority program of the Court. In the same Memorandum, the BAC-CS recommended three (3) consultants who may be considered by the Supreme Court for the procurement of consultancy services. In a Joint Memorandum dated 12 September 2013[4] to then Chief Justice Maria Lourdes P. A. Sereno, Atty. Michael B. Ocampo (Atty. Ocampo) of the Office of the Chief Justice (OCJ) and Mr. Edilberto A. Davis (Mr. Davis), then the Acting Chief of the Management Information Systems Office (MISO), stated that after reviewing and evaluating the three proposed consultants by the BAC-CS, they found Ms. Macasaet to be the most qualified. Their recommendation that Ms. Macasaet be hired for the procurement was approved by the then Chief Justice. The Supreme Court, ostensibly represented by its then Chief Administrative Officer Atty. Eden T. Candelaria (Atty. Candelaria), entered into a six-month Contract of Services with Ms. Macasaet on 1 October 2013.[5] The consultancy fee of Ms. Macasaet under the Contract

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[1] *Rollo*, pp. 50-51.

[2] *Id*. at 2 (OCAt Report).

[3] *Id*. at 61-62.

[4] *Id*. at 63-64.

[5] *Id*. at 67-70.

of Services dated 1 October 2013 was ₱600,000.00, to be paid in six (6) equal monthly installments.

In a Memorandum to the Chief Justice dated 16 April 2014,[6] Atty. Ocampo stated that there was a need for a technical and policy consultant for the implementation of the Updated EISP Work Plan. Atty. Ocampo proposed to directly negotiate a six-month contract with the consultant, who would be paid a fee of ₱250,000.00 a month, inclusive of all applicable taxes. Atty. Ocampo based his proposal on Section 53.7 of the Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 (Government Procurement Reform Act),[7] where a procuring entity can forego public bidding and directly negotiate a six-month contract with a consultant, who will perform work that is highly technical, proprietary, primarily confidential or policy determining. Atty. Ocampo stated that the proposed consultancy is clearly **highly technical** and policy determining, which would be subject to the confirmation of the BAC-CS.[8] Again, in its 15 May 2014 Memorandum,[9] the BAC-CS reiterated that the subject procurement can proceed without the Committee's involvement as it was "**highly technical in nature** and primarily requires trust and confidence, owing to the fact that it is a priority program of the Supreme Court." The BAC-CS stated, in the same Memorandum, that in addition to the consultant previously engaged, the other consultants named in their previous memorandum should also be considered for the procurement of the consultancy services.[10] Acting on the Memorandum of the BAC-CS, Atty. Ocampo and Mr. Davis determined, in their Joint Memorandum dated 20 May 2014,[11] that Ms. Macasaet was the most qualified among the three

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[6] *Id*. at 80-83.

[7] Approved on 10 January 2003 and took effect on 1 April 2003.

[8] *Rollo*, p. 83.

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

[10] *Id*. at 96.

[11] *Id*. at 614-616.

proposed consultants. This Joint Memorandum was approved by then Chief Justice Sereno.

However, the records are bereft of any explanation as to how the three (3) consultants were chosen by the BAC-CS for the purpose of recommending to the Supreme Court the procurement of consultancy services. As aptly pointed out by the report of the Office of the Chief Attorney (OCAt) dated 6 November 2017 (OCAt Report):

> There are no documents from the BAC-CS that would show the following: (i) posting of opportunity in PhilGEPS website, SC website and SC bulletin boards or letter/s addressed to prospective individual consultant/s to submit his/her/their resume with respective financial proposal/s; (ii) that any or all three (3) prospective individual consultants named by the BAC-CS submitted his/her/their resume with respective financial proposal/s to the BAC-CS; (iii) the conduct of the negotiation; [iv] resolution recommending the award; [v] notice of award; [vi] proof that the notice of award was posted in the PhilGEPS website, SC website and in the SC bulletin boards; and [vii] notice to proceed.
>
> If at all, the BAC-CS terminated its role after having "resolved to consider the subject procurement as **highly technical in nature** and primarily requires trust and confidence owing to the fact that it is the priority program of the Supreme Court." After holding "that there is no need for said procurement to pass through the regular process of engaging consultants being conducted by it", the procurement got off the hands of the BAC-CS through a disposition "that the Supreme Court, through the Office of the Chief Justice, can and should exercise its discretion to act on the subject procurement so as not to delay the same." The BAC-CS, instead of proceeding as prescribed, merely submitted three (3) names of "consultants which can be considered by the Supreme Court for the subject procurement." Even the process through which the BAC-CS had this list of three (3) names, which includes Ms. Macasaet, is not on record.[12] (Emphasis supplied)

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[12] *Id*. at 27.

On 23 May 2014, the Court, ostensibly represented by Atty. Candelaria as Chief Administrative Officer, entered into a second six-month Contract of Services with Ms. Macasaet.[13]

In the meantime, the Court issued an *En Banc* Resolution dated 16 September 2014[14] in A.M. No. 14-09-06-SC, approving the updated EISP work and its budget (2014-2019), which were supposedly the output of the 1 October 2013 Contract of Services with Ms. Macasaet.

In the Joint Memorandum dated 1 December 2014,[15] Mr. Davis and Atty. Ocampo stated that there was a continuing need for the services of a consultant to provide **technical advice** and assistance in the first year implementation of the plan and in developing ICT policies to support it. Thus, they recommended the extension of Ms. Macasaet's contract for another six (6) months.[16] Then Chief Justice Sereno approved the Joint Memorandum, and a Contract of Services was entered into on 10 December 2014[17] between Ms. Macasaet and the Court, where Atty. Candelaria signed for and in behalf of the Court. Thereafter, the Contract of Services was extended five more times, for a total of six extensions of six months for every extension. In total, the Court entered into a Contract of Services with Ms. Macasaet for a total of eight times.

The Issue

The issue at hand is the legality of the eight Contracts of Services, entered into by the Court by negotiated procurement, ostensibly represented by Atty. Candelaria, with Ms. Macasaet. This issue was initially part of A.M. No. 17-08-05-SC entitled "Re: Letter-Request of Atty. Lorenzo G. Gadon for Certified

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[13] *Id*. at 606-613.

[14] *Id*. at 77.

[15] *Id*. at 114-117.

[16] *Id*. at 115.

[17] *Id*. at 118-126.

True Copies of Certain Documents in Connection with the Filing of an Impeachment Complaint."

In a Resolution dated 19 September 2017,[18] the question of the legality of the Contracts of Services was referred to the OCAt and former Chief Justice Sereno was given the opportunity to comment on Atty. Gadon's request for documents in relation to the Contracts of Services with Ms. Macasaet. In compliance with the Court's Resolution dated 19 September 2017,[19] the OCAt submitted the OCAt Report.[20] Acting on the OCAt Report, then Chief Justice Sereno submitted her Preliminary Comment on 20 November 2017 to the other members of the Court *En Banc*.[21] The Court, in its Resolution dated 21 November 2017,[22] required the BAC-CS and Ms. Macasaet to comment. The BAC-CS and Ms. Macasaet filed their respective Comments on 25 January 2018[23] and 22 January 2018.[24] The Court noted the Comment of Ms. Macasaet in its Resolution dated 23 January 2018.[25] In its Resolution dated 30 January 2018,[26] the Court noted the Comment of the BAC-CS. In the same Resolution, Attys. Candelaria and Ocampo were required by the Court to comment on the OCAt Report, which comment they filed on 20 February 2018 and 25 April 2018, respectively.

The Ruling of the Court

Based on the facts and applicable laws and regulations, all the Contracts of Services should be declared void *ab initio*.

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[18] *Id*. at 49-49A.

[19] *Id*.

[20] *Id*. at 1-48.

[21] *Id*. at 409-421.

[22] *Id*. at 407.

[23] *Id*. at 464-488.

[24] *Id*. at 433-460.

[25] *Id*. at 462-463.

[26] *Id*. at 668-669.

SIGNATORY HAD NO WRITTEN AUTHORITY

The signatory in all the eight (8) Contracts of Services with Ms. Macasaet was Atty. Candelaria in her capacity as Chief Administrative Officer and Deputy Clerk of Court.[27] **However, the records fail to show that she was authorized in writing by the Supreme Court *En Banc* to act as signatory of the Court in entering into these Contracts of Services with Ms. Macasaet.** In fact, in her Comment dated 20 February 2018,[28] Atty. Candelaria herself **admitted** that she was not **given any express full written authority** by then Chief Justice Sereno to sign the Contracts of Services with Ms. Macasaet. In her Comment, Atty. Candelaria states:

> In these particular Contracts of Services with Ms. Macasaet, since the Chief Justice as the Head of the Procuring Entity has already approved the award of the contract to the consultant and that the contract was already prepared by the Office of the Chief Justice (OCJ) indicating therein the Deputy Clerk of Court and Chief Administrative Officer as the Court's representative, **it was understood as *an implied authority* and designation for the undersigned to act as signatory for and in behalf of the Court.**[29] (Boldfacing and italicization supplied)

Atty. Candelaria stated that since the then Chief Justice had already approved the contract with Ms. Macasaet and the Office of the Chief Justice had already prepared the contract, she took it as an "**implied authority**" to sign on behalf of the Court.[30] Even assuming for the sake of argument that there was an "implied authority," as in fact nothing of such authority can be implied from the contract, an "implied authority" is not the "**full authority**" in writing required under Sections 4 and 5 of Executive Order (EO) No. 423.

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[27] *Id*. at 46 (OCAt Report).

[28] *Id*. at 670-672.

[29] *Id*. at 671-672.

[30] *Id*.

EO No. 423 dated 20 April 2005[31] prescribed the rules and procedures on the review and approval of all government contracts to conform with the Government Procurement Reform Act.[32] EO No. 423 was issued in accordance with Section 75 of the Government Procurement Reform Act, which provides:

SEC. 75. *Implementing Rules and Regulations and Standard Forms*. — Within sixty (60) days from the promulgation of this Act, the necessary rules and regulations for the proper implementation of its provisions shall be formulated by the GPPB, jointly with the members of the Oversight Committee created under Section 74 hereof. The said rules and regulations shall be approved by the President of the Philippines. For a period not later than thirty (30) days upon the approval of the implementing rules and regulations, the standard forms for Procurement shall be formulated and approved.

Specifically, Sections 4 and 5 of EO No. 423 provide:

Section 4. Approval of Government Contract Entered Into Through Alternative Methods of Procurement. –

x x x x x x x x x

b. For Government Contracts Involving An Amount Below Five Hundred Million Pesos (₱500 Million). — Except for Government contracts required by law to be acted upon and/or approved by the President, **the Heads of the Procuring Entities shall likewise have full authority to give final approval and/or to enter into Government contracts of their respective agencies, entered into**

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[31] Repealing Executive Order No. 109-A, dated 18 September 2003, Prescribing the Rules and Procedures on the Review and Approval of All Government Contracts to Conform with Republic Act No. 9184, Otherwise Known as "The Government Procurement Reform Act."

[32] Under Chapter 2, Title 1, Book III of the Administrative Code of 1987, the President has the authority to issue Executive Orders to implement and execute statutes. In particular, Section 2 provides:

Chapter 2. Ordinance Power

Section 2. Executive Orders. — Acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in executive orders.

through alternative methods of procurement allowed by law. Provided, that the Department Secretary certifies under oath that the contract has been entered into in faithful compliance with all applicable laws and regulations.

The Heads of the Procuring Entities may delegate in writing this *full authority* to give final approval and/or to enter into Government contracts involving an amount below Five Hundred Million Pesos (₱500 Million) entered into through alternative methods of procurement allowed by law, as circumstances may warrant (*i.e.*, decentralization of procurement in a Government Agency), subject to existing laws and such limitations imposed by the Head of the Procuring Entity concerned (Section 5(j), Republic Act No. 9184).

Section 5. Authority to Bind the Government. — **All Government contracts shall require the approval and signature of the respective Heads of the Procuring Entities or their respective duly authorized officials, as the case may be, as required by law, applicable rules and regulations, and by this Executive Order, before said Government contracts shall be considered approved in accordance with law and binding on the government, except as may be otherwise provided in Republic Act No. 9184.** For Government contracts required by law to be acted upon and/or approved by the President, Section 6 of this Executive Order governs the process by which such Government contracts shall be considered entered into with authority and binding on the Government.

The Heads of the Procuring Entities or their respective duly authorized officials, as the case may be, shall be responsible and accountable for ensuring that all Government contracts they approve and/or enter into are in accordance with existing laws, rules and regulations and are consistent with the spending and development priorities of Government.

All Government contracts entered into in violation of the provisions of law, rules and regulations, and of this Executive Order shall be considered contracts entered into without authority and are thus invalid and not binding on the Government. (Boldfacing and italicization supplied)

From the foregoing, it is clear that it is the Head of the Procuring Entity who is authorized to enter into binding government contracts, **when such contracts are entered into**

through alternative methods of procurement such as directly negotiated contracts like the Contracts of Services with Ms. Macasaet. This authority may be delegated, but this must be done only "**in writing**" with "**full authority**" to give "final approval and/or to enter into" the contract delegated to such duly authorized official. **Since the alternative method of procurement is an exception to the general rule that procurement shall be through public bidding, the written "full authority" cannot be general, but must refer specifically to the particular contract being entered into through the alternative method of procurement.**

The Head of the Procuring Entity is defined by the IRR of the Government Procurement Reform Act as follows:

> Section 5. Definition of Terms
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> x x x x x x x x x
>
> t) *Head of the Procuring Entity (HoPE)*. Refers to: (i) the head of the agency or body, or his duly authorized official, for [National Government Agencies] and the constitutional commissions or offices, and other branches of government; (ii) the governing board or its duly authorized official, for [government-owned and/or -controlled corporations], [government financial institutions] and [state universities and colleges] or (iii) the local chief executive, for [local government units]: *Provided, however*, That in an agency, department, or office where the procurement is decentralized, the head of each decentralized unit shall be considered as the HoPE, subject to the limitations and authority delegated by the head of the agency, department, or office.

In this case, the Procuring Entity is the Supreme Court. The Head of the Supreme Court is the Supreme Court *En Banc*. Thus, any government contract below ₱500 Million entered into by the Supreme Court through alternative methods of procurement should be approved by the Supreme Court *En Banc* as Head of the Procuring Entity.

Article VIII, Section 6 of the Constitution provides that the Supreme Court "**shall have administrative supervision over all courts and the personnel thereof**." Thus, the administrative

powers of the Court – which include entering into government contracts in the exercise of these powers of administration – are vested in the members of the Supreme Court sitting *en banc*, as a collegial body. To repeat, any government contract entered into on and in behalf of the Supreme Court must be authorized by the Supreme Court *En Banc*.

The powers of the Supreme Court – whether judicial or administrative supervision – are exercised by the members of the Court sitting *en banc* or by the members sitting in their respective Divisions. Rule 2, Section 1 of the Internal Rules of the Supreme Court[33] provides:

> Section 1. *Exercise of judicial and administrative functions.* — **The Court exercises its judicial functions and its powers of administrative supervision over all courts and their personnel through the Court *en banc* or its Divisions.** It administers its activities under the leadership of the Chief Justice, who may, for this purpose, constitute supervisory or special committees headed by individual Members of the Court or working committees of court officials and personnel.[34] (Emphasis supplied)

The Supreme Court is first and foremost a collegial body, with one vote for each Justice, including the Chief Justice, in all judicial or administrative matters for decision. The Supreme Court exercises its functions through the Court *En Banc* or its Divisions. As the Court is a collegial body, absent a proper authorization by the Court *En Banc*, even the Chief Justice who is *primus inter pares* cannot act on his or her own. This Court has previously emphasized the collegial nature of the Supreme Court, to wit:

> To reiterate, the Court, whether sitting *En Banc* or in Division, acts as a collegial body. By virtue of the collegiality, the Chief Justice alone cannot promulgate or issue any decisions or orders. In *Complaint of Mr. Aurelio Indencia Arrienda Against SC Justices Puno, Kapunan, Pardo, Ynares-Santiago*, the Court has elucidated

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[33] A.M. No. 10-4-20-SC, as amended. Dated 4 May 2010.

[34] *Id*.

on the collegial nature of the Court in relation to the role of the Chief Justice, *viz*.:

> The complainant's vituperation against the Chief Justice on account of what he perceived was the latter's refusal "to take a direct positive and favorable action" on his letters of appeal overstepped the limits of proper conduct. It betrayed his lack of understanding of a fundamental principle in our system of laws. Although the Chief Justice is *primus inter pares*, he cannot legally decide a case on his own because of the Court's nature as a collegial body. Neither can the Chief Justice, by himself, overturn the decision of the Court, whether of a division or the *en banc*.
>
> There is only one Supreme Court from whose decisions all other courts are required to take their bearings. While most of the Court's work is performed by its three divisions, the Court remains one court – single, unitary, complete and supreme. Flowing from this is the fact that, while individual justices may dissent or only partially concur, when the Court states what the law is, it speaks with only one voice. Any doctrine or principle of law laid down by the court may be modified or reversed only by the Court *en banc*.[35]

While the powers are vested in the Supreme Court as a collegial body, such powers may be delegated by the Supreme Court *En Banc*. In A.M. No. 99-12-08-SC (Revised),[36] the Supreme Court *En Banc* delegated some of its administrative functions to the Divisions of the Court, the Chief Justice, and the Chairpersons of the Divisions. The delegation of these administrative powers over all courts and its personnel was done through a resolution issued by the Supreme Court *En Banc* because the power of administrative supervision is vested in the Supreme Court *En Banc* as a collegial body.

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[35] *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc.*, G.R. No. 178083, 13 March 2018.

[36] Referral of Administrative Matters and Cases to the Divisions of the Court, the Chief Justice, and to the Chairmen of the Divisions for Appropriate Action or Resolution. Dated 22 April 2003.

In particular, A.M. No. 99-12-08-SC (Revised) authorized the Divisions, the Chief Justice, and the Chairpersons of the Divisions, to act on certain administrative matters to relieve the Supreme Court *En Banc* from additional burden brought about by the considerable number of administrative matters or judicial cases. Specifically, the Chief Justice was authorized to act or resolve the following matters:

III. To **REFER** to the Chief Justice for appropriate action or resolution, **for and in behalf of the Court *En Banc***, administrative matters relating to, or in connection with,

(a) Recommendations for the detail of personnel from one office, division, or section in the Supreme Court and the Office of the Court Administrator to another office, division, or section;

(b) Rendition of overtime services and fixing of overtime compensation;

(c) Purchase of supplies, furniture, vehicles, and equipment, including computers and their accessories or paraphernalias; and approval or disapproval of claims for payment therefor;

(d) Awards of contracts for the supply of services, such as security, janitorial, photocopying services, operation of the canteen, and other allied or incidental services;

(e) Approval of requests for payment of electric, telephone and water bills, and bills for the services mentioned in the immediately preceding item;

(f) Requests for the repair of Halls of Justice and approval of claims for payment therefor;

(g) Disposal of old records and unserviceable vehicles, equipment, computers, and the like;

(h) Domestic travel of officials and personnel of the Judiciary; and

(i) Such other matters where the decision, action, or resolution thereon or approval thereof is vested in the Chief Justice by the Constitution, by law, by the Court *En Banc*, by resolutions of the Constitutional Fiscal Autonomy Group (CFAG), or by this revised Resolution, such as, the augmentation of items in the budget from savings in other

> items thereof, realignment of the budget allocation of the continuing appropriation of the Court (the Fiscal Autonomy Account), or the administration of the Judiciary Development Fund (JDF), or those which are traditionally vested in the Chief Justice as head of the Judiciary. (Emphasis supplied)

Similarly, in A.M. No. 10-1-10-SC,[37] the Supreme Court *En Banc* authorized the Clerk of Court *En Banc*, the Court Administrator, the Chief Justice, the Chairpersons of the Divisions to approve certain procurement requests, subject to certain threshold amounts. A.M. No. 10-1-10-SC also stated which **procurement requests** must be approved by the Supreme Court *En Banc*. A.M. No. 10-1-10-SC issued by the Supreme Court *En Banc* reads in part:

> The Court [r]esolved, upon the recommendation of the Procurement Planning Committee (PPC), to
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> x x x x x x x x x
>
> (d) AUTHORIZE the PPC to indorse to the appropriate Property Division the procurement of items or projects, subject to approval as follows:
>
> (i) For procurement requests with a total cost of up to One Million Pesos (₱1,000,000.00) – for the Supreme Court, approval of the Clerk of Court *En Banc*, or in his/her absence, the Deputy Clerk of Court, and for the Lower Courts, the Court Administrator;
>
> (ii) For procurement requests with a total cost of more than One Million Pesos (₱1,000,000.00) up to Two Million Pesos (₱2,000,000.00) – the Chief Justice (exclusive of vehicles);
>
> (iii) For procurement requests with a total cost of more than Two Million Pesos (₱2,000,000.00) up to Four Million Pesos (₱4,000,000.00) – the three (3) Chairpersons of the Divisions (exclusive of vehicles); and
>
> (iv) For procurement requests with a total cost of above Four Million Pesos (₱4,000,000.00) – the Court *En Banc* inclusive of procurement of motor vehicles;

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[37] Re: [2018] Procurement Plan for the Supreme Court and the Lower Courts. Dated 6 March 2018.

Thus, while the Chief Justice may approve **procurement requests** if it meets the threshold amount approved by the Supreme Court *En Banc* through its resolution, this authority to approve is still delegated by the Supreme Court *En Banc* and is not inherent in the position of Chief Justice. To repeat, even the authority to approve procurement requests is delegated by the Supreme Court *En Banc*. Without such delegated authority from the Supreme Court *En Banc*, the Chief Justice simply cannot approve any **procurement requests** on behalf of the Supreme Court. **It is with more reason that the Chief Justice cannot approve *procurement contracts*, as distinguished from *procurement requests*, without the delegated authority from the Supreme Court *En Banc*.**

Based on the foregoing, it is clear that the Chief Justice is not authorized by the Court *En Banc* to independently act on behalf of the Supreme Court to enter into government contracts that are highly technical, proprietary, primarily confidential or policy determining such as the subject Contracts of Services. The power to enter into such contracts was clearly not delegated by the Supreme Court *En Banc* to the Chief Justice. Thus, the Contracts of Services should have been authorized by the Supreme Court *En Banc* which has administrative power over all courts and personnel thereof, and not merely by the then Chief Justice. **A.M. No. 99-12-08-SC (Revised) expressly provides that those administrative matters not referred in the said resolution shall be acted upon by the Court *En Banc*,** to wit:

> All other administrative matters or cases which are either expressly declared above to be cognizable by the Court *En Banc* **or are not covered by the foregoing referrals shall be acted upon or resolved by the Court *En Banc*.** The Chief Justice may likewise refer to the Court *En Banc* for its action or resolution any other matter which, in his opinion, should be resolved by it. (Emphasis supplied)

Moreover, it is important to note that the full written authority to approve or sign to be given to the authorized official by the Head of the Procuring Entity should refer to a specific government contract to be entered into by the Procuring Entity through an alternative method of procurement.

A general authority to sign contracts on behalf of a government entity is insufficient for the official to sign a government contract entered into through any of the alternative methods of procurement. A government contract procured through any of the alternative methods of procurement is an exceptional method of entering into government contracts because the policy of the government is to conduct public bidding in all procurements in order to extend equal opportunity to all eligible and qualified private parties to participate in government procurement.[38] Thus, the alternative methods of procurement such as negotiated contracts are an exception to the general practice of procurement of government contracts which generally involves public bidding. As such, the law explicitly requires the Head of the Procuring Entity to be responsible for such government contract. Section 5 of EO No. 423 provides:

> Section 5. Authority to Bind the Government. — x x x
>
> The Heads of the Procuring Entities or their respective duly authorized officials, as the case may be, shall be **responsible and accountable for ensuring that all Government contracts they approve and/or enter into** are in accordance with existing laws, rules and regulations and are consistent with the spending and development priorities of Government.
>
> x x x x x x x x x (Emphasis supplied)

Thus, the law requires that it should be the Head of the Procuring Entity who approves or signs the government contract or in the alternative, an official who is duly authorized by the Head of the Procuring Entity through a written delegation of full authority to enter into the government contract. The requirement of a written authority is to ensure that the Head of the Procuring Entity or his or her respective duly authorized representative is responsible and accountable for the government contracts entered into on behalf of the Procuring Entity, and prevent unauthorized officials from signing and approving contracts.

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[38] See Section 3(b), Government Procurement Reform Act.

In this case, however, the written authority delegated to Atty. Candelaria, the alleged authorized official, is **non-existent**.

Atty. Candelaria alleges in her Comment that her authority to enter into the Contracts of Services with Ms. Macasaet on behalf of this Court was the Joint Memorandum recommending Ms. Macasaet to be hired as ICT consultant and that steps be undertaken to execute a contract for consultancy services between the Court and Ms. Macasaet.[39] This is not the written "full authority" required by EO No. 423.

As expressly stated in Section 4 of EO No. 423, "**full authority**" must be delegated in writing to the authorized official by the Head of the Procuring Entity. **Being a special authority availed as an exception to the general rule on public bidding, the written "full authority" must refer specifically to the particular contract that is being entered into through the alternative method of procurement.** The Joint Memorandum dated 20 May 2014 prepared for then Chief Justice Sereno and signed by Atty. Ocampo and Mr. Davis cannot be considered as a delegation by the Supreme Court *En Banc* of full authority to Atty. Candelaria to act and sign on behalf of the Supreme Court. The Joint Memorandum was not even addressed to the Supreme Court *En Banc* – it was prepared only for then Chief Justice Sereno. Thus, the other members of the Supreme Court were not informed of the subject Contracts of Services. The Supreme Court *En Banc* was notified of the existence of the Contracts of Services only upon the filing of the letter-request of Atty. Gadon. Since the other members of the Supreme Court *En Banc* were clearly unaware of the Contracts of Services with Ms. Macasaet, it is obvious that the power to enter into such contracts was not delegated to anyone. **The Supreme Court *En Banc* could not have delegated the power to enter into such contracts which it did not know even existed.**

While then Chief Justice Sereno signed the Joint Memorandum dated 20 May 2014 to signify her approval to the Joint Memorandum prepared by Atty. Ocampo and Mr. Davis, it does

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[39] *Rollo*, p. 672.

not vest any authority on Atty. Candelaria to sign the Contracts of Services with Ms. Macasaet. **To repeat, then Chief Justice Sereno had no authority to delegate the power to enter into the Contracts of Services with Ms. Macasaet. Such power is vested only with the Supreme Court *En Banc* and not with the Chief Justice.** Likewise, under Section 4 of EO No. 423, only the Head of the Procuring Entity may delegate in writing the full authority to give approval and/or enter into government contracts. Thus, the Supreme Court *En Banc*, as Head of the Procuring Entity, exercises the power to delegate the signing of government contracts entered into through alternative methods of procurement as allowed by law. The delegated official could have been the Chief Justice, another member or members of the Supreme Court *En Banc*, or any other official of the Court. However, in this case, it is clear that the Supreme Court *En Banc* did not delegate such power to anyone because it was not informed of the Contracts of Services with Ms. Macasaet.

Moreover, even assuming that the Supreme Court *En Banc* had delegated to the then Chief Justice the power to enter into the Contracts of Services, then Chief Justice Sereno could no longer re-delegate such power to another official. It is well-settled that what has been delegated can no longer be further delegated or re-delegated by the original delegate to another – *Delegata potestas non potest delegari*.[40] The power of administrative supervision over all courts and its personnel is vested by the Constitution in the Supreme Court *En Banc*. It is the Supreme Court *En Banc* which exercises administrative power over the courts and personnel, which includes the authority to enter into government contracts through alternative methods of procurement allowed by law. While the Supreme Court *En Banc* may delegate its administrative powers to another such as its Divisions, the Chairpersons of the Divisions or the Chief Justice – as it has done in A.M. No. 99-12-08-SC (Revised) – the delegates may no longer re-delegate the authority or power

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[40] *Gonzales v. Philippine Amusement and Gaming Corporation*, 473 Phil. 582 (2004). See *Heirs of Santiago v. Lazaro*, 248 Phil. 593 (1988).

delegated to them. Therefore, even assuming that the Supreme Court *En Banc* delegated to the then Chief Justice the power to enter into the government contracts with Ms. Macasaet, then Chief Justice Sereno could no longer re-delegate such authority.

Even assuming for the sake of argument, although incorrectly, that then Chief Justice Sereno had the authority to delegate the power to enter into the Contracts of Services, Atty. Candelaria still failed to show any written authority from the then Chief Justice authorizing her to enter into the said Contracts of Services. Atty. Candelaria attached several Memoranda where authority was given to her to sign for and in behalf of ***previous*** Chief Justices. This is not the full written delegation of authority required by Section 4 of EO No. 423. Evidently, any written authority, if ever such authority could be delegated by a Chief Justice, should have been given by then Chief Justice Sereno, who was the Chief Justice at the time the contracts were entered into with Ms. Macasaet, and not by any other previous Chief Justices. Previous Chief Justices had no authority to sign, much less delegate the authority to sign, government contracts after their term of office.

More importantly, the authority given to Atty. Candelaria by the previous Chief Justices, which was also the same authority given to her by then Chief Justice Sereno, referred only to the authority to sign for and in behalf of their communications with other government agencies and the transmittal of Court *En Banc* Resolutions to concerned agencies, as well as to "**internal personnel matters**."[41] The Memorandum of Atty. Candelaria dated 29 August 2012[42] approved by then Chief Justice Sereno specifically enumerated the documents for which Atty. Candelaria asked authority to sign on Chief Justice Sereno's behalf: "Notice of Salary Adjustment; Notice of Step Increment; Notice of Entitlement/Adjustment of Longevity Pay; Notice of Acceptance of Resignation; Permission to Transfer; and the like, except those pertaining to the Honorable Justices of the

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[41] *Rollo*, p. 675.

[42] *Id*.

Supreme Court."[43] This is not the full written authority to be delegated by the Head of the Procuring Entity as expressly required by law for the approval of government contracts entered into through alternative methods of procurement such as the directly negotiated contracts in this case.

Justice Caguioa, in his Dissenting Opinion, maintains that Atty. Candelaria was actually given the authority by then Chief Justice Sereno to sign the Contracts of Services with Ms. Macasaet, and that the basis of this authority is the **action slip** issued by Atty. Ocampo which states:

"I am pleased to furnish your office a copy of the Contract of Services between the Supreme Court and Ms. Helen Macasaet.

Also attached for your reference is the authorization from the Chief Justice to execute the said Contract of Services."[44] (Emphasis supplied)

Contrary to the argument of Justice Caguioa that the action slip is "proof that she was in fact given express written authority by the former Chief Justice to sign and execute the Contracts of Services on the latter's behalf,"[45] the Court finds that the action slip issued by Atty. Ocampo cannot be considered at all as "proof that full written authority was issued by the Head of the Procuring Entity, as required by law.

First, the action slip merely stated that the authority from then Chief Justice Sereno was attached to it, without expressly stating what the attachment was.

Second, the action slip was not even addressed to Atty. Candelaria, the actual signatory to the Contract of Services with Ms. Macasaet, but rather, it was addressed to Deputy Court Administrator Raul B. Villanueva. **The name of Atty. Candelaria, or her position as Chief Administrative Officer**

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[43] *Id*.

[44] *Id*. at 605.

[45] *J*. Caguioa's Dissenting Opinion, p. 63.

and Deputy Clerk of Court, is not even mentioned in the action slip.

Third, there were two (2) attachments to the action slip of Atty. Ocampo: (1) the Contract of Services dated 23 May 2014; and (2) the Joint Memorandum dated 20 May 2014 prepared by Atty. Ocampo and Mr. Davis. **The Contract of Services dated 23 May 2014 signed by Atty. Candelaria and Ms. Macasaet does not contain any written authorization from then Chief Justice Sereno to Atty. Candelaria.** On the other hand, the Joint Memorandum merely contained the recommendation by Atty. Ocampo and Mr. Davis to then Chief Justice Sereno that Ms. Macasaet is the most qualified among the proposed consultants. This recommendation is entirely different from a recommendation to authorize Atty. Candelaria to sign the Contract of Services, a recommendation not found in the Joint Memorandum.

There is no mention or statement *whatsoever* in the Joint Memorandum delegating to Atty. Candelaria or to the Chief Administrative Officer and Deputy Clerk of Court the full authority to enter into the Contract of Services with Ms. Macasaet. The Joint Memorandum does not even mention the name of Atty. Candelaria or her position as Chief Administrative Officer and Deputy Clerk of Court. The Joint Memorandum merely states that "[i]f the Honorable Chief Justice approves the recommendation of the undersigned, appropriate steps shall be undertaken to execute a contract of consultancy services between the Supreme Court and Ms. Macasaet."[46] **One essential appropriate step is an express full written authority given by the Supreme Court *En Banc*, or by the then Chief Justice, assuming *arguendo*, although incorrectly, she had the power, authorizing Atty. Candelaria as the signatory to the Contract of Services, *which essential step was never taken*.**

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[46] *Rollo*, p. 616.

To repeat, there is no mention whatsoever in the Joint Memorandum that Atty. Candelaria or the Chief Administrative Officer and Deputy Clerk of Court was being designated as the authorized signatory on behalf of the Supreme Court *En Banc* or on behalf of the Chief Justice for the Contract of Services with Ms. Macasaet. For ready reference, attached are copies of (1) the action slip of Atty. Ocampo (Annex "A"); the (2) Joint Memorandum dated 20 May 2014 of Atty. Ocampo and Mr. Davis (Annex "B"); and (3) the Contract of Services with Ms. Macasaet (Annex "C").

The approval of then Chief Justice Sereno of this Joint Memorandum was merely for the execution of the Contract of Services to proceed. This is not the full written authority required by law delegating to a specific official the power to sign and approve a government contract entered into under an alternative method of procurement as this written authority should specify not only the particular contract to be signed but more importantly *the name of the authorized signatory to whom the delegation of power is being entrusted*. Thus, the statement of Atty. Ocampo in the action slip that there was "authorization from the Chief Justice to *execute* the said Contract of Services" is misleading, or even false because the attached Joint Memorandum refers only to the approval by then Chief Justice Sereno of the recommendation of Atty. Ocampo and Mr. Davis that Ms. Macasaet is the most qualified consultant, and there is no delegation whatsoever of any authority to Atty. Candelaria or to any other official to *execute* and sign the Contract of Services on behalf of the Court *En Banc* or even on behalf of then Chief Justice Sereno.

To reiterate, there is no mention whatsoever in the Joint Memorandum that Atty. Candelaria or the Chief Administrative Officer and Deputy Clerk of Court is authorized to sign the Contract of Services. The name of Atty. Candelaria or the Chief Administrative Officer and Deputy Clerk of Court is not even mentioned in the Joint

Memorandum. ***In fact, there is no one named in the Joint Memorandum as the authorized signatory to sign the Contract of Services.***

Indisputably, all of the Contracts of Services with Ms. Macasaet were signed by Atty. Candelaria without the written "full authority" of the Supreme Court *En Banc* or even the then Chief Justice. There was a blatant violation of Section 4 of EO No. 423. Thus, these Contracts of Services must be declared "*invalid and not binding on the Government*," as expressly mandated in Section 5 of EO No. 423.

QUALIFICATIONS OF MS. MACASAET

Aside from the lack of authority of the signatory to the said Contracts of Services in violation of Sections 4 and 5 of EO No. 423, the procurement of the services of Ms. Macasaet was also in violation of the provisions of the Government Procurement Reform Act.

The Contracts of Services between the Court and Ms. Macasaet did not pass through the regular process of engaging consultants because it was considered to be "**highly technical in nature** and primarily requires trust and confidence owing to the fact that it is a priority program of the Supreme Court."[47] The BAC-CS considered the procurement to be **highly technical** in nature, citing Section 53.7 of the IRR of the Government Procurement Reform Act which provides:

> 53.7. ***Highly Technical Consultants.*** In the case of individual consultants hired to do work that is (i) **highly technical** or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant: *Provided, however*, That the term of the individual consultants shall, at the most, be on a six month basis renewable at the option of the appointing [Head of the Procuring Entity], but in no case shall exceed the term of the latter. (Emphasis supplied)

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[47] *Id*. at 95.

This Court finds that Ms. Macasaet was not qualified to be considered a Highly Technical Consultant in relation to the implementation of the Updated EISP Project. Moreover, there was no actual need to hire a consultant for the mere overview of the implementation of the Updated EISP Project as the MISO Head is already sufficiently qualified to implement such project.

The Updated EISP Project includes, among others, **the upgrading of the Judiciary Data Center, cabling and site preparation and connectivity and network security.** These activities require highly specialized technical ICT expertise, not general business management expertise. More specifically, based on the Scope of Work of the 23 May 2014 Contract of Services as quoted below, the Updated EISP Project **includes the upgrade of existing Judiciary Data Center and the *design and construction* of the Judiciary Data Center Disaster Site.** Thus, the Updated EISP Project is not merely a general business project, but primarily a highly technical ICT infrastructure project, which Ms. Macasaet is not specially qualified to review or oversee.

The Scope of Work of the Contract of Services will show that the work did not require the additional services of a general business management consultant. More specifically, Article I, Section 1.1 of the Contract of Services dated 23 May 2014 provides:

ARTICLE 1 – SCOPE OF WORK AND PERIOD OF THE ENGAGEMENT
1.1 SCOPE OF WORK. The CONSULTANT shall perform the following:

(a) Communicate the Updated EISP Work Plan to key officials and stakeholders in the judiciary, as identified by the Office of the Chief Justice and MISO.
(b) Iterate on defining key non-ICT projects that will be affected by the re-implementation of the EISP.
(c) In coordination with MISO, develop the terms of reference of the following components of the Updated EISP Work Plan:

i. Design and construction of Judiciary Data Center Disaster Site, proposed to be located in the Angeles City Hall of Justice;

ii. Upgrade of existing Judiciary Data Center housed in the Supreme Court Compound and possible consolidation of data center assets of CTA, CA and Sandiganbayan;

iii. Development of trial courts infrastructure (cabling and site preparation, computers and ICT equipment) for the Implementation of the EISP; and

iv. Networks, security and nationwide connectivity for 419 court adjudicatory loci.

(d) **Provide technical advice** to the Supreme Court Bids and Awards Committee/s during the procurement process for the projects listed above.

(e) **Provide quality assurance (QA) on the functional requirements, technical architecture and other non-functional requirements of the eCourts, which is being implemented with the support of one of the Supreme Court's development partner, American Bar Association-Rule of Law Initiative. The consultant shall review eCourts in compliance with an approval of the EISP re-implementation and its technical components.**

(f) **In coordination with the Supreme Court Process Mapping Group, review the MISO Reengineering Development Plan (MRDP) and update it according to the requirements of the Updated EISP Work Plan.**

(g) Review Court of Appeals, Court of Tax Appeals, and Sandiganbayan ICT Infrastructure and IT organizations in relation to the Updated EISP Work Plan.

(h) **Provide technical** and policy **advice** to the Office of the Chief Justice and MISO regarding the implementation of the Updated EISP Work Plan and related computerization and ICT projects. This includes, but not limited to, providing policy and **technical advice on the following**:

a. Clearing of ICT projects to avoid duplications and maximize available resources;

b. Integration of ICT projects, which have not been identified in the EISP, into the Updated EISP Work Plan;

c. Setting the qualification standards of personnel that may be needed for the EISP implementation; and

d. Review of existing policies, regulations, procedures, and standards that may be reevaluated and/or revised in view of the EISP implementation.[48] (Emphasis supplied)

Ms. Macasaet has no academic degree in any field related to Information and Communications Technology. According to Ms. Macasaet, she received her undergraduate degree in *BS Mathematics for Teachers* from the Philippine Normal College.[49] She also states that aside from her *Master's degree in Business Administration* from the Ateneo de Manila University Graduate School of Business, she has completed the academic requirements for a *Doctoral Degree (PhD) in Education* at the University of the Philippines.[50] **However, she does not hold any educational degree directly related to ICT.** Evidently, Ms. Macasaet's academic background shows that her studies focused mainly on mathematics and education – not on ICT or even the broader area of computer sciences or information systems. Ms. Macasaet's ICT training comes from several short-term non-degree courses, which can hardly be the basis to consider her as an expert in this field. Ms. Macasaet's Master's degree in *Business Administration* and certification in *Customer Relationship Management*, which were the factors considered by Atty. Ocampo and Mr. Davis to recommend Ms. Macasaet as the most qualified, are not qualifications that directly relate to ICT to justify the engagement of her consultancy services in relation to the highly technical Updated EISP Project.

While the Contract of Services evidently requires the procurement of the services of a highly technical consultant, the Terms of Reference for the said contract requires the consultant to have an **advanced degree in business management *OR*** any ICT-related degree, and be a certified customer relationship management system (CRM) specialist

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[48] *Id*. at 607.

[49] *Id*. at 455.

[50] *Id*.

and manager.[51] Justice Caguioa argues in his Dissenting Opinion that since Ms. Macasaet has an advanced degree in business management and has a certification in Customer Relationship Management in accordance with the Terms of Reference, she is a qualified consultant for the Updated EISP Project.[52] We find otherwise.

A highly technical project requires a highly technical consultant. To require in the alternative that a consultant may **only have a business management degree and a certification as a Customer Relationship Management specialist** truly defies reason or logic. **Simply put, this is a tell-tale sign that the Terms of Reference for the consultancy was expressly tailor-made for Ms. Macasaet who is merely a general business consultant and who does not possess the qualifications to handle a highly technical ICT project.** One cannot rely on a business management degree holder for the implementation of a highly technical ICT project. This is simply absurd. For the implementation of a highly technical project such as the EISP, a consultant with highly technical qualifications is required. **For the Terms of Reference to substitute *an advanced degree in ICT with an advanced degree in business management* is a highly irregular and inconsistent requirement. This Court cannot give its imprimatur to such a contract.**

Ms. Macasaet's experience in developing and participating in ICT systems in both private and public sectors is not the highly technical qualification required for the implementation of the Updated EISP Project. **Ms. Macasaet's experience is on the business and management side of ICT systems.** As the Updated EISP Project was already approved by the Supreme Court *En Banc*, the general ICT services required under such EISP could have been implemented by the Supreme Court's MISO. The Chief of MISO is also already qualified to oversee

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[51] *Id*. at 87.

[52] *J*. Cagiuoa's Dissenting Opinion, pp. 22-23.

the general implementation of such project. There was no need to engage the services of a general business consultant for the mere implementation of the Updated EISP Project.

The qualifications of the Chief of MISO, as provided in A.M. No. 06-3-07-SC,[53] are as follows:

	MISO Chief of Office
Education	Bachelor of Laws with **at least 18 units in computer science, information technology or any similar computer academic course** or Bachelor's Degree **in computer science or information technology** and post-graduate degree, preferably in computer science or information technology (Emphasis supplied)
Experience	10 years or more of relevant supervisory work experience either in the government (acquired under career service) or private sector, **with at least 5 years relevant experience in the field of computer science or information and communication technology** (Emphasis supplied)
Training	32 hours of relevant experience in management and supervision
Eligibility	RA 1080 (Bar), CSC Professional or IT eligibility

Thus, it is evident that the Chief of MISO, who has 10 years or more of relevant supervisory work experience and at least 5 years of relevant experience in the field of computer science or ICT, is already sufficiently qualified to oversee the implementation of the Updated EISP Project.

Any highly technical consultancy agreement, if needed, should have been for specific and highly specialized ICT

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[53] Re: Request for Approval of the Revised Qualification Standard for the Chief of MISO. Dated 25 November 2009.

consultancy services, such as for security of information systems, which the MISO may identify as an area where it needs special assistance during the implementation of the Updated EISP Project. General business and management consultancy services, such as those provided by Ms. Macasaet, cannot be considered highly technical consultancy services for the purpose of reviewing and implementing the Updated EISP Project and related ICT and computerization projects.

As the services that Ms. Macasaet provided, based on her qualifications and experience, were mere general business and management services, these services do not fall under the requirement of being a highly technical ICT consultant which would justify the procurement through direct negotiation. Thus, the procurement of her services and the method through which such services were procured – direct negotiation – were unnecessary and unwarranted.

AMOUNT OF COMPENSATION WAS NOT JUSTIFIED

The compensation for Ms. Macasaet for the first contract was ₱600,000.00 for six (6) months, or ₱100,000.00 per month.[54] From the Second Contract of Services until the Eighth Contract of Services, she received a monthly compensation of ₱250,000.00.[55] This Court finds these amounts to be unreasonable and without any basis in law.

When the Contracts of Services were entered into with Ms. Macasaet, DBM Circular Letter No. 2000-11 dated 1 June 2000[56] was applicable in determining the ceiling or maximum amount of compensation that may be paid to individual professional

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[53] Re: Request for Approval of the Revised Qualification Standard for the Chief of MISO. Dated 25 November 2009.

[54] *Rollo*, pp. 67-70.

[55] *Id.* at 39 (OCAt Report). See *rollo,* pp. 100-107, 118-126, 138-146, 156-164, 177-185, 200-208 and 221- 229.

[56] Compensation of Contractual Personnel and Individual Professional Consultants.

consultants such as Ms. Macasaet.[57] DBM Circular Letter No. 2000-11 provides in part:

> 4. Pending the issuance of the guidelines governing the compensation of professional consultancy services, these individual professional consultants shall be paid remuneration of **not more than 120% of the minimum basic salary of his equivalent position in the agency based on the allocation list duly approved by the Department of Budget and Management** pursuant to National Budget Circular No. 433 dated March 1, 1994. (Emphasis supplied)

Thus, DBM Circular Letter No. 2000-11 sets the maximum amount that may be paid to individual consultants as compensation – **not more than 120% of the minimum basic salary of the equivalent position in the agency.**

In this case, to determine the maximum amount of compensation that may be paid to Ms. Macasaet under the Contracts of Services, the equivalent position to the consultant must be determined. As correctly found by the OCAt Report, based on the various positions in the Supreme Court, the equivalent position of Ms. Macasaet as a technical consultant to implement the Updated EISP Project is the post of Chief of the MISO.[58] The Chief of the MISO is a highly technical or policy determining position, and one that requires knowledge and expertise in computer science or information and communications technology. A.M. No. 05-9-29-SC[59] provides in part:

IV. Classify all third level positions in the Supreme Court, including those in the OCA, PHILJA, JBC, and MCLEO, below those of Chief

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[57] *Rollo*, p. 41 (OCAt Report).

[58] *Id*.

[59] In the Matter of Classifying as Highly Technical and/or Policy Determining the Third Level Positions Below that of Chief Justice and Associate Justices in the Supreme Court, Including those in the Philippine Judicial Academy and the Judicial and Bar Council, and for Other Purposes. Dated 27 September 2005.

Justice, Associate Justices, and Regular Members of the JBC, with Salary Grade 26 and above ***as highly technical or policy determining,*** to wit:

x x x x x x x x x

15. Deputy Clerk of Court and **Chief, Management Information System Office (MISO)** (Boldfacing and underscoring supplied)

Clearly, the position of Chief of the MISO in the Supreme Court is equivalent to the position of the consultant under the Contracts of Services. Thus, the remuneration of Ms. Macasaet should not be more than 120% of the basic minimum monthly salary of the Chief of MISO. At the time the first Contract of Services was entered into with Ms. Macasaet, the basic monthly salary of the MISO Chief of Office was ₱73,099.99.[60] Thus, the ceiling, or maximum amount of compensation for a consultant in relation to the implementation of the Updated EISP Project, was 120% of this amount or ₱87,718.80.[61] The monthly consultancy fees of Ms. Macasaet which was ₱100,000.00 monthly under the first Contract of Services, and ₱250,000.00 monthly for the seven succeeding Contracts of Services, far exceeded this amount. The monthly consultancy fees of Ms. Macasaet were clearly unreasonable and excessive.

At this point, this Court notes that DBM Circular Letter No. 2000-11 has been expressly revoked by DBM Circular Letter No. 2017-9[62] dated 16 May 2017. DBM Circular Letter No. 2017-9 provides:

> 4.0 In view hereof, National Budget Circular No. 433 dated March 1, 1994 and Circular Letter No. 2000-11 dated June 1, 2000, which prescribe the guidelines on the hiring of consultants and in setting the compensation of individual professional consultants, are hereby revoked.

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[60] *Rollo*, p. 42 (OCAt Report).

[61] *Id*.

[62] Clarification on the Guidelines on the Procurement of Consulting Services.

It was only upon the issuance of DBM Circular Letter No. 2017-9 on 16 May 2017 that the ceiling of 120% under DBM Circular Letter No. 2000-11 was revoked. Before such time, the compensation to be paid to individual professional consultants could not exceed the amount set by DBM Circular Letter No. 2000-11.

Moreover, DBM Circular Letter No. 2017-9 set the guidelines on how to determine the proper amount of compensation for individual professional consultants:

> 2.0 As such, agencies shall be guided by the provisions of RA No. 9184, its IRR and the Generic Procurement Manuals, Volume 4 – Manual of Procedures for the Procurement of Consulting Services, issued by the Government Procurement Policy Board (GPBB) on June 14, 2006, or its later edition, in the engagement of consultants.
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> 3.0 RA No. 9184 and its IRR, including the Manual of Procedures for the Procurement of Consulting Services, contain the step-by-step procedure in the procurement process and the factors to be considered in determining the appropriate "Approved Budget for the Contract" (ABC), and the bases for computing and arriving at the cost of consultancy or consultancy rate, among others.

While DBM Circular Letter No. 2017-9 refers to the Manual of Procedures for the Procurement of Consulting Services to guide the agencies in determining the consultancy rate, this could not have been applicable before DBM Circular Letter No. 2000-11 was expressly revoked. Volume IV of the Generic Procurement Manuals[63] provides for the guidelines in determining the fees for procurement of consultancy services. However, this manual is merely a generic manual for procurement, while DBM Circular Letter No. 2000-11 pertained specifically to individual professional consultants. Thus, before the express revocation of DBM Circular Letter No. 2000-11, the guidelines provided for in Generic Procurement Manuals

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[63] Manual of Procedures for the Procurement of Consulting Services.

could not have applied to individual consultancy agreements such as the Contracts of Services with Ms. Macasaet.

On the other hand, Joint Circular No. 1, series of 2017, dated 15 June 2017 (Joint Circular) provided guidelines on how the payment of services under Individual Contract of Services should be determined, to wit:

> 8.0 Payment of Services under Individual Contract of Service
>
> **Individuals hired through contract of service shall be paid the prevailing market rates,** subject to the provisions of RA 9184 and its Implementing Rules and Regulations.
>
> The payment of services shall be charged against the Maintenance and Other Operating Expenses in the approved agency budget.
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> x x x x x x x x x (Emphasis supplied)

Thus, upon effectivity of the Joint Circular on 15 June 2017, the consultancy fees of individual consultants were fixed at the "prevailing market rates." To repeat, it was only upon the issuance of the Joint Circular on 15 June 2017 that "prevailing market rates" applied to consultancy fees of individuals. Nonetheless, in this case, the only Contract of Services which was entered into after 15 June 2017 was the eighth or last Contract of Services of Ms. Macasaet which was entered into on 24 July 2017. It is worth noting, however, that the period of engagement for this last contract was for a period of six (6) months from 24 May 2017, which was **before the issuance of the Joint Circular.**

Atty. Ocampo conducted his market research for the prevailing market rates in his Memorandum dated 16 April 2014,[64] which was referred to in his Memorandum dated 22 June 2015, and again in his Memorandum dated 7 December 2015.[65] In his Memorandum dated 7 December 2015, Atty. Ocampo benchmarked the compensation of Ms. Macasaet using an online

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[64] *Rollo*, pp. 80-83.

[65] *Id*. at 397-406.

tool, and found that the fees were comparable to and within the pay scale range of ICT positions in the Philippines.[66] This was the justification given for the amount of ₱250,000.00 monthly compensation for Ms. Macasaet under the Second to Eighth Contracts of Services.

Again, before the revocation on 15 June 2017 by the Joint Circular of DBM Circular Letter 2000-11, the amount of compensation for individual consultants such as Ms. Macasaet could not exceed 120% of the minimum basic salary of an equivalent position in the Supreme Court, which is that of the Chief of MISO. Thus, prevailing market rates could not have applied to the Contracts of Services entered into from 2013 to 2016, or prior to 15 June 2017. Worse, there was absolutely no basis given for the cost of consultancy services in the first Contract of Services with Ms. Macasaet. The first market research was embodied only in Atty. Ocampo's Memorandum dated 16 April 2014,[67] which was long after the First Contract of Services dated 1 October 2013.[68]

If we assume that Ms. Macasaet should have been paid according to the prevailing market rates for her consultancy services for the contract entered into in 2017, which was the last Contract of Services between the Court and Ms. Macasaet – as DBM Circular Letter No. 2000-11 had been revoked by then, this Court still finds her compensation to be unjustified as there was no proper market research made to determine such rates as of 2017. The market research conducted by Atty. Ocampo was in 2015 while the last Contract of Services was entered into in 2017, more than two (2) years thereafter. **Thus, when the eighth and last Contract of Services was entered into on 24 July 2017, there was no proper market research conducted to determine the prevailing market rates as of 2017, which prevailing market rates should be the applicable**

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[66] *Id*. at 399-406.

[67] *Id*. at 80-83.

[68] *Id*. at 67-70.

amount of compensation payable to an individual professional consultant.

PROCUREMENT WAS NOT IN ACCORDANCE WITH THE ANNUAL APPROPRIATION PLAN

There was a violation of Section 7 of the Government Procurement Reform Act when the second Contract of Services was entered into on 23 May 2014 without the proper Annual Procurement Plan (APP).

The APP is defined as the document that consolidates the various Project Procurement Management Plans (PPMPs) submitted by the various Project Management Offices and end-user units within the Procuring Entity.[69] It reflects the entirety of the procurement activities that will be undertaken by the Procuring Entity within the calendar year.[70] Section 7 of the Government Procurement Reform Act provides that all procurements shall be included in the APP, and the APP must be consistent with the yearly approved budget of the Procuring Entity.

> Sec. 7. *Procurement Planning and Budgeting Linkage* – **All procurement[s] 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.
>
> **No government Procurement shall be undertaken unless it is in accordance with the approved Annual Procurement Plan of the Procuring Entity. The Annual Procurement Plan shall be approved by the Head of the Procuring Entity and must be consistent with its duly approved yearly budget.** The Annual Procurement Plan shall be formulated and revised only in accordance with the guidelines set forth in the IRR. In the case of Infrastructure Projects, the Plan

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[69] Procurement Manual, Volume 1 – Guidelines on the Establishment of Procurement Systems and Organizations.

[70] *Id*.

shall include engineering design and acquisition of right of way. (Emphasis supplied)

Further, Section 7.3 of the Revised IRR of the Government Procurement Reform Act provides the guidelines on how the APP shall be formulated: the APP is prepared for the succeeding calendar year to support the Procuring Entity's proposed budget, taking into consideration the framework for that year in order to reflect the Procuring Entity's priorities and objectives. To prepare the APP, the implementing units of the Procuring Entity shall formulate the PPMPs for their different Programs, Activities, and Projects (PAPs). The PPMPs shall be submitted to the Procuring Entity's Budget Office for evaluation to ensure consistency with the budget proposal and compliance with existing budget rules. As soon as the General Appropriations Act (GAA) is enacted, the end-user or implementing units shall revise and adjust the PPMPs to reflect the budgetary allocation for their respective PAPs. The APP shall be submitted to the Government Procurement Policy Board on or before the end of January of the budget year, and shall be posted in accordance with law.

Thus, the inclusion of all the planned procurements in the APP is crucial to ensure that all expenses and expenditures of a government entity in relation to its procurement are within the approved appropriation as reflected in the corresponding GAA.

In this case, when the second Contract of Services dated 23 May 2014 was entered into, the APP for the year 2014 did not include the line item for "Technical and Policy Consultants" for purposes of procurement.[71] This was only included when the APP was subsequently revised, in accordance with the Memorandum of the Procurement Planning Committee (PPC), where the PPC requested the amendment of the APP with the inclusion of the line item for "Technical and Policy Consultants" to be sourced from the savings of the Court.[72] **The**

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[71] *Rollo*, p. 22 (OCAt Report).

[72] *Id*. See also *rollo*, p. 252.

recommendation to include the line item for "Technical and Policy Consultants" in the addendum to the 2014 Annual Procurement Plan was only approved by the Court in A.M. No. 10-1-10-SC dated 23 September 2014.[73] **Clearly, when the Contract of Services dated 23 May 2014 was entered into with Ms. Macasaet, the APP did not cover the hiring of services of a technical and policy consultant for procurement purposes.**

While it is true that the APP refers to and pertains to the entire fiscal year, and that an APP may be revised in accordance with the guidelines set forth in the IRR,[74] **the fact remains that *before* procurement is actually undertaken, such procurement must have been included in the existing APP of the Procuring Entity.** Thus, the inclusion of the line item for "Technical and Policy Consultants" in the revised APP must have first been approved before any contract with technical and policy consultants could be entered into by the Court. To repeat, while the APP may be revised in accordance with the applicable guidelines, such revision should precede the procurement of services not found in the original APP for the applicable fiscal year.

Moreover, it is doubtful that the savings of the Court could be transferred to the hiring of a technical and policy consultant, **which was a non-existent item before the APP was amended.** In *Sanchez v. Commission on Audit*,[75] the Court held that for a transfer of appropriation, two essential requisites must be complied with – first, there must be savings in the programmed appropriation of the transferring agency, and second, there must be an ***existing*** item, project or activity with an appropriation in the receiving agency to which the savings will be transferred. In *Sanchez v. Commission on Audit*, the Court held:

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[73] *Id.* at 710 (OCAt Report).

[74] See Section 7.3, Rule III, Revised IRR of the Government Procurement Reform Act.

[75] 575 Phil. 428 (2008).

Clearly, there are two essential requisites in order that a transfer of appropriation with the corresponding funds may legally be effected. *First*, there must be savings in the programmed appropriation of the transferring agency. *Second*, there must be an existing item, project or activity with an appropriation in the receiving agency to which the savings will be transferred.

Actual savings is a *sine qua non* to a valid transfer of funds from one government agency to another. The word "actual" denotes that something is real or substantial, or exists presently in fact as opposed to something which is merely theoretical, possible, potential or hypothetical.

As a case in point, the Chief Justice himself transfers funds only when there are actual savings, *e.g.*, from unfilled positions in the Judiciary.

The thesis that savings may and should be presumed from the mere transfer of funds is plainly anathema to the doctrine laid down in *Demetria v. Alba* as it makes the prohibition against transfer of appropriations the general rule rather than the stringent exception the constitutional framers clearly intended it to be. It makes a mockery of *Demetria v. Alba* as it would have the Court allow the mere expectancy of savings to be transferred.

Contrary to another submission in this case, the President, Chief Justice, Senate President, and the heads of constitutional commissions need not first prove and declare the existence of savings before transferring funds, the Court in *Philconsa v. Enriquez*, x x x, categorically declared that the Senate President and the Speaker of the House of Representatives, as the case may be, shall approve the realignment (of savings). However, "[B]efore giving their stamp of approval, these two officials will have to see to it that: (1) The funds to be realigned or transferred are actually savings in the items of expenditures from which the same are to be taken; and (2) The transfer or realignment is for the purpose of augmenting the items of expenditure to which said transfer or realignment is to be made."

As it is, the fact that the permissible transfers contemplated by Section 25(5), Article VI of the 1987 Constitution would occur entirely within the framework of the executive, legislative, judiciary, or the constitutional commissions, already makes wanton and unmitigated malversation of public funds all too easy, without the Court abetting

it by ruling that transfer of funds *ipso facto* denotes the existence of savings.[76]

In this case, there was no item, project or activity for the hiring of the technical and policy consultants in 2014 before the APP was amended to include such line item. Thus, clearly, any savings from the budget of the Supreme Court could not have been transferred to a then non-existent item. As this Court held in *Sanchez v. Commission on Audit*:

> As regards the requirement that there be an item to be augmented, which is also a *sine qua non* like the first requirement on the existence of savings, there was no item for augmentation in the appropriation for the Office of the President at the time of the transfers in question. Augmentation denotes that an appropriation was determined to be deficient after the implementation of the project or activity for which an appropriation was made, or after an evaluation of the needed resources. To say that the existing items in the appropriation for the Office of the President already needed augmentation as early as 31 January 1992 is putting the cart before the horse.
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> x x x x x x x x x
>
> The absence of any item to be augmented starkly projects the illegality of the diversion of the funds and the profligate spending thereof.[77]

NO PROPER APPROPRIATION

Moreover, since the line item for "Technical and Policy Consultants" was not initially included in the APP for 2014,[78] it was also not considered in the evaluation of the budgetary proposal of the Supreme Court for consistency and compliance with existing budget rules. The budget proposal is submitted to Congress for the enactment of the GAA. Thus, the GAA for 2014 did not include the procurement of Technical and Policy

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[76] *Id*. at 454-455.

[77] *Id*. at 462-463.

[78] *Rollo*, p. 710 (OCAt Report).

Consultants. **Before the APP was amended, there was clearly no budget or appropriation for the Contract of Services for ICT consultancy services.**

The funds for the proposed line item for "Technical and Policy Consultants" were to be ***sourced from the savings of the Court.***[79] However, before the approval of the revised APP, there was no appropriation for the consultancy agreement of Ms. Macasaet that could be augmented from the savings of the Court. The procurement of consultancy services without the prior amendment of the APP clearly renders void the Contract of Services dated 23 May 2014 with Ms. Macasaet. To hold otherwise would be to contravene the requirement that there must first be a proper appropriation before public funds are expended.

Under Presidential Decree No. 1445[80] or the Government Auditing Code of the Philippines, the expenditure of public funds without the required appropriation renders the contract void:

> Section 85. *Appropriation before entering into contract*.
>
> 1. **No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor,** the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure.
>
> x x x x x x x x x
>
> Section 87. *Void contract and liability of officer.* **Any contract entered into contrary to the requirements of the two immediately preceding sections shall be void**, and the officer or officers entering into the contract shall be liable to the government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties. (Emphasis supplied)

Sections 85 and 87 of PD No. 1445 implement Section 29(1), Article VI of the Constitution, which mandates:

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[79] *Id*.

[80] Dated 11 June 1978.

Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

A violation of Section 85 of PD No. 1445 constitutes at the same time a violation of Section 29(1), Article VI of the Constitution.

It is clear that there must first be an appropriation before any contract involving expenditure of public funds is entered into, and any contract entered into in violation of this requirement renders such contract void. In this case, before the approval of the revised APP, there was no proper appropriation for the Contract of Services dated 23 May 2014.

Further, based on the Contract of Services dated 23 May 2014, the payment for the services was to be made in six equal monthly installments – the first payment to be made within fifteen (15) days from the signing of the Contract, and the next installment to be paid every 15th of the month beginning on 15 July 2014.[81] Thus, from the signing of the Contract and until 15 September 2014, there was actual payment for consultancy fees which was not covered by proper appropriation. It was only on 23 September 2014 when the APP was revised to include the line item for "Technical and Policy Consultants."[82] **Thus, not only was a contract entered into without proper appropriation, there was even actual expenditure of public funds without the required appropriation. Thus, the Contract of Services dated 23 May 2014 is in blatant violation of Section 85 of PD No. 1445, and must be declared void as expressly mandated in Section 87 of PD No. 1445.**

LACK OF CERTIFICATE OF AVAILABILITY OF FUNDS

Finally, we address the lack of Certificate of Availability of Funds (CAF) for the Contracts of Services with Ms. Macasaet.[83]

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

[82] *Id*. at 710 (OCAt Report).

[83] *Id*. at 35 (OCAt Report).

The CAF was issued only for the first two Contracts of Services in the amounts of ₱600,000.00 and ₱1,500,000.00, respectively.[84] **The rest of the six Contracts of Services, which had a consultancy fee of ₱1,500,000.00 each, were not covered by any CAF.** The absence of the CAF for the procurement of the consultancy services of Ms. Macasaet is in blatant violation of Sections 86 and 87 of PD No. 1445, which provide:

> Section 86. *Certificate showing appropriation to meet contract.* Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three months, or banking transactions of government-owned or controlled banks, **no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof, subject to verification by the auditor concerned. *The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract*, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.**
>
> Section 87. *Void contract and liability of officer.* **Any contract entered into contrary to the requirements of the two immediately preceding sections shall be void**, and the officer or officers entering into the contract shall be liable to the government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties. (Boldfacing and italicization supplied)

Section 86 of PD No. 1445 is clear and categorical: "*no contract xxx shall be entered into*" without the required CAF being "*attached to and become an integral part of the proposed contract*." This means that no government official shall sign

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[84] See *rollo*, pp. 53 and 89.

a contract unless the CAF is "**attached**" to the "**proposed contract**" so as to "**become an integral part**" of the proposed contract. The CAF must be attached to the "**proposed contract**," at the latest, **at the time of the signing of the contract, before the "proposed contract" is entered into by the signing of the contract.**

The CAF cannot be attached to the contract after the contract is entered into because Section 86 expressly requires that "***no contract x x x shall be entered into*" without the required CAF being "*attached to x x x the proposed contract*."** Unless the CAF is so attached to the contract so as to become an integral part of the contract before the signing of the contract, the contract "**shall be void**" as expressly declared in Section 87 of PD No. 1445. In the present case, no CAF was attached to the third and subsequent contracts at the time these contracts were entered into, rendering these contracts clearly void.

EO No. 292 (Administrative Code of 1987) also provides a similar provision on the requirement of a CAF before expenditures are incurred. Section 40, Chapter 5, Book VI of the Administrative Code of 1987 provides:

SECTION 40. *Certification of Availability of Funds.*—**No funds shall be disbursed, and no expenditures or obligations chargeable against any authorized allotment shall be incurred or authorized in any department, office or agency without first securing the certification of its Chief Accountant or head of accounting unit as to the availability of funds and the allotment to which the expenditure or obligation may be properly charged.**

No obligation shall be certified to accounts payable unless the obligation is founded on a valid claim that is properly supported by sufficient evidence and unless there is proper authority for its incurrence. Any certification for a non-existent or fictitious obligation and/or creditor shall be considered void. The certifying official shall be dismissed from the service, without prejudice to criminal prosecution under the provisions of the Revised Penal Code. Any payment made under such certification shall be illegal and every official authorizing or making such payment, or taking part therein or receiving such payment,

shall be jointly and severally liable to the government for the full amount so paid or received. (Emphasis supplied)

Correspondingly, Section 43, Chapter 5, Book VI of the Administrative Code of 1987 provides that any contract entered into without the proper appropriation is void:

SECTION 43. *Liability for Illegal Expenditures*.— **Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void.** Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal. (Emphasis supplied)

This Court has consistently held that the absence of the proper appropriation and the CAF attesting to the availability of such funds shall render the government contract void. In *Philippine National Railways v. Kanlaon Construction Enterprises Co., Inc.*,[85] this Court held that contracts entered into without an appropriation law authorizing the expenditure in the contract and a CAF attesting that funds are available for such contract shall render the contract void. The failure to comply with *any* of these two requirements shall render the contract void. The Court held:

Thus, the Administrative Code of 1987 expressly prohibits the entering into contracts involving the expenditure of public funds **unless two prior requirements are satisfied.** First, there must be an

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[85] 662 Phil. 771 (2011).

appropriation law authorizing the expenditure required in the contract. **Second, there must be attached to the contract a certification by the proper accounting official and auditor that funds have been appropriated by law and such funds are available.** Failure to comply with any of these two requirements renders the contract void.

In several cases, the Court had the occasion to apply these provisions of the Administrative Code of 1987 and the Government Auditing Code of the Philippines. In these cases, the Court clearly ruled that the two requirements – the existence of appropriation and the attachment of the certification – are "conditions *sine qua non* for the execution of government contracts."

In *COMELEC v. Quijano-Padilla*, we stated:

It is quite evident from the tenor of the language of the law that the existence of appropriations and the availability of funds are indispensable pre-requisites to or conditions *sine qua non* for the execution of government contracts. The obvious intent is to impose such conditions as *a priori* requisites to the validity of the proposed contract.

The law expressly declares void a contract that fails to comply with the two requirements, namely, an appropriation law funding the contract and a certification of appropriation and fund availability. The clear purpose of these requirements is to insure that government contracts are never signed unless supported by the corresponding appropriation law and fund availability.

The three contracts between PNR and Kanlaon do not comply with the requirement of a certification of appropriation and fund availability. Even if a certification of appropriation is not applicable to PNR if the funds used are internally generated, still a certificate of fund availability is required. Thus, the three contracts between PNR and Kanlaon are void for violation of Sections 46, 47, and 48, Chapter 8, Subtitle B, Title I, Book V of the Administrative Code of 1987, as well as Sections 85, 86, and 87 of the Government Auditing Code of the Philippines.[86]

Clearly, based on the pronouncements of this Court, the CAF must be attached to the contract at the time the contract is entered

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[86] *Id*. at 779-780.

into by the government and not later. Failure to do so shall render such contract void. This has been reaffirmed in the recent case of *Guillermo v. Philippine Information Agency*,[87] where the Court held that for the validity of contracts involving the expenditure of public funds, the requisites of Sections 46, 47 and 48 of Book V, Title I, Subtitle B, Chapter 8 of the Administrative Code of 1987 must be present, to wit:

CHAPTER 8
Application of Appropriated Funds

SECTION 46. *Appropriation Before Entering into Contract*. — (1) No contract involving the expenditure of public funds shall be entered into unless **there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure**;

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SECTION 47. *Certificate Showing Appropriation to Meet Contract*. — Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three (3) months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current calendar year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

SECTION 48. *Void Contract and Liability of Officer*. — **Any contract entered into contrary to the requirements of the two (2) immediately preceding sections shall be void,** and the officer or officers entering

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[87] 807 Phil. 555 (2017).

into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties. (Emphasis supplied)

Atty. Ocampo, in his Comment, argues that despite the absence of the CAFs for the third to eighth contracts, there was compliance with the CAF requirement, as the payments to Ms. Macasaet were covered by an Obligation Request and a Disbursement Voucher, where the chief accountant of the Supreme Court certified the availability of the funds for the consultancy fees.[88]

This Court finds his arguments untenable.

The law is absolutely clear on the requirement that **before** any obligation chargeable against any authorized allotment is incurred, there must be a CAF or a certification **from the Chief Accountant** as to the allotment against which the expenditure will be charged, and that funds are available for such expenditure. This certificate required by law cannot be replaced by mere Obligation Requests and Disbursement Vouchers, which serve different purposes from that of a CAF which certifies that there are funds actually appropriated for the contract to be executed, and that such funds are actually available to be expended. The Obligation Requests and Disbursement Vouchers are not the certification from the chief accountant that is required by Section 40 of Book VI, Chapter 5 and Section 47, Title I, Book V, Subtitle B, Chapter 8 of the Administrative Code of 1987 or Section 86 of PD No. 1445.

In an Obligation Request, the Head of the Requesting Office or his authorized representative certifies on the necessity and legality of the charges to the budget under his supervision, and the validity, propriety and legality of the supporting documents.[89] In the same Obligation Request, the Head of the

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[88] *Rollo*, pp. 769-770.

[89] See Annex A1 of COA Circular No. 003-06 dated 31 January 2006.

Budget Unit or his authorized representative certifies on the availability of allotment obligated for the purpose as indicated therein. In particular, COA Circular No. 003-06[90] provides:

> 2.2 The Head of the Budget Unit shall certify the availability of allotment and obligations incurred in the [Obligation Request] or budget and utilization in the [Budget Utilization Request].

Thus, it is clear that the obligation indicated in the Obligation Request *has already been incurred*, and that the Head of the Budget Unit simply certifies as to the availability of the allotment obligated for such purpose. This Obligation Request is prepared in three copies and distributed as follows – the original is attached to the Disbursement Voucher, the duplicate is given to the Budget Unit, and the triplicate is given to the Accounting Unit. **This differs from a CAF which is signed by the Chief Accountant and is required to be attached to the contract entered into by the government *before* any obligation chargeable against any authorized allotment is incurred or authorized.** The obligation becomes chargeable upon perfection of the contract, and that takes place upon the signing of the contract by the parties.

On the other hand, a Disbursement Voucher contains the certification by the Head of Accounting Unit or his authorized representative on the availability of cash, subject to Advice to Debit Accounts, on the completeness of the supporting documents.[91] It also contains the approval by the Head of the Agency or his authorized representative on the payment covered by the Disbursement Voucher. Finally, the same Disbursement Voucher contains the acknowledgment by the claimant or his duly authorized representative for the receipt of the check or cash, and the date of such receipt. **Simply put, the Disbursement**

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[90] Restatement with Amendments of COA Circular No. 2005-001 on Accounting Policies Related to the Budget, Accounting and Disbursement Functions in National Government Agencies Under the New Government Accounting System (NGAS). Dated 31 January 2006.

[91] See Annex B of COA Circular No. 003-06 dated 31 January 2006.

Voucher merely records the mode of payment made to the payee indicated therein, and certifies that the cash for such disbursement is available and that the supporting documents for such disbursement are complete.

It is clear, therefore, that the Obligation Requests and the Disbursement Vouchers are not the certification required by law to be secured **before** an obligation is incurred by the government, which certification shows that funds have been appropriated by law and that such funds are available therefor. Obligation Request, Budget Utilization Request, and Disbursement Voucher are mere forms prescribed by the Commission on Audit, to be used in recording obligations incurred, budget utilization, and disbursements.[92]

Justice Caguioa, in his Dissenting Opinion, agrees with the finding of the OCAt that no CAF was issued prior to entering into the third to eighth Contracts of Services with Ms. Macasaet[93] but raises the argument that since there is no particular form required to be followed for the issuance of the CAF, the Obligation Requests and Disbursement Vouchers which were issued before the payments to Ms. Macasaet are compliant with the CAF requirement under the law.

The Court disagrees.

Again, what is required by law is a CAF **before** any obligation chargeable against any authorized allotment is incurred. This also means that the CAF must be secured **before** the services are performed or the goods are delivered. That there were an Obligation Request and a Disbursement Voucher before payment was made to Ms. Macasaet is entirely irrelevant and immaterial because the law requires the CAF **before the obligation is incurred** – not thereafter when the obligation is paid. Clearly, when payment is made, the obligation had already been incurred and performed.

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[92] COA Circular No. 003-06 dated 31 January 2006.

[93] *J.* Caguioa's Dissenting Opinion, pp. 53, 55.

The Obligation Request and Disbursement Voucher, while made before payment, are issued after the obligation chargeable against the authorized allotment is incurred. Even if the law does not require the CAF to be in any particular form, an Obligation Request or a Disbursement Voucher cannot replace the CAF required by law because the law clearly states that there must be a CAF **before** such obligation is actually incurred or authorized.

ALL THE CONTRACTS OF SERVICES ARE VOID

In summary, all the eight (8) Contracts of Services must be declared void *ab initio*.

It is beyond doubt that (1) the lack of authority of the government signatory; (2) lack of qualifications of Ms. Macasaet; (3) the excessive amount of consultancy fees; (4) the incurrence of obligation and the expenditure of public funds without the proper appropriation; and (5) the absence of the required CAFs render the subject Contracts of Services with Ms. Macasaet void *ab initio*.

WHEREFORE, the Court **DECLARES** the subject eight (8) Contracts of Services with Ms. Helen P. Macasaet, for Information and Communications Technology consultancy services in relation to the Supreme Court's Enterprise Information Systems Plan, **VOID *ab initio***.

Ms. Helen P. Macasaet is hereby **DIRECTED** to reimburse all the amounts received as consultancy fees from the subject eight (8) Contracts of Services with the Supreme Court of the Philippines amounting to Eleven Million One Hundred Thousand Pesos (₱11,100,000.00) less whatever taxes were withheld, within thirty (30) days from finality of this Resolution, with legal interest at the rate of six percent (6%) *per annum* from the expiration of the same thirty (30) day period until the same shall have been fully paid.

SO ORDERED.

Bersamin, C.J, Peralta, Leonen, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, and *Inting, JJ.*, concur.

Caguioa, J., *dissents,* see dissenting opinion.

Del Castillo, *J.*, the *C.J.* certifies that Del Castillo who is on official business leave left his vote for the dissent of *J.* Caguioa.

Jardeleza, J., joins the dissent of *J.* Caguioa.

Perlas-Bernabe, J., on official leave.

DISSENTING OPINION

CAGUIOA, *J.*:

I dissent.

Factual Antecedents

This matter involves the legality of the eight (8) Contracts of Services (subject contracts) executed between the Court and Ms. Helen P. Macasaet (Ms. Macasaet) for her rendition of Information and Communications Technology (ICT) consulting services from 2013 to 2017, in relation to the Court's Enterprise Information Systems Plan (EISP).

This was initially part of A.M. No. 17-08-05-SC entitled "*Re: Letter-Request dated August 8, 2017 of Atty. Lorenzo G. Gadon for Certified True Copies of Certain Documents in connection with the filing of an Impeachment Complaint*" It was re-docketed as A.M. No. 17-12-02-SC in a Resolution[1] dated December 5, 2017.

Through the Court's Resolution dated September 19, 2017 in A.M. No. 17-08-05-SC, the question of the legality of the subject contracts was referred to the Office of the Chief Attorney (OCAt), and former Chief Justice Maria Lourdes P. A. Sereno (former Chief Justice) was given the opportunity to comment on Atty. Gadon's request for the documents in connection with Ms. Macasaet's consultancy.

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[1] *Rollo*, p. 408.

OCAt Report

In compliance with the Court's Resolution, the OCAt submitted its Report[2] (OCAt Report) dated November 6, 2017. Below are the OCAt's factual findings on the EISP and the subject contracts:

Brief Background on the EISP

The EISP was intended to serve as the framework of ICT initiatives of the Judiciary for the years 2010 to 2014. It contained the then present ICT needs of the Judiciary and proposed solutions regarding the organization's mandate, objectives, and programs through the development of new Information Systems and provision of additional state-of-the-art IT equipment. It included the functional and technical requirements of the systems, cost estimates, and a discussion on the implementation plan and change management network.[3]

INDRA Sistemas S.A. (INDRA) was designated to provide the Management and Consultancy Services for the development of the Judiciary's ICT Capability as part of the Judicial Reform Support Project (JRSP) which was financed by the World Bank.[4]

In the June 23, 2009 Resolution in A.M. No. 08-11-09-SC,[5] the Court approved the EISP submitted by INDRA. However, the 2009 EISP Budget did not include a budget for the judiciary-wide technical infrastructure, nationwide connectivity, and network security, which are pre-requisites to the nationwide implementation of the EISP and on-going ICT projects like the eCourts.[6]

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[2] *Id*. at 1-48.

[3] *Id*. at 2.

[4] *Id*.

[5] *Re: Management and Consultancy Services for the Development of the Philippine Judiciary's ICT Capability Assessment Report Executive Summary (Final Report).*

[6] *Rollo*, p.2.

To review the status of the implementation of the EISP and related ICT and computerization projects, the services of a technical consultant had to be engaged.[7]

First Contract of Services

In her Memorandum dated September 2, 2013, Atty. Ma. Carina M. Cunanan (Atty. Cunanan), then Assistant Chief of Office, Office of Administrative Services (OAS) and Chairperson of the Procurement Planning Committee (PPC), requested from Atty. Corazon G. Ferrer-Flores (Atty. Flores), then Deputy Clerk of Court and Chief, Fiscal Management and Budget Office (FMBO), a Certification to the effect that the amount of ₱600,000.00 be certified and allotted from the Regular Funds of the Court to cover the consultancy fee for the Consultancy Agreement in relation to the EISP and related ICT projects. The requested Certification was issued and signed on the same day by Ms. Estrella D. Eje (Ms. Eje), Chief Judicial Staff Officer, and noted by Atty. Flores.[8]

On September 4, 2013, Atty. Cunanan issued a Memorandum for the former Chief Justice recommending the approval of the Terms of Reference (TOR) of the subject consultancy agreement and reiterating her request in the earlier Memorandum for the approval of ₱600,000.00 for allocation from the Regular Funds of the Court allotted for the purpose under the General Appropriations Act (GAA) to cover the cost of the consultancy fee. She also requested that the same be referred to Hon. Raul B. Villanueva (DCA Villanueva), Deputy Court Administrator and Chairperson, Bids and Awards Committee for Consultancy Services (BAC-CS) for appropriate action. Atty. Cunanan's requests and recommendation were approved by the former Chief Justice on September 6, 2013.[9]

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[7] *Id*.

[8] *Id*. at 2-3.

[9] *Id*. at 3.

In her 1st Indorsement dated September 9, 2013, Atty. Cunanan referred to DCA Villanueva the following:

1. **APPROVED AUTHORITY** for the procurement of **Consultancy Services for the Review of the Implementation and Update of the [EISP] and Related ICT Projects of the Judiciary**;
2. **Certificate of Availability of Fund** issued by [Ms. Eje], SC Chief Judicial Staff Officer, Budget Division, [FMBO], and duly noted by [Atty. Flores], Deputy Clerk of Court and Chief of Office, FMBO; and,
3. **Terms of Reference of the Consultancy Services.**[10]

In its September 10, 2013 Memorandum, the BAC-CS "resolved to consider the subject procurement as highly technical in nature and primarily requires trust and confidence owing to the fact that it is a priority program of the Supreme Court. **As such, it is the view of the Committee that there is no need for said procurement to pass through the regular process of engaging consultants being conducted by it.**" The BAC-CS cited Section 53.7 of the Revised Implementing Rules and Regulations (IRR) of Republic Act No. (R.A.) 9184, otherwise known as the *Government Procurement Reform Act*.[11]

The last paragraph of the Memorandum reads:

Thus, the Committee respectfully recommends that the Supreme Court, through the Office of the Chief Justice, can and should exercise its discretion to act on the subject procurement so as not to delay the same. In this connection, and by way of recommendation, the committee submits the following consultants which can be considered by the Supreme Court for the subject procurement, to wit:

(1) Enrique I. Metra
(2) Randal R. Lozano
(3) **Helen P. Macasaet** (emphasis supplied)[12]

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[10] *Id*.

[11] *Id*. at 4.

[12] *Id*.

In a Joint Memorandum to the former Chief Justice dated September 12, 2013, Atty. Michael B. Ocampo (Atty. Ocampo), then Court Attorney V, Office of the Chief Justice (OCJ), and Mr. Edilberto A. Davis (Mr. Davis), then Acting Chief, Management Information Systems Office (MISO), stated that after reviewing and evaluating the qualifications of the three consultants *vis-a-vis* the requirements of the TOR, they had determined that Ms. Macasaet was the most qualified among the three proposed consultants; hence, they recommended that Ms. Macasaet be hired for the procurement. This recommendation was approved by the former Chief Justice.[13]

On October 1, 2013, the services of Ms. Macasaet as consultant were engaged through a Contract of Services. The Contract was entered into by the Supreme Court "represented by its Chief Administrative Officer Atty. Eden T. Candelaria" (Atty. Candelaria), and was signed in the presence of Atty. Ma. Lourdes E.B. Oliveros (Atty. Oliveros), Chief Justice Staff Head, OCJ, Atty. Ruby C. Esteban-Garcia (Atty. Garcia), SC Assistant Chief of Office, FMBO, and Ms. Eje, as witnesses, and acknowledged before Atty. Enriqueta E. Vidal, then Clerk of Court *en banc*.[14]

On March 24, 2014, or six days before the end of the first Contract of Services, Ms. Macasaet wrote a letter to the former Chief Justice submitting the Final Report on the review of the EISP implementation. Relative thereto, she requested the (1) approval of the Final Report; (2) issuance of the Certificate of Final Acceptance attesting to the completion of her work under the contract; and (3) release of the performance security in the amount of ₱30,000.00 which she posted. These requests were approved by the former Chief Justice on April 1, 2013.[15]

The first contract ended on March 30, 2014. In the Certificate of Final Acceptance signed by the former Chief Justice and issued to Ms. Macasaet, Atty. Ocampo certified that "the

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

[14] *Id*. at 6.

[15] *Id*. at 8.

deliverables per Article II of the Consultancy Services have been completed." Atty. Oliveros and Mr. Davis recommended the issuance of the Certificate of Final Completion.[16]

In A.M. No. 14-09-06-SC,[17] the Court *en banc* issued a Resolution dated September 16, 2014 approving the updated EISP and budget (2014-2019) which is the output of the first Contract of Services with Ms. Macasaet.[18]

Second Contract of Services

Prior to the approval of the Updated EISP Workplan by the Court *en banc*, Atty. Ocampo, in his Memorandum to the former Chief Justice dated April 16, 2014, stated that there is "a need for a technical and policy consultant for the implementation of the Updated EISP Work Plan," thereby enumerating the scope of work of the consultant. He proposed that the consultant be paid a fee of ₱250,000.00 a month or ₱1,500,000.00 for the six-month contract period, inclusive of all applicable taxes, and to directly negotiate a six-month contract with the consultant.[19] For the mode of procurement, the Memorandum states the following:

> Under Section 53.7 of the Revised Implementing Rules and Regulations of Republic Act No. 9184, a procuring entity can forego public bidding and directly negotiate a 6-month contract (subject to renewal) with a consultant, who will perform work that is highly technical or proprietary and primarily confidential or policy determining.
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> The proposed consultancy is clearly highly technical and policy determining; however, this will be subject to the confirmation of the [BAC-CS] in line with the procedures previously observed in the case of the EISP Review and Update consultancy. x x x[20]

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[16] *Id*.

[17] *Re: Approval of the Updated Enterprise Information Systems Plan Work Plan and Budget*; see *rollo*, p. 77.

[18] *Rollo*, pp. 8-9.

[19] *Id*. at 9.

[20] *Id*. at 10.

This Memorandum was approved by the former Chief Justice upon the recommendation of Atty. Oliveros.

On May 2, 2014, Atty. Oliveros referred to Atty. Cunanan, as PPC Chairperson, the proposed TOR for the Consultancy on the Implementation of the Updated Work Plan of the EISP of the Judiciary.

On May 9, 2014, upon the request of Atty. Cunanan, Atty. Garcia issued a Certification, noted by Atty. Flores, which reads:

CERTIFICATION

This is to certify that the amount of **ONE MILLION FIVE HUNDRED THOUSAND PESOS (₱1,500,000.00)** will be made available to cover the consultancy fee for the Consultancy Agreement, in connection with the Implementation of the Updated Enterprise Information Systems Plan (EISP) of the Judiciary. The amount will be charged against the regular budget of the Supreme Court allotted for the purpose under the General Appropriations Act on the year the expense is incurred.[21]

In her 1st Indorsement dated May 12, 2014, Atty. Cunanan referred to DCA Villanueva the Certificate of Availability of Fund (CAF) issued by Atty. Garcia and the TOR for the Consultancy Services on the Implementation of the Updated Work Plan of the EISP of the Judiciary.[22]

In its May 15, 2014 Memorandum, the BAC-CS reiterated that "the subject procurement can proceed without the Committee's involvement."[23] The BAC-CS posited that the subject procurement is highly technical in nature and primarily requires trust and confidence owing to the fact that it is a priority program of the Court. As such, the BAC-CS was of the view that there was no need for the procurement to pass through the regular process of engaging consultants being conducted by

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[21] *Id*.

[22] *Id*. at 11.

[23] *Id*.

it, citing Section 53 of the Revised IRR of R.A. 9184 on Negotiated Procurement.[24]

In a Memorandum dated May 20, 2014, acting on the recommendation of the BAC-CS, Mr. Davis and Atty. Ocampo reviewed the qualifications of the three consultants *vis-a-vis* the requirements of the TOR and determined that Ms. Macasaet was the most qualified among the three proposed consultants.[25] This Memorandum was approved by the former Chief Justice.[26]

On May 23, 2014, the Court entered into a second Contract of Services with Ms. Macasaet. Like the first contract, the Court was represented by Atty. Candelaria, as Chief Administrative Officer, with Attys. Ocampo and Garcia as witnesses, and the same was acknowledged before then Clerk of Court Atty. Vidal. On the same day, Ms. Macasaet posted a performance bond in the amount of ₱75,000.00.[27]

The second Contract of Services ended on November 23, 2014. A Certificate of Final Acceptance signed by the former Chief Justice was issued to Ms. Macasaet. Atty. Ocampo recommended the issuance of the Certificate of Completion while Atty. Oliveros and Mr. Davis recommended the issuance of the Certificate of Final Completion.[28]

Third to Eighth Contracts of Services
(Extensions/ Renewal of Contracts)

In a Joint Memorandum dated December 1, 2014, Mr. Davis and Atty. Ocampo recommended the extension of Ms. Macasaet's contract for another six months, explaining that:

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[24] *Id*.

[25] *Id*. at 12.

[26] *Id*. at 13.

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

[28] *Id*. at 16.

Considering that the implementation of the Updated EISP is just at its starting point, **there is a continuing need for the services of the Consultant to provide technical advice and assistance** in the first year implementation of the plan **and in developing ICT policies to support it.** Under the Government Procurement Reform Act, a procuring entity may directly negotiate a contract with a highly technical consultant like Ms. Macasaet, and the contract shall, at the most, be on a six month basis, *renewable at the option of the appointing Head of the Procuring Entity, but in no case shall exceed the term of the latter*. (**This has been confirmed by the Procurement Planning Committee and the Supreme Court Bids and Awards Committee for Consultancy Services**).[29] (Emphasis in the original)

This recommendation was approved by the former Chief Justice. Hence, on December 10, 2014, the Court entered into a third Contract of Services with Ms. Macasaet. Again, the Contract was signed by Atty. Candelaria for and in behalf of the Court, with Attys. Ocampo and Garcia as witnesses, and acknowledged before Atty. Vidal.[30]

The third Contract of Services ended on May 23, 2015. On June 9, 2015, a Certificate of Final Acceptance was issued to Ms. Macasaet. Atty. Ocampo recommended the issuance of the Certificate of Completion while Atty. Oliveros and Mr. Davis recommended the issuance of the Certificate of Final Completion. The same was signed by the former Chief Justice.[31]

In a Memorandum dated June 10, 2015, Mr. Davis and Atty. Ocampo requested for the second extension of the contract of Ms. Macasaet for another six months. They stated that "[considering that the implementation of the Updated EISP is continuing, with the procurement for key application systems scheduled for the 2nd half of 2015, there is a continuing need for the services of the Consultant to provide technical advice and assistance in the first- and second-year EISP implementation and in developing ICT policies to support it."[32]

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[29] *Id*.

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

[31] *Id*. at 17.

[32] *Id*. at 17-18. Emphasis omitted.

To validate the findings with respect to the consultancy fees of Ms. Macasaet, Atty. Ocampo reiterated in his Memorandum dated June 22, 2015 the following pertinent sections of his April 16, 2014 Memorandum as regards the Second Contract:

To further benchmark Ms. Macasaet's consultancy fees, in June 2015, I requested information regarding the cost of similar consultancies from the Office of Usec. Richard Moya of the Department of Budget and Management (DBM), who serves as the DBM's Chief Information Officer in charge of reviewing IT-related expenditures in the DBM and other government offices.

According to Mr. Christopher A. Kuzhuppilly of the Digitization Project Coordination Unit under the Office of Usec. Moya, the DBM hired "an individual IT consultant [2012] to craft the TOR, conduct requirements gathering, consultation, coordination, provide policy advice, etc. x x x for the Comprehensive Human Resource Information System (CHRIS), commonly known as the National Payroll System." Mr. [Kuzhuppilly] also furnished a copy of the terms of reference of the said consultancy, which shows that the monthly fee given to DBM consultant was ₱92,000 per month.

Comparing the scope of work of the DBM consultant and the proposed TOR of Ms. Macasaet, it is my assessment that the consultancy fees of Ms. Macasaet are reasonable. *First*, the DBM consultant was only required to develop the terms of reference of one application, which is just a sub-component of the Enterprise Resource Planning System that Ms. Macasaet will work on. In addition, Ms. Macasaet will work on the TOR of another application system, the Philippine Judicial Academy eLearning System. *Second*, unlike the DBM consultant, Ms. Macasaet is also required to be part of the technical working group that will **review the bid documents for twelve (12) ICT procurement projects.** This will require her to attend pre-bid conferences and review technical bids during the post-qualification stage of 12 procurements. *Third*, Ms. Macasaet is doing quality assurance for another application system development project, the eCourts, which is the case management system of the Judiciary. Thus, all in all, Ms. Macasaet is involved in 9 application system projects, 6 ICT infrastructure projects (including the construction of regional data centers) and 1 human resource development project. Finally, Ms. Macasaet has to attend the monthly meetings of the CCL and its subcommittees (2-3 meetings per month) aside from addressing regular technical questions regularly referred to her by the [OCJ] and MISO.

In view of the foregoing, the recommendation in the 10 June 2015 Memorandum to extend Ms. Macasaet's contract for another 6 months is respectfully reiterated. (emphasis and italics in the original)[33]

Acting on the two Memoranda dated June 10 and 22, 2015, the former Chief Justice approved on June 23, 2015 the recommended extension of the Contract of Services of Ms. Macasaet for another six months. Thus, another Contract of Services was executed on June 23, 2015 between the Court and Ms. Macasaet which was signed by Atty. Candelaria for and in behalf of the Court, with Attys. Ocampo and Garcia as witnesses, and acknowledged before Atty. Vidal.[34]

At the end of each Contract of Services, a Certificate of Final Acceptance is issued to Ms. Macasaet and a Joint Memorandum is submitted to the former Chief Justice for approval, citing the "continuing need for the services of the Consultant to provide technical advice and assistance" as basis for the extension of the services of Ms. Macasaet.[35] The details of the issuance of the Certificates of Final Acceptance at the end of each contract period and the submission of a Joint Memorandum for the extension of the services of Ms. Macasaet are shown in the table below as contained in the OCAt Report:

End of Contract Period	**Date of Joint Memorandum Justifying the Extension**	**Date of Contract**	**Contract Duration**	**Date of Certificate of Final Acceptance**
November 23, 2014	December 1, 2014 Joint Memo of Mr. Davis and Atty. Ocampo and duly approved by the [former] Chief Justice	December 10, 2014 (1st extension)	November 23, 2014 - May 23, 2015 (6 months)	June 9, 2015

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

[34] *Id*. at 19.

[35] *Id*. at 19. Emphasis omitted.

May 23, 2015	June 10, 2015 Joint Memo of Mr. Davis and Atty. Ocampo and approved by the former Chief Justice on June 23, 2015. June 22, 2015 Memo of Atty. Ocampo and approved by the [former] Chief Justice on June 23, 2015.	June 23, 2015 (2nd extension)	May 24, 2015 - November 23, 2015 (6 months)	December 7, 2015
November 23, 2015	December 8, 2015 Joint Memo of Mr. Davis and Atty. Ocampo and approved by the [former] Chief Justice	November 23, 2015 (3rd extension)	November 24, 2015 - May 23, 2016 (6 months)	June 6, 2016
May 23, 2016	June 6, 2016 Joint Memo of Mr. Davis and Atty. Ocampo and approved by the [former] Chief Justice	June 20, 2016 (4th extension)	May 24, 2016 - November 23, 2016 (6 months)	December 9, 2016
November 23, 2016	December 19, 2016 Joint Memo of Attys. Ocampo and Carlos N. Garay and approved by the [former] Chief Justice on December 22, 2016	December 28, 2016 (5th extension)	November 24, 2016 - May 23, 2017 (6 months)	May 24, 2017
May 23, 2017	May 24, 2017 Joint Memo of Attys. Ocampo and Jilliane Joyce R. de Dumo and approved by the [former] Chief Justice	July 27, 2017 (6th extension)	May 24, 2017 - November 23, 2017 (6 months)	As the Contract was still ongoing [at the time of drafting the OCAt Report], a Certificate of Services dated June 16, 2017, signed by Attys. Ocampo and de Dumo, was issued for the release of the 1st tranche of Ms. Macasaet's consultancy fees.[36]

[36] *Id*. at 19-21.

In sum, the Court had entered into a total of eight (8) Contracts of Services with Ms. Macasaet, as listed below:

Contract Date	Contract Duration	Contract Price
1. October 1, 2013	October 1, 2013 – March 30, 2014 (6 months)	₱600,000.00
2. May 23, 2014	May 23, 2014 -November 23, 2014 (6 months)	₱1,500,000.00
3. December 10, 2014 (1st extension)	November 23, 2014 – May 23, 2015 (6 months)	₱1,500,000.00
4. June 23, 2015 (2nd extension)	May 24, 2015 – November 23, 2015 (6 months)	₱1,500,000.00
5. November 23, 2015 (3rd extension)	November 24, 2015 - May 23, 2016 (6 months)	₱1,500,000.00
6. June 20, 2016 (4th extension)	May 24, 2016 - November 23, 2016 (6 months)	₱1,500,000.00
7. December 28, 2016 (5th extension)	November 24, 2016 - May 23, 2017 (6 months)	₱1,500,000.00
8. July 27, 2017 (6th extension)	May 24, 2017 - November 23, 2017 (6 months)	₱1,500,000.00
	TOTAL CONSULTANCY FEE	₱11,100,000.00[37]

In the last four Contracts of Services, Atty. Candelaria signed for and in behalf of the Court, with Attys. Ocampo and Garcia as witnesses. The Contracts were acknowledged before the then Clerk of Court, Atty. Felipa Borlongan-Anama (Atty. Anama). The WHEREAS clauses and the Terms and Conditions of the Contracts of Services are substantially the same as the previous Contracts.[38]

Findings and Recommendations of the OCAt

The OCAt found that all contracts of services between the Court and Ms. Macasaet are void for not having been procured in accordance with R.A. 9184 and its Revised IRR, and for being violative of other statutory laws and pertinent auditing

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[37] See *id*. at 21-21A.

[38] *Id*. at 22.

rules pertaining to the CAF. This is based on the following representations of the OCAt:

1. Non-inclusion of a line item for "Technical and Policy Consultants" in the 2014 Annual Procurement Plan (APP);
2. Lack of participation by the BAC-CS in the negotiated procurement;
3. Procedural infirmities in the conduct of the procurement, particularly regarding the:
    a. failure of the BAC-CS to comply with various documentary requirements for procurement;
    b. lack of posting in the Philippine Government Electronic Procurement System (PhilGEPS) of the opportunity, requirements, and notice of award; and
    c. renewal of the consultancy contracts;
4. Infirmities regarding consultancy fees, specifically:
    a. the exclusion of reimbursable costs from the consultancy fees, in violation of the rule on fixed price contracts; and
    b. unreasonableness of the consultancy fees due to
    i. wrong market research benchmarking, and
    ii. violation of the ceiling provided in DBM Circular Letter No. 2000-11;
5. Infirmities regarding the CAF, which relates to:
    a. the insufficiencies of the CAFs pertaining to the 1st and 2nd Contracts of Services due to non-inclusion of reimbursable travel and accommodation costs; and
    b. failure to provide CAFs for the 3rd to 8th Contracts of Services;

6. Splitting of contracts; and
7. Lack of signing authority of the Chief Administrative Officer.

As a result of these findings, the OCAt made the following recommendations to the Court:

1. **DECLARE** as void, in a Court Resolution, the eight (8) Contracts of Services of Ms. Helen P. Macasaet for having been procured not in accordance with Republic Act No. 9184 and its Revised Implementing Rules and Regulations, and violative of other statutory laws and pertinent auditing rules that pertain to the Certificate of Availability of Funds;

2. **DIRECT** the Office of the Clerk of Court to furnish Ms. HELEN P. MACASAET a copy of the resolution informing her that all her Contracts of Services are void and therefore, payments for her services rendered shall be based on the principle of *quantum meruit*;

3. **DIRECT** the Fiscal Management and Budget Office (FMBO), Office of Administrative Services (OAS) and the Management Information Systems Office (MISO) to immediately determine the amount corresponding to the reasonable value of the services rendered by Ms. Helen P. Macasaet to the Court; and

4. **DIRECT** Ms. Helen P. Macasaet to immediately refund the difference between the amount paid by the Court to her and the reasonable compensation due her as determined by the offices of the Court.[39]

Letter of the former Chief Justice

On November 20, 2017, the former Chief Justice circulated a letter[40] to the members of the Court *en banc* containing her preliminary comments on the OCAt Report. Her discussion was limited to three points: *first*, the legal premises utilized by the OCAt to determine the legality of the contract were patently

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[39] *Id*. at 47.

[40] *Id*. at 409-421.

erroneous; *second*, the OCAt came up with conclusions without factual support and sufficient research or were based on flawed presumptions; and *third*, there is a conspicuous absence in the OCAt Report of any comment or explanation from the offices and committees involved in the procurement, which renders questionable the procedure followed in the review.[41]

On the *first point*, the former Chief Justice claimed that while the OCAt does not opine that public bidding should have been conducted for the procurement of Ms. Macasaet's services, it nonetheless applied legal provisions that are either inapplicable, taken out of their proper legal context, and/or pertain to an evaluation of short-listed consultants in a procurement project undertaken through competitive bidding. The former Chief Justice states that these rules are irrelevant and inapplicable to the procurement of consulting services using the negotiated method.[42]

According to the former Chief Justice, the OCAt also applied rules that, by their express wording, and by the OCAt's own admission, exclude the hiring of individual highly technical consultants from their coverage, as well as standards not yet in existence during the procurement of the services of Ms. Macasaet.[43]

Regarding the *second point*, the former Chief Justice identified certain conclusions made by the OCAt that were bereft of any factual support or based on flawed premises.[44]

On the *last* point, the former Chief Justice emphasized that the OCAt appeared to have circulated its opinion without reference to any comment or explanation from the BAC-CS, PPC, and the end-users of the services — the Committee on Computerization, MISO, and the OCJ. Since the conclusions

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[41] *Id*. at 409.

[42] *Id*. at 410.

[43] *Id*. at 410-411.

[44] *Id*. at 418-420.

contained in the OCAt Report involve the previous actions and findings of these committees and offices, the former Chief Justice claims that the basic tenets of due process and fairness dictate that the parties all be given a right to be heard — including Ms. Macasaet, the other party to the subject contracts.[45]

In a Resolution[46] dated January 10, 2018, the Court *en banc* resolved to note the former Chief Justice's letter.

Comments of the Parties

Acting on the OCAt Report, the Court *en banc* issued a Resolution[47] dated November 21, 2017 in A.M. No. 17-08-05-SC requiring BAC-CS and Ms. Macasaet to comment thereon.

Comment of Ms. Macasaet

In her Comment,[48] Ms. Macasaet narrated the events that led to her involvement in the EISP and the process of her engagement as ICT consultant. She stated that, as admitted in the OCAt Report, the services of a technical consultant had to be engaged to review the status of the EISP implementation and related ICT and computerization projects of the Judiciary because "nobody in the Judiciary, including any member of the MISO or the [Committee on Computerization and Library (CCL)], was competent to undertake such a monumental and unique task."[49]

Ms. Macasaet claimed that due to her limited personal knowledge of and participation in the procurement process of her ICT consultancy projects, in addition to her not being a legal professional, she is not competent to render a legal opinion regarding the validity of her eight Contracts of Services. Nevertheless, she maintains that she was made to believe, and

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[45] *Id*. at 420.

[46] *Id*. at 428.

[47] *Id*. at 407.

[48] *Id*. at 433-461.

[49] *Id*. at 435.

still believes in all good faith, that all contracts are valid and lawful especially considering that she contracted with no less than the highest court of the land.[50]

Assuming *arguendo* that the subject contracts are void and that she should be compensated on the basis of *quantum meruit* as the OCAt suggests, Ms. Macasaet avers that the compensation she received is reasonable from the government's perspective even though, from her perspective, such compensation is substantially below market rate. She argues that the factors[51] considered in determining the fees of lawyers may be applied by analogy to her case because lawyers and ICT consultants are both professionals, thus similarly situated.[52]

Ms. Macasaet avers that, applying the foregoing factors, she should have instead charged or have been paid a monthly fee of ₱880,000.00, which is more than three times of what she actually received for the second to eighth contracts and almost nine times of what she received for the first one. Nonetheless, she maintains that she accepted the engagement as an ICT consultant not for the compensation but for a desire to give back to the country and contribute to its development.[53]

Additionally, Ms. Macasaet disagrees with the OCAt's finding that the MISO Chief is an equivalent position; hence, the salary of the MISO Chief should not be used in determining the reasonableness of her compensation. She argues that nobody

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[50] *Id*.

[51] *Id*. at 436-437, citing *Ignacio v. Alviar*, 813 Phil. 782, 794 (2017). These factors are: (1) time spent and the extent of the services rendered or required; (2) novelty and difficulty of the question involved; (3) importance of the subject matter; (4) skill demanded; (5) probability of losing other employment as a result of acceptance of the proffered case; (6) customary charges for similar services and the schedule of fees of the IBP Chapter to which he belongs; (7) amount involved in the controversy and the benefits resulting to the client from the service; (8) contingency or certainty of compensation; (9) character of the employment, whether occasional or established; and (10) professional standing of the lawyer.

[52] *Id*.

[53] *Id*. at 457.

in MISO possesses her qualifications and expertise and that the EISP and other related ICT projects never took off until her services were engaged.[54]

Moreover, Ms. Macasaet claims that since the OCAt did not conduct any benchmarking or market research, it is in no position to conclude that the compensation she received was unreasonable. She notes the OCAt's suggestion that the benchmarking or market research on the value of the services that she rendered be undertaken by the FMBO, OAS, and MISO. In this regard, she requests for an opportunity to comment on their own benchmarking or market research.[55]

Finally, Ms. Macasaet disagrees with the OCAt's finding that the six-month term of each Contract of Services is "disadvantageous to the government" and that she should have been engaged instead for a longer period such as five years. She avers that such finding is completely speculative, unfounded, erroneous, and contrary to law.[56]

In a Resolution[57] dated January 23, 2018, the Court *en banc* noted the Comment filed by Ms. Macasaet.

Comment of BAC-CS

On January 25, 2018, the BAC-CS filed its Comment[58] wherein it asserted in the main that the procedural requirements of prevailing procurement law were sufficiently met with respect to the subject contracts.

In a Resolution[59] dated January 30, 2018, the Court *en banc* noted the Comment filed by the BAC-CS and required Attys. Ocampo and Candelaria to comment on the OCAt Report.

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[54] *Id*.

[55] *Id*. at 458.

[56] *Id*.

[57] *Id*. at 462-463.

[58] *Id*. at 464-489.

[59] *Id*. at 668-669.

Comment of Atty. Candelaria, Chief Administrative Officer

On February 20, 2018, Atty. Candelaria filed her Comment,[60] which focused on the issue of her being an authorized signatory to the subject contracts entered for and in behalf of the Court. In gist, Atty. Candelaria maintains that as Deputy Clerk of Court (DCC) and Chief Administrative Officer, she is one of the authorized officials and signatories of the Court in the execution of its contracts. She attached several Memoranda[61] where she requested for authority to sign for and in behalf of the previous Chief Justices, beginning from the time of Chief Justice Reynato S. Puno.

Comment of Atty. Ocampo, OCJ

On April 25, 2018, Atty. Ocampo filed his Comment[62] disputing point by point the findings contained in the OCAt Report. In its Resolutions dated June 5, 2018[63] and July 3, 2018,[64] the Court *en banc* noted the Comment filed by Atty. Ocampo.

Issue

The main issue presented before the Court is the validity of the eight Contracts of Services entered into by the Court and Ms. Macasaet for the latter's rendition of consultancy services in relation to the EISP and other ICT projects.

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[60] *Id*. at 670-672.

[61] *Id*. at 675-679.

[62] *Id*. at 747-789. On February 27, 2018, Atty. Ocampo filed his first Motion for Extension of Time to file his Comment, which was granted by the Court in its Resolution dated March 6, 2018. On March 23, 2018, Atty. Ocampo filed his second Motion for Extension of Time to file his Comment, which was likewise granted by the Court in its Resolution dated April 3, 2018. *Id*. at 740-746.

[63] *Id*. at 790-791.

[64] *Id*. at 792-793.

The Ruling of the Court

The Court, through Senior Associate Justice Antonio T. Carpio, partially adopted the OCAt Report. In the said Resolution, the Court resolved to declare the subject contracts void *ab initio* for five reasons: (1) the lack of authority of the government signatory; (2) the lack of qualifications of Ms. Macasaet; (3) the excessive amount of consultancy fees; (4) the incurrence of obligation and the expenditure of public funds without appropriation; and (5) the absence of the required CAFs.[65]

Aside from declaring the subject contracts void *ab initio*, the Court likewise directed Ms. Macasaet to reimburse all the amounts she received under the subject contracts amounting to Eleven Million One Hundred Thousand Pesos (₱11,100,000.00).[66]

***I strongly register my dissent*.** With due respect, I deem the Court's act of nullifying the subject contracts as egregiously erroneous, and compelling Ms. Macasaet to reimburse the subject consultancy fees is a grave injustice.

Reasons for the Dissent

I discuss the merits of the factual and legal findings of the OCAt Report, including the grounds[67] not ruled upon by the *ponencia*:

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[65] *Ponencia*, p. 35.

[66] *Id*.

[67] The *ponencia* did not make a ruling on the following grounds raised in the OCAt Report: (1) lack of participation by the BAC-CS in the negotiated procurement; (2) failure of the BAC-CS to comply with various documentary requirements for procurement; (3) lack of posting in the Philippine Government Electronic Procurement System (PhilGEPS) of the opportunity, requirements, and notice of award; (4) renewal of the consultancy contracts; (5) violation of the rule on fixed price contracts; and (6) the splitting of contracts.

I. *There is no lack of support of the Second Contract of Services in the 2014 Annual Procurement Plan (APP).*

With respect to the subject contracts having support in the APPs approved by the Court *en banc*, the OCAt readily acknowledged that "there was diligent compliance with the requirements under Section 7 of R.A. 9184 that all procurements shall be included in the Annual Procurement Plan, x x x."[68]

The OCAt alleged, however, that with respect to the Second Contract of Services entered into on May 23, 2014, the 2014 APP supposedly does not support its execution because of the purported failure of the 2014 APP to include an item on "Technical and Policy Consultants."[69] The *ponencia* agreed with the OCAt's findings and found that the subject procurement was not in accordance with an annual appropriation plan, and that there was no proper appropriation allotted to support the Second Contract.[70]

Under Section 7, Article II of R.A. 9184, no government procurement shall be undertaken unless it is in accordance with the approved APP of the Procuring Entity:

> SEC. 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.
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> **No government Procurement shall be undertaken unless it is in accordance with the approved Annual Procurement Plan of the Procuring Entity**. The Annual Procurement Plan shall be approved by the Head of the Procuring Entity and must be consistent with its

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[68] *Rollo*, p. 22.

[69] *Id*.

[70] *Ponencia*, pp. 24-29.

duly approved yearly budget. The Annual Procurement Plan shall be formulated and revised only in accordance with the guidelines set forth in the IRR. In the case of Infrastructure Projects, the Plan shall include engineering design and acquisition of right-of-way. (Emphasis and underscoring supplied)

Applying the foregoing provision of the law to the Second Contract of Services, it must be emphasized that **in the 2014 APP, which was approved by the Court *en banc* in A.M. No. 10-1-10-SC,**[71] **a total of ₱436,448,080.00 was already specifically allotted for the EISP.**[72] **Further, in the approved budget under the 2014 APP, funds were allotted for the further development of infrastructure and application systems under the EISP.**[73]

To stress, the engagement of technical and policy consultants was part and parcel of the 2014 APP's allocation for the further development of infrastructure and application systems under the EISP. The very rationale and underlying purpose for the hiring of consultancy services under the subject contracts was precisely the further development of the EISP system.[74] Hence, it cannot be said that the execution of the Second Contract of Services was without any basis in the 2014 APP as it was pursued for the further development of infrastructure and application systems under the EISP — an item provided for in the 2014 APP. Otherwise stated, even without the amended 2014 APP, with the 2014 APP having already provided allotments for the

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[71] See Resolution dated February 25, 2014, *rollo*, p. 232.

[72] A copy of the 2014 APP for the Supreme Court is accessible at the official website of the Government Procurement Policy Board: <http://www.gppb.gov.ph/gppb-admin/monitoring/app/APP14-SupremeCourt.pdf >

[73] *Id*.

[74] See *rollo*, pp. 100-107. The Second Contract provides: "[t]he Supreme Court seeks to engage the services of the **CONSULTANT** to provide technical and policy advice to the Office of the Chief Justice and the Management Information Systems Office (MISO) of the Supreme Court regarding implementation of Updated EISP Work Plan and related ICT projects; x x x." (*Id*. at 100; emphasis in the original)

further development of infrastructure and application systems under the EISP, the Second Contract was entered into in accordance with an approved APP.

More importantly, even assuming *arguendo* that the 2014 APP did not cover the Second Contract of Services, the OCAt Report itself readily acknowledged that **in another Resolution**[75] **dated September 23, 2014 in A.M. No. 10-1-10-SC, the Court *en banc* approved an amended procurement plan for 2014 (amended 2014 APP), which provided additional funds for infrastructure and application systems development for the implementation of the EISP**:

> "x x x The Court Resolved, upon the recommendation of the Procurement Planning Committee, to **APPROVE** the amendment of the 2014 Procurement Plan for the Supreme Court and Lower Courts to include (i) infrastructure and application systems development for the implementation of the Enterprise Information Systems Plan (EISP) of the Judiciary and (ii) hardware requirements for the eCourts project in the amounts of ₱330,000,000.00 and ₱43,920,000.00, respectively."[76]

With the OCAt Report expressly recognizing that an amended 2014 APP sufficiently covered the hiring of consultancy services under the Second Contract of Services, even assuming *arguendo* that the previously approved 2014 APP failed to cover the Second Contract, it cannot reasonably be said that there is no procurement plan that supports the execution of the Second Contract in violation of R.A. 9184 because **the amended 2014 APP refers and pertains to the entire fiscal year, and not only the period subsequent to its issuance**. It must be noted that under R.A. 9184, the law states that APPs relate to the entire duly approved yearly budget.[77]

It must be emphasized as well that Section 7, Article II of R.A. 9184 specifically grants procuring entities (in this case,

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[75] *Id*. at 246.

[76] *Id*.

[77] R.A. 9184, Sec. 7.

the Court) the power to revise and update their respective APPs that govern the procuring entities' spending in a fiscal year. Thus, the Court should recognize the ability of the amended 2014 APP to cover the Second Contract of Services that was entered into within the fiscal year as it is within the ambit of the Procuring Entity's power under R.A. 9184 to revise the APP applicable for a given fiscal year. Adopting a different stance to the effect that an amended APP would not be able to sufficiently cover a prior procurement activity would render futile, useless, and nugatory the power specifically granted to procuring entities under Section 7, Article II of R.A. 9184 to revise and update their respective APPs. Therefore, it is certainly the intent of the law that an amended APP refers and pertains to the entire fiscal year, and not only the period subsequent to its issuance. Regrettably, however, the *ponencia* strayed away from the intent of Section 7, Article II of R.A. 9184.

Hence, with both the 2014 APP covering the further development of the EISP and the amended 2014 APP providing additional funds for infrastructure and application systems development for the implementation of the EISP, I maintain that the findings of the OCAt and the *ponencia* that there is no procurement plan supporting the execution of the Second Contract of Services is indubitably erroneous.

II. *There is no violation of the procurement law by the BAC-CS in the conduct of procurement of the subject contracts.*

The OCAt alleged that the procurement of the subject contracts entailed several violations of R.A. 9184, its IRR, and the Manual of Procedures for the Procurement of Consulting Services (Manual of Procedures),[78] which contains the applicable guidelines issued by the Government Procurement Policy Board (GPPB) regarding the procurement of consultancy services.

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[78] Under Section 6 of R.A. 9184, the GPPB is mandated to pursue the development of generic procurement manuals and standard bidding forms, the use of which once issued shall be mandatory upon all Procuring Entities.

Specifically, the OCAt found that the procurement process observed in procuring the subject contracts failed to follow the applicable procurement law because of the supposed "hands-off" approach adopted by the BAC-CS in the whole procurement process.

The OCAt alleged that the BAC-CS failed to participate "actively" in the procurement of the subject contracts. When the BAC-CS determined that the subject contracts were highly technical in nature and primarily required trust and confidence owing to the fact that they are priority programs of the Court, and that there was no need for the said procurement to pass through regular bidding, the BAC-CS purportedly prematurely terminated its role without following the prescribed procedure of negotiation supposedly required, *i.e.*, evaluation of the qualifications of the consultant, preparation of the TOR, conducting the required negotiation, finalization of the contract, recommendation of the awarding of the contract, and posting of results of the award.[79]

The OCAt further alleged that the BAC-CS failed to produce any document showing that: (1) the BAC-CS recommended the award of the subject contracts to Ms. Macasaet; (2) it issued a Notice of Award; (3) it posted the Notice of Award in the PhilGEPs website, in the Court's website and bulletin boards; and (4) it issued a Notice to Proceed.[80]

In the main, the OCAt Report alleges that the BAC-CS' level of participation in the procurement process involving the subject contracts was sorely lacking, with the BAC-CS apparently failing to observe certain procedural and documentary requirements purportedly required under procurement law.

In determining whether the BAC-CS failed to observe procedural and documentary requirements for the procurement of consultancy services that are highly technical in nature and

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[79] See *rollo*, pp. 26-28.

[80] *Id*. at 29.

primarily require trust and confidence, a careful examination of the applicable procurement law is necessary.

R.A. 9184 or the Government Procurement Reform Act

R.A. 9184[81] applies to the procurement of infrastructure projects, goods, and consulting services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, including the Court.[82]

On the method of procurement, the general rule is that all procurements shall be done through Competitive Bidding.[83] **Competitive Bidding** is defined as a method of procurement which is open to participation by any interested party and which consists of the following processes: **advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification**, and **award of contract**, the specific requirements and mechanics of which are defined in the law's IRR.[84]

However, this general rule admits of exceptions.

Under Section 10 of R.A. 9184, the procurement process under Competitive Bidding need not be followed in instances provided by Article XVI of the law. Otherwise stated, **in the instances identified under Article XVI, another mode of procurement that follows a different set of procedures than Competitive Bidding may be pursued by the Procuring Entity**. R.A. 9184 provides that the BAC has the power to recommend to the Head of the Procuring Entity the use of

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[81] R.A. 9184 was signed by President Gloria Macapagal-Arroyo on January 10, 2003, and was published on January 11, 2003, in two (2) newspapers of general nationwide circulation, namely, Manila Times and Malaya. It took effect fifteen (15) days after its publication or on January 26, 2003.

[82] R.A. 9184, Sec. 4.

[83] *Id*., Sec. 10.

[84] *Id*., Sec. 5(e).

Alternative Methods of Procurement as provided in Article XVI.[85]

Article XVI - Alternative Methods of Procurement

Section 48, Article XVI of R.A. 9184 states that a Procuring Entity may resort to alternative methods of procurement, subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in the law.

Negotiated Procurement

One of the identified alternative methods of procurement is **Negotiated Procurement**, defined as a method of procurement that may be resorted to under (1) the extraordinary circumstances provided for in Section 53 of the law, and (2) other instances specified in the IRR, whereby **the Procuring Entity *directly* negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant**.[86]

Taking together Section 53[87] of R.A. 9184 and Section

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[85] *Id*., Sec. 12.

[86] R.A. 9184, Sec. 48(e).

[87] SEC. 53. *Negotiated Procurement.* – Negotiated Procurement shall be allowed only in the following instances:

(a) In cases of two (2) failed biddings, as provided in Section 35 hereof;

(b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

(c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

(d) Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: *Provided, however*, That the original contract is the result of a Competitive Bidding; the subject contract

53[88] of the 2009 IRR, negotiated procurement — whereby the procuring entity ***directly*** negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant — may be pursued in any of the following cases: (1) two failed biddings, (2) emergency cases, (3) take-over of contracts, (4) adjacent or contiguous contracts, (5) agency-to-agency procurement, (6) request for a procurement agent, (7) **highly technical consultants**, (8) defense cooperation agreement, (9) small value procurement, (10) lease of real property, (11) NGO participation, (12) community participation, and (13) procurement from specialized agencies of the United Nations.

Negotiated Procurement for Highly Technical Consultants

One of the identified instances wherein the alternative method of Negotiated Procurement may be pursued by a Procuring Entity is the procurement of **Highly Technical Consultants**.

Under Section 53.7 of the 2009 IRR, Negotiated Procurement, which entails the direct negotiation of a contract, may be done by the Procuring Entity in the case of **individual consultants or partnerships hired to do work that is (i) highly technical**

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to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: *Provided, further*, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,

(e) Subject to the guidelines specified in the IRR, purchases of Goods from another agency of the Government, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989.

[88] Note: the applicable and prevailing IRR with respect to the subject contracts is the 2009 IRR, issued by the GPPB in its Resolution No. 03-2009 dated July 22, 2009.

or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant.

The Subject Contracts procured via Negotiated Procurement of Highly Technical Consultants

It is not disputed that the subject contracts were and could be subjected to the alternative method of procurement of Negotiated Procurement of Highly Technical Consultants.

As previously mentioned, the subject contracts were recommended by the BAC-CS to be subjected to Negotiated Procurement ***based on its finding*** **that the subject contracts were highly technical in nature and primarily requiring trust and confidence, owing to the fact that it is a priority program of the Supreme Court.** This recommendation was approved by the Head of the Procuring Entity, which in this case was the former Chief Justice.

The *ponencia* found that Ms. Macasaet was not qualified to be considered a Highly Technical Consultant in relation to the implementation of the Updated EISP Project.[89] Moreover, it held that the nature of the work involved in the subject contracts are not highly technical, and that "there was no actual need to hire a consultant for the mere overview of the implementation of the Updated EISP Project as the MISO Head is already sufficiently qualified to implement such project."[90] The *ponencia* added that since the nature of the work is not highly technical in nature, thus not requiring the engagement of a highly technical consultant, "the general ICT services required under such EISP could have been implemented by the Supreme Court's MISO."[91]

On the qualifications of Ms. Macasaet, the *ponencia* highlighted the fact that Ms. Macasaet has no academic degree

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[89] *Ponencia*, p. 17.

[90] *Id*.

[91] *Id*. at 19.

in any field directly related to ICT and that her ICT training from several short-term courses can hardly be the basis to consider her as an expert in the field. Also, the *ponencia* found that her Master's degree in Business Administration and certification in Customer Relationship Management are not qualifications that directly relate to ICT in order to justify her engagement in relation to the highly technical Updated EISP Project.[92]

With due respect, these conclusions are simply wrong. While Ms. Macasaet's educational background indeed shows that she does not hold any degree directly related to ICT, the TOR for the Consultancy on the Implementation of the Updated EISP[93] expressly required, among others, that the consultant sought must: (1) have an advanced degree in business management *or* any ICT-related degree; and (2) be a certified customer relationship management system (CRM) specialist and manager.[94] The records show that Ms. Macasaet holds a Master's degree in Business Administration from the Ateneo de Manila University Graduate School of Business and is a certified CRM specialist and manager.[95] In other words, based on her educational background, Ms. Macasaet was qualified for the consultancy under the TOR.

Moreover, her lack of academic degree in a field directly related to ICT hardly makes her less of an expert in the field as, in fact, the records show her sterling record in the ICT industry. On this note, the Court quotes the following statements by Ms. Macasaet, unrebutted by anybody, as regards her qualifications:

I have **industry experience stretching more than 30 years. I am also one of the pioneers in the ICT profession** both as an end-user and as a solutions provider;

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

[93] *Rollo*, pp. 85-87.

[94] *Id*. at 87. Italics supplied.

[95] *Id*. at 615.

As an end-user:

– worked as MIS Head in an international manufacturing company (Nicholas Kiwi), headed the IT Department as First Vice President of a local universal bank (UCPB), Manager of a legal publishing firm, Butterworths in Australia

As a solutions provider:

– was Consulting Center Director of an international consulting company (James Martin & Co), President & COO of a local IT firm (MISNet), Retainer Consultant (Destileria Limtuaco, King Group of Companies, Lhuillier Group) and President & Founder of Pentathlon Systems Resources Inc., a local ICT consulting company.

In those jobs, **I have successfully delivered some of the most challenging ICT projects** such as:

– As CIO-Consultant, **I resolved the biggest ICT disaster in Philippine history, the GSIS Database Crash**. I was able to diagnose and assess the problems in 6 months and institute the solution implementation within 1.5 years. GSIS has continued to use the technical and application architecture which I installed in 2008- 2010. I re-implemented the ERP systems until it was able to generate its DAILY Financial Reports[;]

– Business process re-engineering and installing modern computerized systems for some of the oldest companies in the Philippines namely: Loyola Group of Companies and Destileria Limtuaco[;]

– As Principal Consultant in the delivery of international projects such as Nicholas Kiwi and Subentra Bank in Indonesia, Thai Military Bank and several investment firms in Thailand, and Bank Simpanan in Malaysia[;]

– Principal Consultant in the development of ICT Plans and Enterprise Architectures, namely: SSS, Producers Bank, Hyundai, Nissan, Volvo, Philippine Women's University, Philippine Science High School, Baliuag University[;]

– Delivery of ICT Outsourcing projects by managing their IT Departments: Diwa Publishing, Fastech Manufacturing[.][96] (Emphasis supplied)

In spite of this, the *ponencia* still mistakenly insists that Ms. Macasaet's experience in developing and participating in ICT systems in both private and public sectors is not the highly technical qualification required for the implementation of the Updated EISP Project as her experience is on the business and management side of ICT Systems.[97] However, the *ponencia* miserably fails to explain how Ms. Macasaet's qualifications were classified as merely "on the business and management side of ICT systems."[98]

More importantly, however, it should be emphasized that Ms. Macasaet's qualifications were, as they should be, gauged against the TOR for the Consultancy on the Implementation of the Updated EISP.

In addition to the requirements on an advance degree and CRM specialization, the TOR requires that the consultant: (1) must have at least 10 years of experience in developing, managing, implementing, or consulting on enterprise and management information systems, customer relationship management systems and related ICT projects for the government or private sector (experience as Chief Information Officer of a business/government entity is necessary); (2) must have an experience in implementing enterprise-wide ICT projects, preferably nation-wide in scope; and (3) must have had extensive participation in formulating ICT policy and e-governance framework in the country, whether in an official or advisory capacity.[99] Based on these required qualifications in the TOR, Atty. Ocampo and Mr. Davis chose Ms. Macasaet as the most

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[96] *Id*. at 454.

[97] *Ponencia*, p. 19.

[98] *Id*.

[99] *Rollo*, p. 87.

qualified among the proposed consultants for the EISP Project, to wit:

> **(c) She has had extensive participation in formulating ICT and e-governance policies in the country**, having served as the business community's representative to the Information Technology and E-Commerce Council of the Philippines, Chairperson of the ICT Governance Framework Technical Working Group in the National Competitiveness Council, member of the National IT Advisory Council to the Department of Science and Technology-Information and Communication Technology Office, and ICT Governance Co-Chair of the Judicial Reform Initiative of the Management Association of the Philippines.
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> (d) Ms. Macasaet has implemented enterprise- and nationwide ICT projects, including those involving a major commercial bank and lending company (a major pawnshop), both of which have units located all over the Philippines. **This experience in nationwide ICT projects is very relevant considering the organizational set-up of the judiciary and the locations of its various courts.**
>
> **(e) Finally, Ms. Macasaet['s] previous consultancy resulted in the Updated EISP Work Plan. She is in a position to guide the Court in implementing the Updated EISP Work Plan because of the knowledge that she has acquired (i.e. information on the Court's infrastructure, computerization projects, ICT policies, etc.) during her previous consultancy.**[100] (Emphasis and underscoring supplied)

Considering the foregoing, it is only fair to conclude that Ms. Macasaet possessed the highly technical qualification needed for the implementation of the Updated EISP Project. As well, based on these required qualifications in the TOR, it is evident that the head of the MISO was not, contrary to the sweeping conclusion of the *ponencia*, qualified to undertake the job required.

As regards the classification of the work required under the subject contracts, it is inaccurate for the *ponencia* to classify

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[100] *Rollo*, p. 615.

the implementation, review, assessment, and updating of the EISP — the very task assigned to Ms. Macasaet under the subject contracts — as mere "general ICT services."[101] Surely, it cannot be sufficiently argued that the nature of the work covered by the subject contracts is not highly technical, which does not require the engagement of a highly technical consultant.

Jurisprudence holds that the nature of the functions attaching to an office or a position ultimately determines whether such position is policy-determining, primarily confidential, or highly technical.[102] In the instant case, the functions pertaining to Ms. Macasaet under the subject contracts do not merely refer to conducting an in-depth, critical, exhaustive, and comprehensive review and assessment of the EISP project and other related ICT and computerization projects. Part of Ms. Macasaet's functions under the subject contracts was the making of actual recommendations for the updating of this complex and multifaceted technological system.[103]

The highly technical nature of the review and updating of the EISP project was, in fact, recognized and underscored by the Court *en banc* itself when, in its June 23, 2009 Resolution[104] in A.M. No. 08-11-09-SC, the Court *en banc* described the EISP as a comprehensive framework of several ICT initiatives, involving the development of new information systems and provision of state-of-the-art IT equipment. It must be stressed that the project pertains **not only to the Court alone, but to the entire judiciary**, composed of all the courts and its adjunct offices around the Philippines. The Court *en banc* explained that:

> The EISP is intended to serve as the framework of ICT initiatives of the Judiciary for the next five years (Yr. 2010-2014). It contains the present ICT needs of the Judiciary and proposed solutions *vis-a-vis*

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[101] *Ponencia*, p. 19.

[102] *Samson v. Court of Appeals*, 230 Phil. 59, 64 (1986).

[103] See *rollo*, p. 67.

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

the [organization's] mandate, objectives, and programs through the development of new Information Systems (IS) and provision of additional state-of-the-art IT equipment. It also includes functional and technical requirements of the systems, cost estimates, and a discussion on the implementation plan and change management framework.[105]

Aside from the Court *en banc* manifestly saying that the project involves an in-depth assessment of "functional and technical requirements of the systems,"[106] the fact that the EISP project is a highly technical and policy-determining endeavor, where trust and confidence are significant factors, is further underscored by the Court *en banc*'s own explanation that the EISP is an initiative that goes into the fulfillment of the judiciary's "mandate, objectives, and programs."[107] Hence, as **the EISP is a priority program of the Court**, being an innovative initiative that would greatly aid the judiciary in achieving its mandate, Ms. Macasaet's functions under the subject contracts to assess and update the EISP clearly entailed work that was highly technical and primarily confidential or policy determining, where trust and confidence is necessarily required.

In fact, it is important to emphasize that while the *ponencia* expressed the belief that the nature of the work found in the subject contracts is not highly technical in nature, in the same breath, the *ponencia* also recognized that "[t]he Updated EISP Project includes, among others, the upgrading of the Judiciary Data Center, cabling and site preparation and connectivity and network security. **These activities require highly specialized technical ICT expertise, not general business management expertise**. More specifically, based on the Scope of Work of the [May 23, 2014] Contract of Services as quoted below, the Updated EISP Project includes the upgrade of existing Judiciary Data Center and the design and construction of the Judiciary

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[105] *Id*. at 50.

[106] *Id*. Underscoring supplied.

[107] *Id*.

Data Center Disaster Site. **Thus, the Updated EISP Project is not merely a general business project, but primarily a highly technical ICT infrastructure project**, x x x."[108]

Hence, this belies the *ponencia*'s own assessment that "the general ICT services required under such EISP could have been implemented by the Supreme Court's MISO"[109] considering that there is already an acknowledgment that the work involved in the subject contracts "is not merely a general business project, but primarily a highly technical ICT infrastructure project."[110]

Further, the task of reviewing, assessing, and updating the EISP could not have been simply left to MISO and its Chief of Office. While not questioning the competency and qualifications of the MISO and its Chief of Office, the latter cannot be expected to sufficiently handle the EISP project because, to reiterate, **the EISP encompasses not merely the ICT system of the Court alone; it involves the development of the complex IT framework and other computerization projects covering the *entire* judiciary as an institution**. According to A.M. No. 92-3-021-SC,[111] the mandate of the MISO is limited to providing technological services and managing the computerized monitoring system installed in the Supreme Court — this does not include the other courts in the country. The *ponencia* completely and utterly failed to consider that the review of the IT framework of the entire judiciary is beyond the scope of the MISO's mandate.

Furthermore, it must be noted that since the EISP encompasses the IT initiatives of the entire judiciary, **its review necessarily includes an evaluation of the projects and initiatives of the MISO**. Thus, in the TOR, among the tasks of the consultant

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[108] *Ponencia*, p. 17. Emphasis and underscoring supplied; emphasis in the original omitted.

[109] *Id.* at 19.

[110] *Id.* at 17.

[111] *Re: Creation of the Management Information Systems Office*, March 5, 1992.

for the Updated EISP are: (a) to provide technical and policy advice to the OCJ and the MISO regarding the implementation of the Updated EISP Work Plan and related computerization and ICT Projects; and (b) **review the MISO Reengineering Development Plan (MRDP) and update it according to the requirements of the Updated EISP Work Plan**.[112] Surely, asking the MISO to review, assess, and evaluate its own IT projects and initiatives, instead of by an independent, highly technical consultant, would be inimical to developing an improved IT system for the judiciary.

Lastly, it should be noted that along with Atty. Ocampo, it was Mr. Davis, then Acting Chief of the MISO, who recommended Ms. Macasaet to be the consultant for the Updated EISP.[113] **Verily, the MISO itself recognized the need to hire a consultant in the person of Ms. Macasaet for such undertaking**.

Therefore, considering that the EISP involves the development and implementation of a complex web of IT systems that will cover the entire judiciary, including the provision of state-of-the-art IT equipment, designed to assist the judiciary in achieving its very mandate, any pronouncement that the EISP is a "simple" IT project that can be reviewed by any IT consultant fails to fully comprehend the intricacy, complexity, and importance of the EISP.

Telling is the fact that even the OCAt Report itself does not question the recommendation of the BAC-CS that the work involved in reviewing and updating the EISP, as well as the related ICT and computerization projects, is highly technical in nature. In recognizing the highly technical nature of the EISP, the OCAt even acknowledged that the instant case involved '"x x x **the hiring of individual consultants under special cases,' such as these instant procurements**."[114] Thus, it is

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[112] *Rollo*, pp. 85-86.

[113] See *id*. at 614-616.

[114] *Id*. at 26. Emphasis and underscoring supplied.

quite bewildering how the *ponencia* can take a contrary position.

Therefore, the question now redounds to whether or not the procurement of the subject contracts followed the prescribed procedure required for the alternative method of Negotiated Procurement of Highly Technical Consultants.

Alleged Faulty Participation of the BAC-CS in the Negotiated Procurement of the Subject Contracts

In essence, the OCAt Report alleges that the procurement of the subject contracts was legally infirm because the BAC-CS did not participate in the Negotiated Procurement process in the manner required by law. This is because, as soon as it resolved that the subject contracts were to be subjected to Negotiated Procurement, the BAC-CS "purportedly prematurely terminated its role" — the OCAt Report asserting that the BAC-CS should have itself conducted the rigors of negotiation, *i.e.*, that it should have discussed, clarified, finalized the TOR and the Scope of Services; conducted extensive discussions on the methodology and work program, qualifications and compensation, financial proposal, and the other aspects of the subject contracts; posted an opportunity to bid in the required websites; recommended not only the resort to alternative modes of procurement but also the actual awarding of the subject contracts to Ms. Macasaet; issued Notices of Award; and issued Notices to Proceed.

Upon close examination of the applicable law and rules applicable to Negotiated Procurement of Highly Technical Consultants, the OCAt's findings on the supposed failure of the BAC-CS to actively participate in the subject procurement are egregiously mistaken.

First and foremost, it must be reiterated that Negotiated Procurement is defined by R.A. 9184 as an alternative method of procurement whereby "**the Procuring Entity *directly* negotiates a contract with a technically, legally and**

financially capable supplier, contractor or consultant."[115] It is a cardinal rule of statutory construction that where the terms of the statute are clear and unambiguous, no interpretation is called for, and the law is applied as written.[116] Hence, it is clear that in procuring goods or services through Negotiated Procurement, the negotiation process is ***directly*** managed and facilitated by the Procuring Entity itself, **and not by the BAC as alleged by the OCAt Report**.

Consistent with the clear and unequivocal provision of law that it is the Procuring Entity that directly negotiates in a Negotiated Procurement, **there is nothing in the prevailing provisions governing alternative methods of procurement that even remotely suggests that the BAC shall be responsible for the actual negotiation process in a Negotiated Procurement**. What R.A. 9184 provides is that the BAC shall recommend to the Procuring Entity if an alternative mode of procurement should be pursued. In the instant case, it is undisputed that the BAC-CS indeed issued such recommendations for the procurement of the subject contracts *via* Negotiated Procurement of Highly Technical Consultants.

Thus, the overall theory posed by the OCAt that the BAC-CS should have "taken the lead" in the process of Negotiated Procurement of the subject contracts is completely lacking in legal basis.

In arguing that the BAC-CS itself should have facilitated the nitty gritty process of negotiating with the highly technical consultant, the OCAt Report refers to **Section 33.2.5 of the 2009 IRR** which provides the coverage of the negotiation process. **However, even just a cursory perusal of these provisions would make it readily evident that such provision is not applicable to Negotiated Procurement**.

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[115] R.A. 9184, Art. XVI, Sec. 48(e).

[116] *Commissioner of Internal Revenue v. Limpan Investment Corporation*, 145 Phil. 191, 194 (1970), citing *Luzon Stevedoring Corp. v. Court of Tax Appeals*, 124 Phil. 1013, 1015 (1966) and *POACO v. CBP*, 131 Phil. 2, 7 (1968).

The aforementioned provision explaining the acts that make up the process of negotiation is under Section 33 of the 2009 IRR on "**Bid** Evaluation of Short Listed **Bidders** for Consulting Services." Moreover, Section 33 and its sub-sections are under Rule IX on "Bid Evaluation." Evidently, these provisions of the law apply only to the procurement of goods and services through the **bidding process — they do not apply to the procurement of goods and services through Negotiated Procurement**.

It must be stressed that under R. A. 9184, the advertisement of bidding, holding of a pre-bid conference, eligibility screening of prospective bidders, and receipt, opening and evaluation of bids are at the very center of the procurement method of Competitive Bidding or Public Bidding.[117] Clearly, **the concept of bidding is generally incongruent with the concept of procurement under Negotiated Procurement of a Highly Technical Consultant**, wherein instead of undergoing a bidding procedure where interested parties are open to participate, the Procuring Entity and the consultant **directly engage each other** in negotiation. **Hence, the manifest error committed by the OCAt Report was to apply legal provisions governing bidding procedure to a procurement process that does not involve bidding. To stress, this was unwarranted, completely baseless and therefore egregiously erroneous.**

Moreover, it must also be noted that Section 5(d) of R.A. 9184 defines a **bid** as **a signed offer or proposal submitted by a supplier, manufacturer, distributor, contractor or consultant in response to the Bidding Documents**.

As acknowledged by the OCAt Report itself, the procurement of the subject contracts is **a "special case" wherein the "tender of the usual bid documents" is "done away" with**.[118] Thus, in expressly recognizing that the process of Negotiated Procurement of Highly Technical Consultants does not include

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[117] R.A. 9184, Sec. 5(e).

[118] *Rollo*, p. 26.

bidding documents, the OCAt concedes that the concept of a bid does not apply to the procurement of the subject contracts. **Necessarily, therefore, provisions that apply only to bidding should not be made to apply in the instant case**.

It must also be noted that the provision on the coverage of the negotiation process under Section 33.2.5 of the 2009 IRR which, again, was the legal basis of the OCAt Report to find fault against the BAC-CS, was expressly included in the process of procuring consultancy services under **Competitive Bidding** in the Manual of Procedures.[119] It is very telling that the same provision was **NOT** included in the process of procuring consultancy services under Negotiated Procurement in the same Manual. This should have convinced the Court that the acts of negotiation under Section 33.2.5 of the 2009 IRR do not find application in the instant case.

Aside from Section 33.2.5 of the 2009 IRR, the OCAt Report likewise cited as legal basis the Manual of Procedures. It argued that under the section on Negotiated Procurement found in the Manual of Procedures, it explicitly states that the BAC shall participate in the Negotiated Procurement of consultancy services:

Who are the parties involved in negotiated procurement?

The following must participate in the procurement of consulting services using the negotiated procurement method:

1. The Head of the Procuring Entity;

2. **The BAC**[.][120] (Emphasis supplied)

The OCAt Report made the argument that since the Manual of Procedures expressly identified the BAC as a party that must participate in the Negotiated Procurement process, then it should have actively participated in the actual negotiation process. **This reasoning by the OCAt is an unjustified leap in logic and fatally flawed**.

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[119] Manual of Procedures, p. 83

[120] *Id*. at 85.

There is no serious dispute that even as Negotiated Procurement involves direct negotiations between the Procuring Entity and the consultant, the BAC still has some level of participation in the process. That participation, however, is, as previously discussed, confined to merely recommending that the procurement of consultancy services may undergo Negotiated Procurement. In the case at hand, the BAC-CS did participate in the Negotiated Procurement of the subject contracts when it made such recommendation to the Procuring Entity. The OCAt, however, committed false equivalency in making its argument; it equated "participation" with "negotiation" — *without* any legal basis. Simply stated, requiring the BAC to participate in the Negotiated Procurement does not mean that it is required to conduct the negotiation process itself. **Otherwise, the clear and unequivocal provision of R.A. 9184 that the Procuring Entity directly negotiates with the consultant in a Negotiated Procurement is subrogated.**

Still on the Manual of Procedures, the OCAt also argued that it requires the observance of a set of requirements for Negotiated Procurement:

> **How is negotiated procurement conducted?**
>
> **Except for adjacent or contiguous projects and for the hiring of individual consultants under special cases**, negotiated procurement is conducted in the following manner:
>
> x x x x x x x x x
>
> 4. If the Head of the Procuring Entity disapproves of the recommendation, he shall state the reason(s) of this disapproval and instruct the BAC on the subsequent steps to be adopted. If its recommendation is approved, **the BAC, through the TWG and the BAC Secretariat, finalizes the TOR and other action documents, including draft contracts, in accordance with the procedures laid down in this Manual and in the IRR-A**.[121] (Emphasis and underscoring supplied)

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

The OCAt Report maintained that since the aforementioned set of procedures expressly states that the BAC should finalize the TOR and other action documents, the BAC-CS' failure to observe such procedure made the subject procurement infirm.

Again, the OCAt's finding is wholly unavailing. As manifestly evident in the cited provision itself, the procedural requirements referred to shall ***not*** apply to the hiring of individual consultants under special cases. The subject procurement certainly falls under such "special cases". As already explained above, the subject contracts involve extremely technical and complex matters that are not easily comprehensible to laymen. Further, these contracts touch upon one of the priority projects of the Court. Thus, it is not difficult to understand that such procurement involved primarily confidential or policy determining matters where trust and confidence are the primary considerations for the hiring of the consultant.

In any case, it bears much stressing that no less than the OCAt Report itself unequivocally acknowledged that **[t]he above quoted procedure on how the alternative method of negotiated procurement is conducted, through its first line, categorically takes out from its coverage 'x x x the hiring of individual consultants under special cases', such as these instant procurements.**"[122]

The OCAt's argument that the BAC-CS is still required to undergo the "required negotiation" despite the foregoing unmistakable provision in the Manual of Procedures accordingly lacks legal basis.

The OCAt mentioned a GPPB Non-Policy Opinion which purportedly states that the verification, validation, and the ascertainment of the eligibility and qualifications of the consultant should still be pursued in negotiations.[123] However, a fair reading of the said GPPB Non-Policy Opinion shows

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[122] *Rollo*, p. 26. Emphasis and underscoring supplied.

[123] GPPB NPM 032-2005; see *rollo*, p. 26.

that it only mentions that the aforementioned procedure be done in the negotiation stage; **it does not hold that such acts must be done by the BAC and not the Procuring Entity**.

To further bolster the fact that the procedures found in the Manual of Procedures do not apply to Negotiated Procurement of Highly Technical Consultants, it is worthy to mention that one of the procedures found in the cited list of procedures, *i.e.*, item no. 6 or the posting by the BAC of the Invitation to Apply for Eligibility and to Bid, was **expressly excluded** for Negotiated Procurement of Highly Technical Consultants under the 2009 IRR.[124] The rationale of this exclusion of the posting requirement with respect to Negotiated Procurement of Highly Technical Consultants is obvious — because in such a mode of procurement, the Procuring Entity directly and personally negotiates with the consultant based on his/her qualifications, skills, and other personal circumstances, with trust and confidence being the primary considerations. **Hence, the OCAt's finding that the BAC-CS violated the procurement law because it failed to show "posting of opportunity in the PhilGEPS website, SC website, and the SC bulletin boards x x x"[125] is terribly erroneous.**

Even with respect to the BAC-CS' alleged failure to submit and evaluate the eligibility requirements of Ms. Macasaet, such

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[124] **Section 54. Terms and Conditions for the use of Alternative Methods**

x x x x x x x x x

54.2 For alternative methods of procurement, advertisement and posting as prescribed in Section 21.2.1 of this IRR may be dispensed with: Provided, however, That the BAC, through its Secretariat, shall post the invitation or request for submission of price quotations for Shopping under Sections 52.1 (b) and Negotiated Procurement under Sections 53.1 (two-failed biddings) and 53.9 (small value procurement) of this IRR in the PhilGEPS website, the website of the procuring entity concerned, if available, and at any conspicuous place reserved for this purpose in the premises of the procuring entity for a period of seven (7) calendar days.

[125] *Rollo*, p. 27.

argument of the OCAt Report fails to find any legal basis. There is absolutely no provision under R.A. 9184, its 2009 IRR, and the Manual of Procedures which requires the BAC to manage and evaluate the eligibility requirements of a consultant engaged through Negotiated Procurement of a Highly Technical Consultant.

In fact, even the GPPB itself recognized in its Resolution No. 18-2015 that the law is "**[still] silent whether or not eligibility documents mentioned under the above-mentioned provisions must be submitted when resorting to any of the Alternative Methods of Procurement, except those where competitive bidding or a semblance thereof is still present.**"[126]

In further insisting that the BAC-CS should have engaged in negotiations with Ms. Macasaet, the OCAt Report also cited Section V, D(7b)(ii) of the Consolidated Guidelines for the Alternative Methods of Procurement of the 2016 IRR of R.A. 9184, which states that the "BAC shall undertake the negotiation with the individual consultant based on the Terms of Reference prepared by the End-User."

However, the cited provision of the 2016 IRR cannot be made to apply to the subject contracts because at the time of the procurement of the said contracts, the 2009 IRR was the prevailing applicable rule.

With respect to the OCAt's allegation that the BAC-CS was required to issue a resolution recommending not only the resort to an alternative method of procurement, but the actual awarding of the subject contracts to Ms. Macasaet, it cites a certain Non-Policy Opinion of the GPPB to that effect.[127] However, it bears stressing that such a stand fails to find any legal support under R.A. 9184 and its IRR.

To restate, there is absolutely no provision under R.A. 9184 and its 2009 IRR which requires or otherwise compels the BAC

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[126] 5th WHEREAS Clause. Emphasis supplied.

[127] GPPB NPM 040-2005.

to recommend the actual awarding of the contract when a Negotiated Procurement is pursued by the Procuring Entity.

While R.A. 9184 identifies the recommendation of the awarding of contracts to the Head of the Procuring Entity or his duly authorized representative as a function of the BAC,[128] such provision is read together with the applicable provision on the awarding of contracts under Section 37 of R.A. 9184, which states that:

> SEC. 37. *Notice and Execution of Award.* – Within a period not exceeding fifteen (15) calendar days from the **determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award**, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid. (Emphasis and underscoring supplied)

It is clear from this provision that the requirement of the BAC recommendation of awarding contracts applies only to procurement involving bidding and not to Negotiated Procurement of Highly Technical Consultants. In fact, it is significant to note that even in the list of procedures for Negotiated Procurement under the Manual of Procedures, there is no requirement for the BAC to recommend the awarding of the contract, aside from recommending the resort to an alternative mode of procurement.

While the OCAt Report cited a certain GPPB Non-Policy Opinion on the BAC's function of recommending awards that were subject to Negotiated Procurement, it must be noted that such opinion is inconsistent with, if not totally opposite to other GPPB opinions. In GPPB Non-Policy Matter (NPM) 068-2004, the GPPB held that:

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[128] R.A. 9184, Sec. 12.

Under Section 12.1 of the IRR-A of R.A. 9184, one of the responsibilities entrusted to the BAC is to recommend the award of contracts to the head of the procuring entity or his duly authorized representative. **However, this responsibility is performed by the BAC in cases where the agency procures through competitive bidding or under the alternative methods of procurement where public bidding procedures are required to be adopted**, such as Limited Source Bidding under Section 49 of the IRR-A of R.A. 9184, and Negotiated Procurement under Section 53 (a) and (b) of the same rules.

On the other hand, with respect to those alternative methods of procurement where the public bidding procedures are not mandated to be undertaken, such as, Direct Contracting, Repeat Order and Shopping, under Sections 50, 51 and 52 of the IRR-A of R.A. 9184, respectively, **there is no need for the BAC to perform such function**. x x x. (Emphasis and underscoring supplied)

As regards the supposed failure of the BAC-CS to issue a Notice of Award and Notice to Proceed, again, the OCAt Report has no legal basis to support its assertion. **In the list of procedures applicable to Negotiated Procurement under the Manual of Procedures, there is no requirement for the BAC to issue a Notice of Award and Notice to Proceed. *Moreover, according to Section 37of R.A. 9184, it is the Procuring Entity and not the BAC who shall issue the Notice of Award and Notice to Proceed***:

"x x x In case of approval, **the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award** to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

x x x x x x x x x

The Procuring Entity shall issue the Notice to Proceed to the winning bidder not later than seven (7) calendar days from the date of approval of the contract by the appropriate authority. x x x" (Emphasis supplied)

Hence, contrary to the position of the OCAt, there is no fault in the manner by which the BAC-CS participated in the Negotiated Procurement on the subject contracts.

III. *There is no violation of the procurement law with respect to the renewal of the subject contracts.*

Under Section 53.7 of the 2009 IRR, contracts procured through Negotiated Procurement of Highly Technical Consultants may be renewable at the option of the appointing Head of the Procuring Entity:

> ***53.7 Highly Technical Consultants.*** In the case of individual consultants or partnerships hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant: Provided, however, That the term of the individual consultants or partnerships shall, at the most, be on a six month basis, **renewable at the option of the appointing Head of the Procuring Entity**, but in no case shall exceed the term of the latter.

The OCAt Report itself acknowledged that the subject contracts are not "extensions" but renewals under the abovementioned provision of the 2009 IRR.[129]

The OCAt likewise conceded, citing GPPB NPM 111-2004, that "it is sufficient for the end-user unit to submit the renewal of contract of the individual consultant to the head of the procuring entity for approval."[130] **Thus, with the renewal of the subject contracts having been duly approved by the Head of the Procuring Entity, *i.e.*, the Chief Justice, the renewals were in line with the prevailing rules on procurement**.

Nonetheless, the OCAt still questioned the validity of the renewals of the subject contracts since, supposedly, "R.A. No. 9184 and its Revised IRR prescribe other mandatory procedural and documentary requirements which have to be complied with,"[131] referring to the purported legal infirmities it had

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[129] *Rollo*, p. 31.

[130] *Id*.

[131] *Id*.

previously raised against the BAC-CS' participation in the Negotiated Procurement of the subject contracts.

As already exhaustively and comprehensively discussed in the immediately preceding section, the alleged findings of the OCAt Report on the claimed violations of procedural and documentary requirements under procurement law are all wrong. Indeed, they are all baseless. To be sure, they are egregious errors. Hence, there is no reason to find any error with respect to the renewals of the subject contracts.

IV. *The subject contracts should not be nullified due to the failure to publicly post the Notice of Award.*

The OCAt found that the subject contracts violated the supposed mandatory requirement under the 2009 IRR regarding the posting of notices of award by the BAC. Since there was a non-observance of a legal requirement, the OCAt posited that the subject contracts should automatically be deemed null and void.

The OCAt Report referred to Section 54.3 of the 2009 IRR:

> 54.3 In all instances of alternative methods of procurement, the BAC, through the Secretariat, shall post, **for information purposes**, the notice of award in the PhilGEPS website, the website of the procuring entity concerned, if available, and at any conspicuous place reserved for this purpose in the premises of the procuring entity.

The aforementioned provision seems to be categorical in stating that in all instances of alternative methods of procurement, including Negotiated Procurement, the BAC is required to post, "**for information purposes**," the notice of award in the PhilGEPS website, the website of the Procuring Entity concerned, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity.

However, upon closer examination of R.A. 9184, the 2009 IRR requirement on the posting of the Notice of Award is of

doubtful application to contracts procured through Negotiated Procurement of Highly Technical Consultants.

The requirement for the issuance of a formal Notice of Award as a prerequisite for the entering of a contract is governed by Section 37 of R.A. 9184:

> SEC. 37. *Notice and Execution of Award*. – Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the **Lowest Calculated Responsive Bid or Highest Rated Responsive Bid**, and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. **In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid**.
>
> **Within ten (10) calendar days from receipt of the Notice of Award, the winning bidder shall formally enter into contract with the Procuring Entity.** When further approval of higher authority is required, the approving authority for the contract shall be given a maximum of twenty (20) calendar days to approve or disapprove it. (Emphasis and underscoring supplied)

A reading of the aforesaid provision makes it apparent that the issuance of a Notice of Award in the procurement process refers to contracts procured through the bidding process.

Under the law, the required period for the issuance of the Notice of Award is within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid. Further, the said provision requires the Head of the Procuring Entity or his duly authorized representative to immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid. Furthermore, within ten (10) calendar days from receipt of the Notice of Award, the law refers to the winning bidder formally entering into contract with the Procuring Entity.

As already explained, under R.A. 9184, the concept of bidding is divergent from the concept of procurement under Negotiated Procurement of Highly Technical Consultants where, instead of undergoing a bidding procedure wherein interested parties may participate, the Procuring Entity and the consultant directly engage each other in negotiation, owing to the highly technical nature of the contact, as well as the factor of trust and confidence involved. Moreover, it must be reiterated that Section 5(d) of R.A. 9184 defines a **bid** as a signed offer or proposal submitted by a supplier, manufacturer, distributor, contractor or consultant **in response to the Bidding Documents**.

As acknowledged by the OCAt Report itself, the procurement of the subject contracts, as it involves Negotiated Procurement of a Highly Technical Consultant, is **a "special case" wherein the "tender of the usual bid documents" is "done away" with**.[132] Consequently, it is admitted that the concept of a bid does not apply as regards the subject contracts which were procured *via* Negotiated Procurement of Highly Technical Consultants.

Hence, the foregoing provision on the issuance of a Notice of Award and, corollarily, the posting requirement under the 2009 IRR, should not be applied with respect to the Negotiated Procurement of Highly Technical Consultants, which obviates any semblance of competitive or public bidding.

A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. In short, every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.[133]

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[132] *Id*. at 26. Emphasis and underscoring supplied.

[133] *Chavez v. Judicial and Bar Council, et al*., 691 Phil. 173, 200-201 (2012).

Thus, in order to harmonize the 2009 IRR requirement of public posting of Notices of Award with the provision on when a Notice of Award is required under R.A. 9184, the rule should be construed to mean that the BAC is required to post, for information purposes, the notice of award in the PhilGEPS website, the website of the Procuring Entity concerned, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity in instances involving **Competitive Bidding and alternative methods of procurement which entail Competitive Bidding or a semblance thereof**.[134]

Such interpretation is more in harmony, not only with R.A. 9184 itself, but also with the Manual of Procedures. In the steps for conducting Negotiated Procurement found in the Manual of Procedures, the requirement of posting of the award is **NOT** imposed on the procurement of the services of individual consultants under special cases, such as in the instant case where there is Negotiated Procurement of a Highly Technical Consultant.[135]

Moreover, restricting the mandatory requisite of posting Notices of Award to instances involving Competitive Bidding and alternative methods of procurement which involve Competitive Bidding or a semblance thereof is likewise consistent with several GPPB issuances, which recognized differentiations of requirements applicable to alternative methods of procurement that involve or have a semblance of Competitive Bidding and to those that do not.

The GPPB has acknowledged the absence of any requirement of eligibility documents when resorting to any of the alternative

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[134] An example of which is the alternative method of procurement of Limited Source Bidding under Section 48(a), Article XVI of R.A. 9184: "*Limited Source Bidding*, otherwise known as Selective Bidding – a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract[.]"

[135] Manual of Procedures, pp. 85-86.

methods of procurement where competitive bidding or a semblance thereof is not present.[136]

Further, in its Resolution No. 30-2013, the GPPB opined that while registration by the supplier or consultant with PhilGEPS is still required for procurements through alternative methods in order to ensure the widest dissemination of the procurement activity, it nonetheless identified Negotiated Procurement of Highly Technical Consultants and other alternative modes of procurement that preclude any semblance of Competitive Bidding procedure as procurement methods where registration with PhilGEPS would be impractical and unnecessary.[137]

Furthermore, in its Non-Policy Opinion NPM 068-2004, the GPPB explained that the task of the BAC to recommend the award of contracts apply only in cases where the agency procures through competitive bidding or under the alternative methods of procurement where public bidding procedures are observed. On the other hand, the GPPB held that with respect to those alternative methods of procurement where the public bidding procedures are not mandated to be undertaken, there is no need for the aforementioned rule to apply.[138]

Hence, it is evidently clear that the rules referring to bidding should not be slavishly made to apply to alternative methods of procurement that do not involve bidding procedures or do not have a semblance thereof, such as the Negotiated Procurement of Highly Technical Consultants. Therefore, the failure of the BAC-CS to publicly post the awarding of the subject contracts to Ms. Macasaet in the PhilGEPS, the Court's website, and the Court's bulletin board should not lead to the nullification of the validity of the subject contracts.

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[136] GPPB Resolution No. 18-2015, 5th WHEREAS Clause.

[137] GPPB Resolution No. 30-2013.

[138] GPPB NPM 068-2004.

V. *There are no infirmities regarding the consultancy fees*:

A. *The exclusion of reimbursable costs from the consultancy fees is not in violation of the rule on fixed price contracts*

The OCAt Report stated that in determining the budget for a consultancy contract, Ms. Macasaet's travel and accommodation expenses should have been included or factored in her contract. It observed that Section 4.1 of the subject contracts expressly excluded the reimbursable "travel" and "accommodation" costs from her consultancy fees of ₱600,000.00 and ₱1,500,000.00, respectively. The OCAt thus concludes that the contractual provisions which exclude the reimbursable travel and accommodation fees from the consultancy fees violate Section 61, 61.1 and Annex F of the Revised IRR of R.A. 9184 pertaining to fixed price consultancy contracts.[139]

However, contrary to the OCAt's findings, the Manual of Procedures, which was allegedly violated because of the exclusion of reimbursable costs from the consultancy fees, in fact provides that the reimbursement of accommodation and transportation expenses *actually spent* by a technical consultant does not result in violation of the rule on fixed-price contract. It states that "the cost of a consultancy shall consist of [remuneration and **reimbursable costs, which can either be based on agreed fixed rates or actual costs**][140] **and shall be presented in the agreement in the like manner.**"[141] Thus, it

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[139] *Rollo*, p. 33.

[140] See Manual of Procedures, pp. 11, 13-14. In summary, the Manual on Consulting Services allows for the payment of reimbursable costs such as transportation expenses, *per diems*, communication expense, cost of preparing documents to be submitted, acquisition of software licenses, equipment purchases, and cost of other items deemed necessary for the project. Such reimbursable costs can either be based on agreed fixes rates or on actual cost.

[141] *Id*. at 11, par. 5.

allows payment of reimbursable expenses based on actual cost and not on fixed rate as part of the contract price as long as this arrangement is put in writing and forms part of the contract with the consultant. As correctly argued by Atty. Ocampo, even if one talked of fixed rates for travel and accommodation, it is clear that they need not be integrated into the consultancy fees fixed in the contract.[142]

In addition, the OCAt's conclusion does not conform with the applicable Commission on Audit (COA) guidelines. The 2012 Updated Guidelines for the Prevention and Disallowance of IUEEU Expenditures only prohibit the "[g]rant of [C]hristmas bonuses, cash gift and other fringe benefits to consultants... who are not salaried officials of the government as they are not considered employees of the hiring agency."[143] As identified in the Manual of Procedures, there is no prohibition against "reimbursable costs based on actual expenses" including "other expenses associated with the execution of services."[144] **In this connection, to show that the OCAt's conclusion is clearly misplaced, it must be pointed out that the COA never issued any adverse finding or notice of disallowance against the reimbursement of Ms. Macasaet's travel expenses.**[145]

Thus, given that the Manual of Procedures allows the payment of reimbursable travel expenses based on actual cost, the subject contracts cannot be voided based on the allegation of the OCAt that the rule on fixed price contracts was violated.

B. *The consultancy fees were not unreasonable*

i. *There was proper market research benchmarking*

In its Report, the OCAt said that the market research previously conducted by Atty. Ocampo and Mr. Davis was flawed. The

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[142] *Rollo*, p. 779.

[143] Commission on Audit Circular 2012-003 (29 October 2012), Annex A, No. 1.4

[144] Manual of Procedures, pp. 11-14.

[145] *Rollo*, pp. 779-780.

OCAt questioned the Memorandum dated April 16, 2014 which states that the consultancy fees of Ms. Macasaet were fair and reasonable, considering the scope of her work and comparing it with the cost of similar ICT consultancies that the Court approved in 2012, *i.e.*, consultancy for the review of the terms for Judiciary Case Management System and Enterprise Information System, which cost ₱1.8 million per consultancy.[146] The OCAt questioned the validity of this comparison, arguing that firms were hired for the two consultancies and not individual consultants; hence, their rates were incomparable with Ms. Macasaet's.[147]

However, credence should be given to the explanation of Atty. Ocampo that the Memorandum dated April 16, 2014 did not compare the rates of firms to the rates of an individual consultant like Ms. Macasaet.[148] The point of comparison used was the *scope of work* of the two consultancies (costing ₱1.8 million,) *vis-a-vis* the scope of Ms. Macasaet's consultancy (costing less, at ₱1.5 million). Whether the consultancy was done by a firm or by an individual was irrelevant to the analysis of Atty. Ocampo and Mr. Davis.[149]

In fact, as amply explained by Atty. Ocampo in his Comment, comparing the scope of Ms. Macasaet's contract with the scope of the two ₱1.8 million contracts awarded or about to be awarded to the firm, the two consultancy contracts were actually more expensive, considering that each firm had only one deliverable under the contract: the review of one specific project TOR. In contrast, by the time the consultancy of Ms. Macasaet ended in November 2017, she had submitted 18 project TORs. Even assuming that these were her only deliverables and the TORs are divided with the total fees she would have received under the contracts (*i.e.*, ₱11.1 million), then each project TOR would

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[146] *Id*. at 775.

[147] See *id*. at 41.

[148] *Id*. at 775, citing A.M. No. 12-11-4-SC and A.M. No. 12-11-3-SC.

[149] *Id*.

roughly cost ₱617,000.00.[150] Thus, the 2012 consultancies cost 300% more per TOR compared to what was paid to Ms. Macasaet, assuming that her total fees are divided by the 18 TORs that she produced.[151]

Finally, the rate of ₱250,000.00 per month was also lower than Ms. Macasaet's going rate based on her salary history, which is one of the factors considered in determining the cost of consultancy under the Manual of Procedures.[152] According to Ms. Macasaet, she was paid almost P1 million per month as GSIS-CIO consultant.[153] She received ₱500,000.00 as consulting center director at James Martin & Co., exclusive of car plan, gas allowance, communication allowance and other allowances.[154] As President and COO of MISNet, she also received a monthly salary of ₱500,000.00 plus allowances.[155]

In addition, not only did Ms. Macasaet agree to a rate lower than her previous consulting fees and salaries, but she also resigned as President of her company, Pentathlon Systems Resources Inc., and discontinued providing consultancies to other clients in order to avoid conflict of interest, especially when the projects she helped develop for the Court reached the procurement stage where private IT companies were expected

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[150] 11.1 million/18 = 616,666.67.

[151] *Rollo*, p. 776.

[152] Manual of Procedures, p. 11, 1(a), which states: The basic rates represent the salaries actually being received by the professional staff from the consulting firms as certified by the consultant with a sworn statement to be submitted to the Procuring Entity. The basic rates of all individual members of the staff shall be clearly indicated in the contract. In determining the basic rates, the following may be considered as bases:

i. Salary history;
ii. Industry rates; and
iii. Two hundred percent (200%) of the equivalent rate in the Procuring Entity as the floor.

[153] *Rollo*, p. 455.

[154] *Id*. at 456.

[155] *Id*.

to participate.[156] Based on the records, these factors were among those considered in evaluating Ms. Macasaet's consultancy fees.[157]

Thus, the *ponencia* is evidently mistaken in agreeing with the OCAt's finding that there was no proper market research conducted for the prevailing market rates.[158]

ii. *There was no violation of the ceiling provided in DBM Circular Letter No. 2000-11*

The OCAt Report also stated that the proposed consultancy fee of Ms. Macasaet should have been subjected to the ceiling of compensation provided under DBM Circular Letter No. 2000-11.[159]

Under paragraphs 3 and 4 of DBM Circular Letter No. 2000-11 on the subject of *Compensation of Contractual Personnel and Individual Professional Consultants*, the ceiling for remuneration is fixed at 120% of the minimum basic salary of his equivalent position.[160] Upon this premise, the OCAt

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[156] *Id*. at 778.

[157] See *id*. at 777-778.

[158] *Ponencia*, pp. 23-24.

[159] *Compensation of Contractual Personnel and Individual Professional Consultants*, dated June 1, 2000 and signed by Secretary Benjamin E. Diokno.

[160] 3. On the other hand, under Section 81 of the General Provisions of RA 8760 or the FY 2000 General Appropriations Act, individual professional consultants refer to those experts in a field of special knowledge or training who is contracted through service contracts to render particular outputs or services primarily advisory in nature requiring highly specialized or technical expertise which cannot be provided by the regular staff of the agency. Such hiring creates no employer-employee relationship between the individual professional consultants and the agency.

4. Pending the issuance of the guidelines governing the compensation of professional consultancy services, these individual professional consultants shall be paid remuneration of not more than 120% of the minimum basic salary of his

adopted the basic monthly salary of the MISO Chief (*i.e.*, ₱73,099.00) in view of the latter's classification as highly technical and policy-determining.[161] After considering the MISO Chief as a comparable position, the OCAt then concludes that the maximum limit of the compensation of the consultant should have been ₱87,718.80, which was exceeded by the subject contracts covering the period of 2013-2016.[162]

I strongly disagree.

It is noteworthy that DBM Circular Letter No. 2000-11 was issued almost three (3) years before the effectivity date of R.A. 9184, which was the basis for the procurement of Ms. Macasaet's Consultancy. **The OCAt should not have relied on DBM Circular Letter No. 2000-11 since it was no longer in line with R.A. 9184, which became effective in 2003, as well as the Procurement Manual on Consulting Services issued under Section 6 of R.A. No. 9184**, which states:[163]

SEC. 6. *Standardization of Procurement Process and Forms.* – To systematize the procurement process, avoid confusion and ensure transparency, the procurement process, including the form to be used, shall be standardized insofar as practicable.

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equivalent position in the agency based on the allocation list duly approved by the Department of Budget and Management pursuant to National Budget Circular No. 433 dated March 1, 1994.

5. The remuneration of these individual professional consultants shall be inclusive of all benefits accruing for the services rendered. Thus, they are not entitled to any other benefits otherwise accruing to regular personnel of the government.

6. Under existing laws, rules and regulations the remuneration of individual professional consultants shall be chargeable against Maintenance and Other Operating Expense.

[161] *Re: Classifying as Highly Technical or Policy-Determining the Position of Chief of MISO, a Permanent Item in the Court's List of Personnel*, A.M. No. 05-9-29-SC, September 27, 2005.

[162] See *rollo*, p. 42.

[163] *Id*. at 771.

For this purpose, the [Government Procurement Policy Board] shall pursue the development of generic procurement manuals and standard bidding forms, the use of which once issued **shall be mandatory upon all Procuring Entities**. (Emphasis and underscoring supplied)

As can be gleaned from above, the GPPB was mandated to prepare the standardized procurement manuals. Thus, on June 14, 2006, the GPPB adopted and approved the Generic Procurement Manuals (including the Manual of Procedures), which states that all government offices are mandated to use the procurement manuals issued by the GPPB as a reference guide in the conduct of its actual procurement operations effective January 2007.[164] Verily, at the time of the procurement of the First Contract of Services with Ms. Macasaet, government offices were already mandated by Section 6 of R.A. 9184 to use the procurement manuals issued by GPPB.[165] In this regard, it must be pointed out that the GPPB is chaired by the DBM Secretary himself.[166]

In relation to this, Section 2 of the Manual of Procedures discusses how to compute the cost of consultancy.[167] It states that the following factors should be considered in determining the basic rates: (i) salary history; (ii) industry rates;

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[164] GPPB Resolution No. 013-2006, *Approving and Adopting the Generic Procurement Manuals as Harmonized with the ADB, JBIC, and the World Bank Procurement Rules*, June 14, 2006.

[165] *Rollo*, p. 771.

[166] R.A. 9184, 2009 and 2016 Implementing Rules and Regulations, Section 64, which states: "Membership. The GPPB shall be composed of the **Secretary of the Department of Budget and Management**, as Chairman, the Director-General of National Economic and Development Authority, as Alternate Chairman, with the following as Members: the Secretaries of the Departments of Public Works and Highways, Finance, Trade and Industry, Health, National Defense, Education, Interior and Local Government, Science and Technology, Transportation and Communications, and Energy, or their duly authorized representatives and a representative from the private sector to be appointed by the President upon recommendation of the GPPB.

[167] Manual of Procedures, pp. 11-15.

and (iii) two hundred percent (200%) of the equivalent rate in the Procuring Entity as the floor.[168]

Thus, it is obvious that the 120% ceiling cited by the OCAt based on DBM Circular Letter No. 2000-11 and the Manual of Procedures issued by the GPPB are contradictory to each other. It must also be noted that it was Atty. Ocampo's contention that under the Manual of Procedures, the procurement entity will not just use the 200% salary rate as floor (as opposed to a ceiling), but may also consider the previous salary history of the consultant and industry market rates. Indeed, with respect to the latter, the Manual of Procedures states that "[t]he end-user must estimate the cost of consulting services through cost research in the local market."[169] Since the Manual of Procedures issued by the GPPB is a later rule and it is wholly inconsistent with the earlier rule stated in DBM Circular Letter No. 2000-11, as a rule of construction, DBM Circular Letter No. 2000-11 is deemed repealed by the Manual of Procedures. Moreover, the Manual of Procedures was issued under the statutory authority of R.A. 9184, which cannot be overridden by a mere administrative issuance of the DBM, especially a prior one.[170]

Further, as admitted by the OCAt itself, DBM Circular Letter No. 2000-11 has been revoked by DBM Circular Letter No. 2017-9 under the following terms:

> 1.0 The procurement of consulting services, either through an Individual Consultant or a Consultancy Firm, is covered by the provisions of Republic Act (RA) No. 9184 and its 2016 Revised Implementing Rules and Regulations (IRR).
>
> 2.0 As such, agencies shall be guided by the provisions of RA No. 9184, its IRR and the Generic Procurement Manuals, Volume 4 — *Manual of Procedures for the Procurement of Consulting Services*, issued by the Government Procurement Policy Board (GPPB) on June 14, 2006, or its later edition, in the engagement of consultants.

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[168] *Id*. at 11.

[169] *Id*. at 15.

[170] *Rollo*, pp. 772-773.

3.0 RA No. 9184 and its IRR, including the *Manual of Procedures for the Procurement of Consulting Services*, contain the step-by-step procedure in the procurement process and the factors to be considered in determining the appropriate "Approved Budget for the Contract" (ABC), and the bases for computing and arriving at the cost of consultancy or consultancy rate, among others.

4.0 In view hereof, National Budget Circular No. 433 dated March 1, 1994 and **Circular Letter No. 2000-11 dated June 1, 2000, which prescribe the guidelines on the hiring of consultants and in setting the compensation of individual professional consultants, are hereby revoked**.[171]

While acknowledging that DBM Circular Letter No. 2000-11 was revoked, the OCAt's boorish insistence that it still governs the standard compensation of consultants from 2011 until May 16, 2017 when DBM Circular No. 2017-9 was issued is totally unavailing.

The *ponencia* maintains that before the revocation of DBM Circular Letter No. 2000-11 by DBM Circular Letter No. 2017-9, the compensation to be paid to individual professional consultants could not exceed the 120% ceiling set by DBM Circular Letter No. 2000-11. While DBM Circular Letter No. 2017-9 refers to the Manual of Procedures to guide agencies in determining consultancy rates, this could not have been applicable before DBM Circular Letter No. 2000-11 was expressly revoked.[172]

Regrettably, the *ponencia* fails to appreciate the import and clarification made in DBM Circular Letter No. 2017-9 which plainly and quite categorically states that the provisions of DBM Circular Letter No. 2000-11 were inconsistent with RA 9184, its IRR, and the Manual of Procedure. To reiterate, DBM Circular Letter No. 2000-11 has already been repealed by R.A. No. 9184. **Needless to say, the DBM itself acknowledged that it is not**

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[171] Emphasis supplied, citations omitted.

[172] *Ponencia*, p. 22.

DBM Circular Letter No. 2000-11 which governs the determination of the cost of consultancy, rather it is governed by R.A. 9184, its IRR, and the Manual of Procedures.

In this connection, it should be emphasized that R.A. 9184 took effect on January 23, 2003, its IRR on September 2, 2009,[173] and the Manual on Consulting Services in January 2007.[174] Evidently, the OCAt was incorrect in implying that it was DBM Circular Letter No. 2017-9 which gave effect to the abovementioned rules. **These rules did not become valid only in 2017, but on the respective dates of their effectivity as provided by law**. Therefore, contrary to the *ponencia*'s holding,[175] even before the express revocation of DBM Circular Letter No. 2000-11, the guidelines provided for in the Manual of Procedures were already applicable to the consultancy agreements with Ms. Macasaet.

As for ceilings, the 20% premium used by the OCAt to say that the compensation for the subject contracts are unreasonable had been recognized as only applicable to payment of services under job order, thus:

> **9.0 Payment of Services under Job Order**
>
> Individuals hired through job order shall be paid wages equivalent to the daily wage/salary of comparable positions in government and ***a premium of up to 20% of such wage/salary*.**
>
> The payment of services shall be charged against the Maintenance and Other Operating Expenses in the approved agency budget.[176] (Emphasis and underscoring supplied)

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[173] GPPB Resolution No. 03-2009, *Approving the Revised Implementing Rules and Regulations of Republic Act No. 9184*, July 22, 2009. The revised rules were published on the Official Gazette on August 3, 2009.

[174] GPPB Resolution No. 013-2006, *Approving and Adopting the Generic Procurement Manuals as Harmonized with the ADB, JBIC, and World Bank Procurement Rules*, June 14, 2006.

[175] See *ponencia*, p. 23.

[176] CSC-COA-DBM Joint Circular No. 1, s. 2017, June 15, 2017.

Specifically, for individual contracts of service, as the subject contracts, Joint Circular No. 1, s. 2017 provides:

> **8.0 Payment of Services under Individual Contract of Service**
>
> Individuals hired through contract of service shall be paid the ***prevailing market rates***, subject to the provisions of RA 9184 and its Implementing Rules and Regulations.
>
> The payment of services shall be charged against the Maintenance and Other Operating Expenses in the approved agency budget.
>
> Individuals hired through contract of service have the option to enroll themselves in social benefit programs thru the SSS, PhilHealth and PAG-IBIG Fund as self-employed members. (Emphasis and underscoring supplied)

Thus, it was erroneous for the OCAt to apply the 20% premium requirement to the subject contracts.

It is the OCAt's assertion that the COA used "market rate" as standard for determining the reasonableness of consultancy fees for the first time only in 2017 by virtue of DBM-CSC-COA Joint Circular No. 1, s. 2017.[177]

However, such assertion is belied by the fact that **as early as 2012, the COA had already recognized the use of market rates instead of the 120% ceiling imposed by DBM Circular Letter No. 2000-11**. Moreover, the COA uses the following earlier issuances as bases for auditing government transactions: the procurement law (2003), the Manual of Procedures (2006) and the 2012 Updated Guidelines for the Prevention and Disallowance of Irregular, Unnecessary, Excessive, Extravagant and Unconscionable (IUEEU) Expenditures (Guidelines for IUEEU Expenditures) (2012).[178]

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[177] See *rollo*, p. 774.

[178] Commission on Audit, Circular 2012-003, *Updated Guidelines for the Prevention and Disallowance of Irregular, Unnecessary, Excessive, Extravagant and Unconscionable (IUEEU) Expenditures*, October 29, 2012.

To further bolster this fact, it is important to note that the Guidelines for IUEEU Expenditures does not in any way mention the 120% ceiling in DBM Circular Letter No. 2000-11 as a ground to invalidate government transactions. On the contrary, consistent with R.A. 9184 and its Manual of Procedure, it uses the "current and prevailing market value" as a guidepost to determine whether an expenditure is unconscionable.

Hence, contrary to the *ponencia*'s holding,[179] it was not only Joint Circular No. 1, s. 2017 which provided that the prevailing market rates should apply for individual professional consultants. **The use of "market rate" as the standard for determining the reasonableness of consultancy fees was already applicable *prior to* the issuance of said Joint Circular in 2017.**

In any case, even assuming that the appropriate ceiling remains to be that set forth in the 2000 DBM Circular, it does not appear that there exists an equivalent position to which the 120% compensation ceiling can be attached.

In the *ponencia*, it was held that the position of MISO Chief in the SC is equivalent to the position of Ms. Macasaet under the Contracts of Services. Thus, the remuneration of Ms. Macasaet should not be more than 120% of the basic minimum monthly salary of the MISO Chief.[180]

However, it should be emphasized that the position of Ms. Macasaet as an ICT consultant is in no way equivalent to the position of the MISO Chief. The qualifications of Ms. Macasaet as an ICT consultant and that of the MISO Chief, as well as the scope of their work, are entirely different. Stated simply, it is obvious that there exists no equivalent position for the same.

In this connection, the work performed by Ms. Macasaet was not merely to oversee or overview the implementation of the Updated EISP. A perusal of her accomplishment reports

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[179] *Ponencia*, p. 23.

[180] *Id*.

per contract would reveal that she did not only perform general IT consultancy which could have been done by the MISO Chief.

Hence, the OCAt's conclusion that Ms. Macasaet's compensation is unreasonable based on the assumption that the basic salary of the MISO Chief is the appropriate government sector benchmark as "equivalent position" plainly rests upon wrong premises.

As discussed earlier, the scope of work of the ICT Consultant is sufficiently distinct from the functions of the MISO Chief. The work of the MISO Chief is general in scope, while Ms. Macasaet's work is specific to the development and implementation of the EISP. Moreover, it bears reiterating anew that the EISP encompasses not merely the ICT system of the Court alone; it involves the development of the complex IT framework and other computerization projects covering the *entire judiciary*. To illustrate, the integrated automation program under the EISP encompasses more than 3,500 trial court locations and stands to benefit more than 30,000 court employees.[181] This is in stark contrast with the mandate of the MISO[182] which is limited to providing technological services and managing the computerized monitoring system installed in *Supreme Court alone*. The review of the IT framework of the entire judiciary is clearly beyond the scope of the MISO's functions.

Additionally, it should be stressed once more that since the EISP encompasses the IT initiatives of the entire judiciary, its review necessarily includes an evaluation of the projects and initiatives of the MISO. Thus, the MISO cannot possibly be tasked to assess and evaluate its own IT projects. Indeed, an independent, highly technical consultant is better equipped to ensure the development of an improved IT system for the judiciary.

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[181] *Rollo*, p. 452.

[182] See A.M. No. 92-3-021-SC, *Re: Creation of the Management Information Systems Office*.

Finally, it bears reiterating that, along with Atty. Ocampo, it was Mr. Davis, then Acting Chief of the MISO, who recommended Ms. Macasaet to be the consultant for the Updated EISP.[183] Verily, the MISO itself recognized the need to hire a consultant for such undertaking.

Considering the level of expertise and the magnitude and scope of work required for the review and implementation of the EISP, it is clear that the consultancy position of Ms. Macasaet is the first of its kind and has no equivalent post in the Court.

As important, it should be emphasized that R.A. 9184 itself recognizes that the need for consulting services arises precisely from the lack of capacity or capability of the government or its organic personnel to undertake:

> SEC. 5. *Definition of Terms*. – For purposes of this Act, the following terms or words and phrases shall mean or be understood as follows:
>
> x x x x x x x x x
>
> (f) *Consulting Services* – refer to services for Infrastructure Projects and other types of projects or activities of the Government requiring adequate **external technical and professional expertise that are beyond the capability and/or capacity of the government to undertake** such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies. (Emphasis supplied)

Clearly, therefore, given the inapplicability of DBM Circular Letter No. 2000-11 as the measure for the determination of the compensation of the individual professional consultant, the *ponencia* gravely erred when it ruled that the fees were unreasonable. I maintain that there is no cogent reason for the Court to declare the subject contracts void on the basis of unreasonableness of the fees.

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[183] *Rollo*, pp. 614-616.

VI. ***On the Infirmities regarding the CAF:***

A. ***There was no insufficiency of the CAFs pertaining to the 1st and 2nd Contracts due to non-inclusion of reimbursable travel and accommodation costs***

There is no dispute as to the existence of the CAFs for the 1st and 2nd Contracts of Services of Ms. Macasaet, which the OCAt Report itself acknowledged.[184] Moreover, the issue as to the reimbursable travel and accommodation costs has already been discussed above. Hence, this discussion will be focused on the CAFs for the 3rd to 8th Contracts of Services.

B. ***The 3rd to 8th Contracts Sufficiently Complied with the CAF Requirements***

The OCAt Report noted that there appears to be no CAFs for the 3rd to 8th Contracts of Services of Ms. Macasaet; hence, these contracts should be declared void for violating Section 40, Chapter 5 and Section 58, Chapter 7, Book VI of Executive Order No. (E.O.) 292 of 1987 (Administrative Code) and Sections 85, 86, 87 of Presidential Decree No. (P.D.) 1445 (Government Auditing Code).[185] Nonetheless, the OCAt recommends that Ms. Macasaet be compensated on the basis of *quantum meruit* considering that she completely delivered the services required for the contracts involved.[186]

In his Comment, Atty. Ocampo stresses that the issuance of a CAF is only mentioned in Section 20 of R.A. 9184, which refers to the pre-procurement procedure for regular bidding. In contrast, the provisions on alternative modes of procurement are silent as regards the CAF. The same distinction appears in the 2009 Revised IRR and the Manual of Procedures.

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[184] *Id*. at 35.

[185] *Id*. at 33-38.

[186] *Id*. at 38.

Accordingly, the PPC was not required to issue a CAF for procurements using an alternative mode of procurement.[187]

Nevertheless, Atty. Ocampo maintains that all fees paid to Ms. Macasaet were covered by funds appropriated by law and that the availability of funds had been certified by the Court's financial officers in several financial documents.[188]

Before ruling on this matter, it is imperative to discuss the legal provisions involved under the Government Auditing Code and Administrative Code.

Chapter Four (*Application of Appropriated Funds*) of the **Government Auditing Code** states:

> SECTION 85. *Appropriation Before Entering into Contract*. — (1) **No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor**, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure.
>
> (2) Notwithstanding this provision, contracts for the procurement of supplies and materials to be carried in stock may be entered into under regulations of the Commission provided that when issued, the supplies and materials shall be charged to the proper appropriation account.
>
> SECTION 86. ***Certificate Showing Appropriation to Meet Contract.*** — **Except in the case of a contract for personal service**, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three months, or banking transactions of government-owned or -controlled banks, **no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof**, subject to verification by the auditor concerned.

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[187] *Id*. at 769.

[188] *Id*. at 768.

The certificate signed by the proper accounting official and the auditor who verified it, shall be **attached to and become an integral part of the proposed contract**, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

SECTION 87. *Void Contract and Liability of Officer*. — Any contract entered into contrary to the requirements of the two immediately preceding sections shall be **void**, and the **officer or officers entering into the contract shall be liable to the government or other contracting party** for any consequent damage to the same extent as if the transaction had been wholly between private parties. (Emphasis and underscoring supplied)

The same provisions also appear in the **Administrative Code**, specifically in Sections 46, 47, and 48, Chapter 8, Subtitle B, Title I, of Book V. In addition, the Administrative Code also contains the following provision in Book VI, Chapter 5:

SECTION 40. ***Certification of Availability of Funds.*** — **No funds shall be disbursed, and no expenditures or obligations chargeable against any authorized allotment shall be incurred or authorized** in any department, office or agency **without first securing the certification of its Chief Accountant** or head of accounting unit as to the availability of funds and the allotment to which the expenditure or obligation may be properly charged.

No obligation shall be certified to accounts payable unless the obligation is founded on a valid claim that is properly supported by sufficient evidence and unless there is proper authority for its incurrence. Any certification for a non-existent or fictitious obligation and/or creditor shall be considered void. The certifying official shall be dismissed from the service, without prejudice to criminal prosecution under the provisions of the Revised Penal Code. Any payment made under such certification shall be illegal and every official authorizing or making such payment, or taking part therein or receiving such payment, shall be jointly and severally liable to the government for the full amount so paid or received. (Emphasis and underscoring supplied).

Based on the cited provisions, it appears that there are **two different and distinct requirements involved**: (1) a Certificate

Showing Appropriation to Meet Contract (Certificate Showing Appropriation); and (2) a CAF. These provisions are hereby reproduced again in tabular form for easy reference:

Certificate Showing Appropriation to Meet Contract	**Certificate of Availability of Fund**
Section 86, Chapter 4 of the Government Auditing Code; and Section 47, Chapter 8, Subtitle B, Title I, of Book V of the Administrative Code	Section 40, Chapter 5, Book VI of the Administrative Code
Certificate Showing Appropriation to Meet Contract. — Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three (3) months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current calendar year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate	*Certification of Availability of Funds*. — No funds shall be disbursed, and no expenditures or obligations chargeable against any authorized allotment shall be incurred or authorized in any department, office or agency without first securing the certification of its Chief Accountant or head of accounting unit as to the availability of funds and the allotment to which the expenditure or obligation may be properly charged. No obligation shall be certified to accounts payable unless the obligation is founded on a valid claim that is properly supported by sufficient evidence and unless there is proper authority for its incurrence. Any certification for a non-existent or fictitious obligation and/or creditor shall be considered void. The certifying official shall be dismissed from the service,

signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished. (Underscoring supplied)	without prejudice to criminal prosecution under the provisions of the Revised Penal Code. Any payment made under such certification shall be illegal and every official authorizing or making such payment, or taking part therein or receiving such payment, shall be jointly and severally liable to the government for the full amount so paid or received. (Underscoring supplied)

A plain reading of the two provisions reveals that these are different and distinct certificates: ***first***, while the CAF does not appear in the Government Auditing Code, both Certificates appear in the Administrative Code under different Chapters; ***second***, the Certificate Showing Appropriation provides for an exception clause, while the CAF does not provide any; ***third,*** the Certificate Showing Appropriation is made upon entering into a contract and the same is attached to the proposed contract; while the CAF only provides that the certification shall be made before funds are disbursed and expenditures or obligations are incurred or authorized; and ***fourth,*** the Certificate Showing Appropriation certifies that "funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current calendar year is available for expenditure," while the CAF certifies the "availability of funds and the allotment to which the expenditure or obligation may be properly charged."

While the OCAt Report mentions CAF, it cites the provisions covering both the Certificate Showing Appropriation and the CAF. Since it is clear that these are **distinct** certificates required by law, they should be treated separately in relation to the matter at hand.

In its Report, the OCAt did not raise any issue regarding the **Certificate Showing Appropriation** and consequently, the other parties were not apprised of the same. Accordingly, the *ponencia* should not have delved into the matter,[189] as it was unfair to the court officials involved who are not able to present any evidence as regards this issue.

In any case, **the existence of the actual appropriation to cover the fees of Ms. Macasaet under the Court's budget is not disputed**. As stated in Atty. Ocampo's Comment, there were available appropriations in the Supreme Court budget to fund the consultancy fees of the IT consultant for the years 2014-2017 (the period covering the 3rd to 8th Contracts). He attached a certification issued by the FMBO which shows that the fees paid to Ms. Macasaet were charged against the budget line item of "Professional Services" under the Court's Maintenance and Other Operating Expenditures (MOOE) budget. Specifically, the following amounts were appropriated in the Supreme Court for the said budget line item: ₱28.52 million for 2014; ₱28.52 million for 2015; ₱267.42 million for 2016, and ₱267.42 million for 2017. Hence, there was sufficient money appropriated to cover the consultancy fees, which is ₱1.5 million per contract.[190]

As regards the **CAF**, the OCAt Report found that there were no CAFs issued for the 3rd to 8th Contracts. This was belied by Atty. Ocampo, however, who claimed that the availability of funds had been certified in various financial documents.

It is undisputed that there were CAFs issued by the FMBO Budget Division prior to the execution of the 1st and 2nd Contracts. The CAF dated September 2, 2013 states:

> This is to certify that the amount of **SIX HUNDRED THOUSAND Pesos (₱600,000.00)**, inclusive of applicable taxes, will be made available for the payment of a consultancy contract agreement for a period of six (6) months for the Review of the Implementation and

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[189] *Ponencia*, pp. 29-30.

[190] *Rollo*, p. 768.

Update of the [EISP] and Related ICT Projects of the Judiciary. The amount will be charged against the regular budget of the Supreme Court allotted for the purpose under the General Appropriations Act on the year the expense is incurred.[191] (Emphasis in the original)

As for the 2nd Contract, the CAF dated May 9, 2014 states:

This is to certify that the amount of **ONE MILLION FIVE HUNDRED THOUSAND Pesos (₱1,500,000.00)** will be made available to cover the consultancy fee for the Consultancy Agreement, in connection with the Implementation of the Updated [EISP] of the Judiciary. The amount will be charged against the regular budget of the Supreme Court allotted for the purpose under the General Appropriations Act on the year the expense is incurred.[192] (Emphasis in the original)

As found by the OCAt, no similar certification had been issued prior to entering into the 3rd to 8th Contracts. ***However*, this does not necessarily mean that there is non-compliance** with Section 40, Chapter 5 of the Administrative Code **on the CAF requirement**.

To recall, the provision on CAF requires that "[n]o funds shall be disbursed, and no expenditures or obligations chargeable against any authorized allotment shall be incurred or authorized in any department, office or agency without first securing the certification of its Chief Accountant or head of accounting unit as to the availability of funds and the allotment to which the expenditure or obligation may be properly charged." Two things are apparent: *first*, there is **no particular form required** to be followed for the issuance of the CAF; and *second*, unlike the Certificate Showing Appropriation which is required to be issued before entering into the contract, no such requirement appears regarding the CAF. On the contrary, a plain reading of Section 40 readily reveals that the certification by the chief accountant as to availability of funds must be **done *before funds are disbursed* and *expenditures or obligations* chargeable against authorized allotments *are incurred or authorized*.**

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[191] *Id*. at 53.

[192] *Id*. at 89.

Based on these premises, it appears that the 3rd to 8th Contracts duly complied with the CAF requirement. Below are the pertinent statements made by Atty. Ocampo:

> 60. Third, the OCAT report failed to state that **every monthly payment to Ms. Macasaet is covered by an Obligation Request, a form that has a certification from the Supreme Court budget officer on the availability of funds. Each monthly payment is also supported by a Disbursement Voucher, where the Supreme Court chief accountant likewise certifies the availability of the funds for the consultancy fees.** (See Annexes S and T for the Obligation Request and Disbursement Voucher covering the August 24 to September 23 monthly fee of Ms. Macasaet. The same forms are used in all other monthly payments.) All other alternative modes of procurement such as shopping, small value procurement, and procurement through the Procurement Service are also certified in the same manner (see sample Obligation Request and Disbursement Voucher attached as Annexes U and V).
>
> 61. As a final point, **before any payment was made to Ms. Macasaet, the [OCJ] and the [MISO] certified** that the deliverables under her contract had been submitted and attached supporting documents. The certification and supporting documents **then passed through the [OAS], and the finance, budget, and accounting and divisions of the FMBO, and then through the Internal Audit Division.** (See Annex W for the Action Flow Slip for Payment.) The offices, which are in charge of ensuring our compliance with all accounting and auditing rules and are better versed with auditing and accounting guidelines compared to OCAT, **did not find any irregularity in the Ms. Macasaet's contracts and renewals.** No payment[s] were withheld because all required documentation were available to support the payments. All of our financial and auditing units had to do due diligence to ensure that no post-audit findings would be raised by the Commission on Audit. Indeed, 5 years hence since the first contract of Ms. Macasaet was executed, **the COA has yet to issue any adverse observation or notice of disallowance against any of the payments made to Ms. Macasaet on the grounds cited by OCAT**.[193] (Emphasis and underscoring supplied)

Nonetheless, the *ponencia* is of the position that the certification required by law cannot be replaced by mere

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[193] *Id*. at 769-770.

Obligation Requests and Disbursement Vouchers as they serve different purposes from that of a CAF which certifies that there are funds actually appropriated for the contract to be executed and that such funds are actually available to be expended.[194]

However, as mentioned earlier, the law does not require a specific form for the CAF. As such, the certifications by the Chief Accountant (as to the availability of appropriation and funds) contained in the **Obligation Requests**[195] and **Disbursement Vouchers**,[196] **which were issued before the payments were made to Ms. Macasaet** should be deemed, as they are, compliant with the CAF requirement under Section 40, Chapter 5 of the Administrative Code.

On this note, the following averments of Atty. Ocampo must be noted to the effect that the auditing bodies, including the COA, had not made any adverse findings on the subject contracts:

> x x x As a final point, before any payment was made to Ms. Macasaet, the [**OCJ**] and the [**MISO**] certified that the deliverables under her contract had been submitted and attached supporting documents. The certification and supporting documents then passed through the **Office of the Administrative Services**, and the finance, budget, and accounting x x x divisions of the **FMBO**, and then through the **Internal Audit Division**. x x x The offices, which are in charge of ensuring our compliance with all accounting and auditing rules and are better versed with auditing and accounting guidelines compared to OCAT, did not find any irregularity in Ms. Macasaet's contracts and renewals. No payment were withheld because all required documentation were available to support the payments. All of our financial and auditing units had to do due diligence to ensure that no post-audit findings would be raised by the Commission on Audit. Indeed, 5 years hence since the first contract of Ms. Macasaet was executed, **the COA has yet to issue any adverse observation or notice of disallowance against any of the payments made to Ms. Macasaet** on the grounds cited by OCAT.[197] (Emphasis and underscoring supplied)

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[194] *Ponencia*, pp. 33-34.

[195] See Annex S of Atty. Ocampo's Comment.

[196] See Annex T of Atty. Ocampo's Comment.

[197] *Rollo*, p. 770.

VII. *There was no splitting of contracts.*

The OCAt also found that the continuous renewal and/or extension of the subject contracts after every six months amounted to splitting of contracts as defined under the 2009 IRR, which reads as follows:[198]

> 54.1. *Splitting of Government Contracts is not allowed*. Splitting of Government Contracts means the division or breaking up of GOP contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of law and this IRR, especially the necessity of competitive bidding and the requirements for the alternative methods of procurement.

The OCAt averred that the division of five-year EISP implementation period into a series of short term consultancy contracts of six months may be disadvantageous to the government.[199] Contrary to this allegation, the following observations can be made:

First, it bears stressing that it is the 2009 IRR that imposes the time limitation of six months for directly negotiated contracts:

> 53.7 Highly Technical Consultants. In the case of individual consultants hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant: Provided, however, That **the term of the individual consultants shall, at the most, be on a six month basis, renewable at the option of the appointing Head of the Procuring Entity**, but in no case shall exceed the term of the latter. (Emphasis and underscoring supplied)

Hence, the IRR itself specifically mandates that contracts for highly technical, primarily confidential or policy determining

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[198] *Id*. at 45.

[199] *Id*.

consultants be limited to a six-month term. This allows the end-user to evaluate every six months whether there is a further need for the consultant's service.[200]

This is consistent with the GPPB clarification as to the meaning of splitting of contracts in GPPB NPM 136-2014 issued on December 6, 2014, which states:

> **Clarification on the interpretation the term splitting of contracts under Section 53.1 of the IRR of RA 9184.**
>
> [I]t does not follow that once a contract is divided into smaller quantities or phases, there is splitting of contract. In order to determine whether the division of the procurement project into two (2) packages amounts to splitting of contract, **it must be clearly shown that the act must have been done for the purpose of circumventing or evading legal and procedural requirements**, *i.e*., there should be a determination that, despite resorting to public bidding for both packages, the division into two (2) packages was done to circumvent or evade the legal and procedural requirements under RA 9184 and its IRR. (Additional emphasis supplied)

Clearly, the renewal of the subject contracts cannot be described as prohibited splitting because there is no showing that the repeated renewals were done to circumvent or evade the legal and procedural requirements under RA. 9184. **In fact, given that the appropriate modality for the services required is direct negotiation, the Court as the Procuring Entity had no other choice but to enter into the subject contracts with terms not longer than six months as provided under Section 53.7 of the 2009 IRR**.

Second, while another consultant could have been engaged for a longer period, there is no law, rule, or regulation that mandates such course of action. Indeed, it is up to the end-user to determine the necessity and wisdom of a particular mode of consultancy. **The OCAt has absolutely no technical expertise to determine whether one mode of procurement is better than another.** Moreover, the OCAt did not cite any

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[200] *Id*. at 419.

basis to support its conclusion that hiring a consultant for a six-month term is "disadvantageous to the government"[201] compared to hiring a consultant for a five (5)-year period.

In fact, it may actually be argued that it is even more disadvantageous to the government to change or hire another consultant midstream. If a new consultant was hired in the middle of the project, he or she would have to spend a lot of time understanding and learning what had already been done. This would be a waste of time and money, as compared to merely renewing the contract of Ms. Macasaet who was undeniably already very familiar with the project.

As pointed out by Atty. Ocampo, many of the project TORs submitted by Ms. Macasaet included provisions for the training of Supreme Court IT personnel to ensure that knowledge transfer occurred, which would increase internal technical capacity and enable the IT personnel to develop, implement and maintain IT projects, without the need for an external consultant like Ms. Macasaet. The training provisions are found in the TORs of the following IT projects: (i) Hearing Management System; (ii) Judiciary Email System; (iii) Judiciary Portal; (iv) ePHILJA System; (v) Enterprise Resource Planning System; (vi) Digitization of Court Records; (vii) Disaster Recovery Data Center; (viii) Legal Resource Management System; (ix) Systems Integration Services (Phase 1); (x) Systems Integration Services (Phase 2); (xi) Judiciary Data Center Upgrade (Phase 1); (xii) Judiciary Infrastructure Upgrade (Phase 2); and (xiii) Regional Data Centers.[202] Based on this, it is quite obvious that a change of consultant cannot be done midstream because it would require extensive training over a long period of time to become familiar with the current projects given their very technical and complex nature.

Lastly, an examination of the nature of the deliverables involved in the subject contracts shows that the prohibition against splitting of government contracts cited by the OCAt does not apply, as the EISP is implemented in delineated phases.

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[201] *Id*. at 420.

[202] *Id*. at 781-782.

Hence, there is no reason for the subject contracts to be declared null and void on the allegation that the continuous renewal and/or extension of the subject contracts every after six months purportedly amounted to splitting of contracts.

VIII. *The Chief Administrative Officer has the authority to sign the subject contracts*

With respect to the signing authority of Atty. Candelaria, the OCAt Report observed the following:

> In all of these Contracts of Services, Atty. Candelaria, in her capacity as Chief Administrative Officer and Deputy Clerk of Court, entered into the said Contracts with Ms. Macasaet, for and in behalf of the Court. Based on record, it appears that while there was no authority to act as signatory of the Court, Atty. Candelaria signed these Contracts on the basis for the series of Joint Memoranda, either recommending that (a) Ms. Macasaet be hired and that steps be undertaken to execute a contract for consultancy services between the Supreme Court and Ms. Macasaet, or (b) the extension of the Contract of Ms. Macasaet for another six (6) months, all of which were duly approved by the Chief Justice.[203]

The *ponencia* finds that "the records fail to show that [Atty. Candelaria] was authorized in writing by the Supreme Court *En Banc* to act as signatory of the Court in entering into these Contracts of Services with Ms. Macasaet."[204] According to the *ponencia*, the Procuring Entity is the Supreme Court and the head of the Supreme Court is the Supreme Court *en banc*. Thus, the subject contracts should have been approved by the Supreme Court *en banc* as Head of the Procuring Entity, not the Chief Justice alone.[205] Since the former Chief Justice was not given the authority to enter into the subject contracts by the Supreme Court *en banc*, she, in turn, had no authority to further delegate said power to Atty. Candelaria.[206]

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[203] *Id*. at 46.

[204] *Ponencia*, p. 5. Emphasis omitted.

[205] *Id*. at 8.

[206] *Id*. at 13.

In this regard, it must be emphasized that **the OCAt Report did not question the authority of the Chief Justice as the Head of the Procuring Entity. What the OCAt Report questioned was the authority of Atty. Candelaria.** Not once did the OCAt Report mention that the Supreme Court *en banc* was the Head of the Procuring Entity. For all intents and purposes, the OCAt referred to the Chief Justice as the Head of the Procuring Entity, not the Supreme Court *en banc*.

More importantly, it should be stressed that during the duration of the eight contracts from 2013 to 2017, **the Supreme Court *en banc* itself did not raise any objection on the matter**. To elaborate, for her first Contract of Service (October 1, 2013 to March 30, 2014) with the Court, Ms. Macasaet was tasked to review the implementation and update of the EISP and related ICT projects of the judiciary. As part of the final report for her first contract, Ms. Macasaet submitted a revised 5-year work plan and budget for the EISP, which became the Updated EISP.[207] In a Resolution dated September 16, 2014 in A.M. No. 14-09-06-SC, **the Supreme Court *en banc* approved the Updated EISP Workplan and Budget** for 2014 to 2019. One of the whereas clauses therein stated that "an updated work plan and budget of ₱3.97 billion — that address the plan's critical gaps outlined above — have been developed after **a technical expert's review** of the implementation of the EISP."[208] The technical expert referred to in the Resolution was none other than Ms. Macasaet and the updated work plan was the Updated EISP itself which she had developed under her first contract of service. Evidently, from the very beginning, the Supreme Court *en banc* was aware that the former Chief Justice, as the Head of the Procuring Entity, gave her authority for the Court to enter into a consultancy contract with Ms. Macasaet, and yet the *en banc* did not object to the same. This is true as well for the succeeding contracts with Ms. Macasaet.

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[207] *Rollo*, p. 756.

[208] *Id*. at 77. Emphasis and underscoring supplied.

Indubitably, for the Court to now claim that it is the Court *en banc* that is the Head of the Procuring Entity and the former Chief Justice was not authorized to enter into the subject contracts — after its silence for the entire duration of the contracts and after the consultant had already completed the services required of her — goes against the principles of fairness and equity.

In support of this position, the *ponencia* cited A.M. No. 99-12-08-SC (Revised) dated April 22, 2003 on the Referral of Administrative Matters and Cases to the Divisions of the Court, the Chief Justice, and to the Chairmen of the Divisions for Appropriate Action or Resolution. The *ponencia* quoted the following provisions:

III. To **REFER** to the Chief Justice for appropriate action or resolution, **for and in behalf of the Court *En Banc***, administrative matters relating to, or in connection with,

(a) Recommendations for the detail of personnel from one office, division, or section in the Supreme Court and the Office of the Court Administrator to another office, division, or section;

(b) Rendition of overtime services and fixing of overtime compensation;

(c) Purchase of supplies, furniture, vehicles, and equipment, including computers and their accessories or paraphernalia; and approval or disapproval of claims for payment therefor;

(d) Awards of contracts for the supply of services, such as security, janitorial, photocopying services, operation of the canteen, and other allied or incidental services;

(e) Approval of requests for payment of electric, telephone and water bills, and bills for the services mentioned in the immediately preceding item;

(f) Requests for the repair of Halls of Justice and approval of claims for payment therefor;

(g) Disposal of old records and unserviceable vehicles, equipment, computers, and the like;

(h) Domestic travel of officials and personnel of the Judiciary; and

> (i) Such other matters where the decision, action, or resolution thereon or approval thereof is vested in the Chief Justice by the Constitution, by law, by the Court *En Banc*, by resolutions of the Constitutional Fiscal Autonomy Group (CFAG), or by this revised Resolution, such as, the augmentation of items in the budget from savings in other items thereof, realignment of the budget allocation of the continuing appropriation of the Court (the Fiscal Autonomy Account), or the administration of the Judiciary Development Fund (JDF), or those which are traditionally vested in the Chief Justice as head of the Judiciary.[209]

Based on this, the *ponencia* posits that the Chief Justice is not authorized by the Court *en banc* to independently act on behalf of the Supreme Court to enter into government contracts that are highly technical, proprietary, primarily confidential, or policy determining such as the subject contracts. Thus, according to the *ponencia*, the subject contracts should have been authorized by the Supreme Court *en banc* which has administrative power over all courts and personnel thereof, and not merely by the former Chief Justice.[210]

On this note, however, attention is invited to the latter part of the above-quoted provision, to wit: "(i) [s]uch other matters where the decision, action, or resolution thereon or approval thereof is vested in the Chief Justice x x x or those which are traditionally vested in the **Chief Justice as head of the Judiciary**."[211]

Evidently, the provision relied upon by the *ponencia* itself expressly recognizes the Chief Justice as *the* head of the Judiciary. Thus, contrary to the *ponencia*'s erroneous assertion that the Head of the Procuring Entity is the Supreme Court *en banc*, there is already an express recognition that the Chief Justice *is* the head of the Judiciary.

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[209] *Ponencia*, pp. 9-10.

[210] *Id.* at 11.

[211] A.M. No. 99-12-08-SC (Revised), April 22, 2003. Emphasis and underscoring supplied.

This interpretation is not novel as the sitting Chief Justice has been generally and traditionally regarded as the Head of the Procuring Entity. Even the Supreme Court *en banc* made this recognition in its Resolution dated December 4, 2012 in A.M. No. 12-9-4-SC.[212] Consider the following statements therein:

> The OCAT thereby recommended that the Chief Justice, as Head of the Procuring Entity (HoPE): (1) declare that no contract shall be awarded in the procurement project; (2) note the letter-protest of Keng Hua; (3) direct the Court Administrator to immediately facilitate the procurement of basic office supplies for the lower courts through the DBM Procurement Service; and (4) remind the BAC-GS to exercise caution in the conduct of procurement processes.
>
> x x x x x x x x x
>
> x x x Aside from this, the sensitive and confidential nature of the procurement process in the Judiciary requires that personnel tasked with the functions of the Secretariat should enjoy the trust and confidence, not only of the BAC Chairperson but also of the Head of the Procuring Entity. And as stated by the BAC-GS, "[designating coterminous employees as Secretary is necessarily inevitable in the Court, as such is the nature of positions not only in the office of the ACAs (Assistant Court Administrator) but also in the higher offices of the Supreme Court Justices, and the Deputy Court Administrators (DCAs)." These are presumably the reasons **why the Chief Justices, as Heads of the Procuring Entity**, deem it more expedient to maintain the practice of delegating to the BAC Chairpersons the discretion to appoint the heads of their respective Secretariats.[213] (Emphasis and underscoring supplied)

Even at present, the bidding documents released by the SC-BAC refers to the Chief Justice as the Head of the Procuring Entity.[214] Accordingly, that the Chief Justice *is* the Head of

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[212] *Re: Protest Against Bids and Awards Committee for Goods and Services for Disqualifying Keng Hua Paper Products Co., Inc. from Participating in the Procurement of Basic Office Supplies* (Unsigned Resolution).

[213] *Id*.

[214] See SC-BAC-GS Bidding Documents accessible at <http://sc.judiciary.gov.ph/files/bids-and-awards/03-22-19-2-LOT1.pdf and http://sc.judiciary.gov.ph/files/bids-and-awards/04-26-19-2.pdf. >

the Procuring Entity is, as it should be, indisputable. To insist otherwise is totally nonsensical.

The *ponencia* further stated that assuming *arguendo* that the former Chief Justice had the authority to delegate the power to enter into the subject contracts, there was still no showing that Atty. Candelaria was authorized in writing by the former Chief Justice to act as signatory of the Court in entering into the Contracts of Services with Ms. Macasaet.[215] The *ponencia* found that the series of Joint Memoranda prepared and signed by Atty. Ocampo and Mr. Davis cannot be considered as a delegation by the former Chief Justice of full authority to Atty. Candelaria to act and sign on behalf of the Supreme Court.[216] Although the former Chief Justice signed the Joint Memoranda to signify her approval, it did not contain any express delegation of authority to Atty. Candelaria to sign the Contract of Services with Ms. Macasaet.[217]

Such view is wholly mistaken. The records would show that aside from an implied authority and designation to act as signatory, Atty. Candelaria was, in fact, also given an express written authority as required by law.

In this relation, Atty. Candelaria explained in her Comment that the functions of the Deputy Clerk of Court and Chief Administrative Officer is to plan, recommend and implement personnel management and development programs and administrative service functions of the Court. According to her, it is for this purpose that she had requested from the former Chief Justice the authority to sign for and in behalf of the Chief Justice and Associate Justices the documents involving internal personnel matters,[218] to wit:

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[215] *Ponencia*, p. 14.

[216] *Id*. at 15-16.

[217] *Id*. at 16.

[218] *Rollo*, p. 671.

This is to respectfully inform her Honor that the undersigned was granted by former Honorable Chief Justices x x x and Senior Associate Justice Antonio T. Carpio the authority to sign for and in their behalf, communications with other government agencies and the transmittal of Court *En Banc* Resolutions to concerned agencies particularly to the Civil Service Commission (CSC) and the Department of Budget and Management (DBM) regarding appointments and other personnel matters pertaining to the Supreme Court (SC) and the Presidential Electoral Tribunal (PET).

Likewise, the undersigned was authorized to sign the following documents involving internal personnel matters x x x.

In this regard, may the undersigned respectfully request the same authority to sign for and in her Honor's behalf, the documents aforestated x x x in order to alleviate her Honor from signing voluminous papers pertaining to personnel matters x x x.[219]

As the Deputy Clerk of Court and Chief Administrative Officer, she is likewise authorized to sign Contracts for Infrastructure Projects recommended by the BAC. Aside from these is the all-encompassing duty to do related tasks that may from time to time be assigned by the Chief Justice, Associate Justices, or the Clerk of Court.[220]

With respect to the subject contracts, Atty. Candelaria explained that the former Chief Justice, as Head of the Procuring Entity, already approved the award of the subject contracts to Ms. Macasaet and that the said contracts were already prepared by the OCJ indicating the Deputy Clerk of Court and the Chief Administrative Office as the Court's representatives.[221] If this is not an implied authority and designation to act as a signatory for and in behalf of the Court, then what is?[222]

More importantly, aside from the abovementioned implied authority and designation to act as signatory, it is undisputed

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[219] *Id*. at 675.

[220] *Id*. at 671.

[221] *Id*. at 606-613.

[222] *Id*. at 671-672.

that she was also given the written authority required by law. An action slip was issued to Atty. Candelaria by Atty. Ocampo of the OCJ stating that the former Chief Justice is authorizing Atty. Candelaria to sign the contract of services of Ms. Macasaet, to wit:

> I am pleased to furnish your office a copy of the Contract of Services between the Supreme Court and Ms. Helen Macasaet.
>
> **A<u>lso attached for your reference is the authorization from the Chief Justice to execute the said Contract of Services</u>.**[223]

Despite the obvious, the *ponencia* posits that said action slip issued by Atty. Ocampo cannot be considered as "proof" that full written authority was issued by the Head of the Procuring Entity.[224] The *ponencia* further states that the action slip merely stated that an authorization from the former Chief Justice was attached to it, "without expressly stating what the attachment was."[225] However, contrary to this, it is evident from the above-quoted action slip that the attachment refers to the written authorization issued by the former Chief Justice to "**<u>execute</u>** said Contracts of Services," which by plain reading of the first paragraph of the action slip, refers to the Contracts of Services between Ms. Macasaet and the Court.

Thus, contrary to the finding of the *ponencia* that Atty. Candelaria was not given the express authority to sign the Contracts of Services with Ms. Macasaet,[226] the above-quoted action slip is proof that she was in fact given express written authority by the former Chief Justice to sign and execute the Contracts of Services on the latter's behalf.

Atty. Candelaria maintained that her act of signing the subject contracts is a valid exercise of her task of acting as signatory thereto for and in behalf of the Court, in which she exercised

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[223] *Id*. at 605.

[224] *Ponencia*, p. 15.

[225] *Id*.

[226] *Id*. at 15-16.

due diligence and acted within the authority given to her by the former Chief Justice as Head of the Court.[227]

Hence, the *ponencia* seriously erred when it failed to hold that Atty. Candelaria, in her capacity as Deputy Clerk of Court, is indeed authorized to sign the subject contracts. As the Chief Administrative Officer of the Court, there is no question that she may be authorized to sign documents on behalf of the Court or the Chief Justice. Moreover, she was expressly authorized by the former Chief Justice, as Head of the Procuring Entity, to sign the subject contracts on her behalf. Therefore, there is no reason to declare the subject contracts null and void on the ground that there was lack of authority on the part of the signing officer.

The Contracts of Services are valid

In sum, a careful examination of the records of the instant case, as well as a thorough review of the applicable laws, rules, and regulations, would show that, contrary to the findings of the OCAt Report and the *ponencia*, the subject contracts are indeed valid.

These contracts were sufficiently covered by APPs as required under R.A. 9184. The procurement of the subject contracts also followed the requirements under R.A. 9184, its IRR, and the Manual of Procedures regarding the level of participation undertaken by the BAC-CS in the Negotiated Procurement process, and with respect to the other applicable procedural and documentary requirements.

Further, there are no infirmities regarding the consultancy fees granted to Ms. Macasaet. The requirement of issuing CAFs had also been sufficiently met. Moreover, there was no splitting of contracts extant in the instant case. Finally, there is no doubt that the Chief Administrative Officer had the authority to sign the subject contracts on behalf of the Court.

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[227] *Rollo*, p. 672.

A Final Note

Through the resolution of the instant matter, the Court has strayed away from the trail of justice and instead moved towards the path of unfairness.

The beginning of this matter was less than ideal. To put things into perspective, recall that this administrative matter was initially part of a letter-request for certified true copies of certain documents in connection with the filing of an impeachment complaint against the former Chief Justice. The Court referred the determination of the legality of the subject contracts to the OCAt. Subsequently, the OCAt submitted its Report which recommended that the subject contracts be declared void.

Notably, despite grave findings of liability, the OCAt Report was made without *any* comment from the parties involved — including Ms. Macasaet, the person who stands to be most affected by any ruling on the matter. While the parties were subsequently ordered by the Court to file their comments, these were submitted already after the fact — that is, they were not considered at all by the OCAt Report.

Moreover, it appears that the person who initially requested for certain documents in view of the filing of an impeachment complaint had already filed several cases against court officials involving the subject contracts.[228] The grounds he cited were among the grounds used in the OCAt Report in finding the subject contracts void.

Even beyond the actual and possible charges that may be brought against Court officials, this matter also affects one of the major projects of the Court, *i.e.*, the EISP.

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[228] See "*Gadon files graft raps vs 5 Supreme Court officials, consultants,*" < https://news.abs- cbn.com/news/03/12/18/gadon-files-graft-raps-vs-5-supreme-court-officials-consultant > and < https://www.gmanetwork.com/news/news/ nation/646273/gadon-files-raps-vs-sc-officials/story/>(last accessed on July 14, 2019).

These factors should have alerted the Court to be more judicious in resolving this matter. Unfortunately, this was not the case. Contrary to the dictates of prudence, the Court made a declaration of nullity of the contracts on the basis of a mere request for documents and a report made without first hearing the parties involved.

The unfairness is most palpably demonstrated in its order for Ms. Macasaet to return the entire amount she had received as consultancy fees from all eight contracts of services, which amount to ₱11,100,000.00.[229] Even the OCAt Report recommended that despite the nullity of the contracts, payments for Ms. Macasaet's services must still be made on the basis of *quantum meruit* considering that she completely delivered the services required for the contracts involved.[230] Regrettably, the Court did not heed such recommendation. The Court did not even take into consideration that Ms. Macasaet was the only non-lawyer among the key parties in this matter and that most likely, she had to rely on the officials she was dealing with, who were from no less than the Supreme Court and the Office of the Chief Justice.

For the Court now to deny Ms. Macasaet payment for the services she had rendered for the EISP and other ICT projects — which, in fact, the Court has benefited and continues to benefit from — is the height of injustice. I commiserate with Ms. Macasaet on the following statements she made in her Comment:

> 16. Due to my limited personal knowledge of and participation in the procurement process of my ICT consultancy projects, and not being a legal professional, I am not competent to render a legal opinion on the validity of my eight (8) Contracts of Services.
>
> 17. Nevertheless, I must stress that I was made to believe, and I still believe, in all good faith that my eight (8) Contracts of Services are valid and lawful. After all, I contracted with no less than the Highest Court of the land, and I dealt with several lawyers and

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[229] *Ponencia*, p. 35.

[230] *Rollo*, p. 38.

magistrates. It is my belief and understanding that they carefully drafted, studied and reviewed the contracts, and made sure that they are valid and legal. I had no reason to believe that x x x they did not act in good faith, and in the best interest of the government and the public at large. Also, I presumed that those who drafted, studied and reviewed the contracts performed their duties in a regular manner.

18. Assuming for argument's sake that my eight (8) Contracts of Services are void and unlawful and that I should be compensated therefor based on the principle of *quantum meruit*, as the OCAT suggests, there is ample basis in asserting that the compensation I received for the services I rendered is reasonable from the government's perspective even though, from my perspective, such compensation is substantially below market rate.

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20. Indubitably, I deserve to be recompensed for completing the work for which I was engaged. Significantly, the Report noted that this Honorable Court duly issued Certificates of Completion for the first to seventh Contracts of Services. Since the Report was issued prior to the expiration of the eight[h] Contract of Service on 23 November 2017, it failed to note that this Honorable Court has not issued a Certificate of Completion for the eighth and final Contract of Service, and has not released its final payment.[231]

Indeed, it is dishonorable for the Court to turn a blind eye to Ms. Macasaet's accomplished work and disregard all her efforts on the EISP and other ICT projects of the Court. She had rendered services to the Court from 2013 to 2017. How can the Court, within the bounds of fair play, order her to return what she had received for services she had already rendered in the span of four years? For the Court to reap the fruits of Ms. Macasaet's labor while taking what is due her is, in a word, a disgrace. This is unjust enrichment perpetrated by the highest court of the land.

The Court is supposed to be a bastion of fairness, justice, and equity. Regrettably, the Court failed to fulfill its role in the instant matter. I cannot, in good conscience, be part of this injustice. This explains my dissent.

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

Accordingly, I vote to **DECLARE** the eight (8) Contracts of Services executed between the Court and Ms. Helen P. Macasaet for her rendition of Information and Communications Technology (ICT) consulting services from 2013 to 2017 in relation to the Court's Enterprise Information Systems Plan and related ICT projects **VALID**.

EN BANC

[A.M. No. P-18-3890. July 16, 2019]
(Formerly OCA IPI No. 16-4536-P)

ARLENE S. PINEDA, *complainant, vs.* **SHERIFF JAIME N. SANTOS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; NO AFFIDAVIT OF DESISTANCE CAN DIVEST THE SUPREME COURT OF ITS JURISDICTION UNDER THE CONSTITUTION TO INVESTIGATE AND DECIDE COMPLAINTS AGAINST ERRING EMPLOYEES OF THE JUDICIARY.— [T]his Court emphasizes that once an administrative complaint against its employees has been filed before the court, the complainant can no longer withdraw the complaint. *Councilor Castelo v. Sheriff Florendo* elucidates on this: This Court has an interest in the conduct and behavior of all officials and employees of the judiciary and in ensuring at all times the proper delivery of justice to the people. No affidavit of desistance can divest this Court of its jurisdiction under Section 6, Article VII of the Constitution to investigate and decide complaints against erring employees of the judiciary. The issue in an administrative case is not whether the complainant has a cause of action against the respondent, but whether the employees have breached the norms and standards of the courts.

Certainly, an administrative complaint against public officers or employees cannot be withdrawn at any time by the simple expediency of a complainant's sudden change of mind. The people, whose faith and confidence in their government and its instrumentalities need to be maintained, should not be made to depend upon the whims and caprices of complainants who, in a real sense, are only witnesses.

2. ID.; ID.; ID.; ID.; SHERIFFS; GRAVE MISCONDUCT, CONDUCT PREJUDICIAL TO THE INTEREST OF SERVICE, INEFFICIENCY, AND DERELICTION OF DUTY; LIABILITY THEREFOR IS ESTABLISHED WHEN A SHERIFF SOLICITED SEXUAL FAVORS AS A CONDITION FOR THE IMPLEMENTATION OF THE ALIAS WRIT OF EXECUTION, COLLECTED MONEY AS EXECUTION EXPENSES, ATTEMPTED TO PAY OFF COMPLAINANT FOR THE WITHDRAWAL OF THE CASE OR HER NON-APPEARANCE IN THE INVESTIGATION HEARINGS, AND FAILED TO MAKE A REPORT TO THE COURT EVERY 30 DAYS ON THE PROCEEDINGS TAKEN IN RELATION TO THE WRIT'S IMPLEMENTATION, IN VIOLATION OF THE RULES OF COURT; CASE AT BAR.— [T]his Court holds respondent liable for grave misconduct, conduct prejudicial to the interest of service, inefficiency, and dereliction of duty for: (1) soliciting sexual favors as a condition for the implementation of the Alias Writ of Execution; (2) collecting the amount of ₱300.00 as execution expenses; (3) attempting to pay off complainant for the withdrawal of the case or her non-appearance in the investigation hearings; and (4) failing to make a report to the court every 30 days on the proceedings taken in relation to the writ's implementation, in violation of Rule 39, Section 14 of the Rules of Court. As to the first charge, this Court gives weight to the narration of complainant, which was supported by screenshots of their text message conversations. In their dialogue, respondent stated, "*Tulungan nga kita at baka puede punta tau s katabi ng jolibee he he*[.]" Since the place respondent was referring to was a motel, his statement implies that he will give his assistance to complainant if she accedes to his request for sexual favors. Failing to present evidence that he used a different cellphone number then, respondent's bare denial that he owned SIM Number 09357519302 is outright self-serving and uncorroborated. This number even matched his contact detail

saved in the Branch Clerk of Court's mobile phone, further bolstering the claim that it was, indeed, his SIM number. This Court cannot give merit to respondent's allegation that complainant had a monetary motive. This is highly implausible considering that he admitted filing his resignation letter *after* finding out that she would file a case against him. As to the second and third charges, respondent admitted them. In presenting receipts, he implicitly admitted collecting ₱300.00. He also confirmed that he tried to offer complainant ₱10,000.00 for the case's withdrawal or her non-appearance in the hearings. Paying off complainant can only be read as an attempt to cover his guilt. This Court also finds that respondent, after initially making an effort, no longer tried to implement the writ after complainant informed him on the whereabouts of the judgment debtor. This was corroborated by the lack of a report he was mandated to submit. Hence, he violated Rule 39, Section 14 of the Rules of Court.

3. ID.; ID.; ID.; MISCONDUCT; DEFINED AS AN UNACCEPTABLE BEHAVIOR THAT TRANSGRESSES THE ESTABLISHED RULES OF CONDUCT FOR PUBLIC OFFICERS; SIMPLE MISCONDUCT DISTINGUISHED FROM GRAVE MISCONDUCT.— In *Councilor Castelo*, this Court differentiated simple misconduct from grave misconduct: Misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers. . . . To qualify as grave misconduct, there must be showing that the erring employee acted with wrongful intentions or that his acts were corrupt or inspired by an intention to violate the law.

4. ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE; DEFINED AS ANY MISCONDUCT THAT NEED NOT BE RELATED OR CONNECTED TO THE PUBLIC OFFICERS' OFFICIAL FUNCTIONS BUT TENDS TO TARNISH THE IMAGE AND INTEGRITY OF THEIR PUBLIC OFFICE; PENALTY OF DISMISSAL, PROPER IN CASE AT BAR.— [C]onduct prejudicial to the best interest of service is defined as any misconduct that "need not be related or connected to the public officers[']official functions [but tends to tarnish] the image and integrity of [their] public office." Soliciting sexual favors cannot be anything but an intentional act. It is neither a mere error of judgment nor a simple misdemeanor. It shows

the wrongful intention and the corrupt motive of the person asking for it. Respondent brazenly used his position to take advantage of the needs of complainant. Not only did he tarnish the image and integrity of his public office; he also promoted distrust in the administration of justice, which this Court will not condone. For respondent's nefarious act, the most severe penalty of dismissal will be imposed, "not so much to punish [him] but primarily to improve public service and preserve the public's faith and confidence in the government."

5. ID.; ID.; ID.; ID.; ID.; AS AGENTS OF THE LAW, SHERIFFS ARE CALLED UPON TO DISCHARGE THEIR DUTIES WITH DUE CARE AND UTMOST DILIGENCE BECAUSE IN SERVING THE COURT'S WRITS AND PROCESSES AND IMPLEMENTING ITS ORDER, THEY CANNOT AFFORD TO ERR WITHOUT AFFECTING THE INTEGRITY OF THEIR OFFICE AND THE EFFICIENT ADMINISTRATION OF JUSTICE.— [T]his Court reminds our sheriffs on the importance of their role in the justice system, as explained in *Mendoza v. Sheriff IV Tuquero*: Sheriffs play an important role in the administration of justice. They are tasked to execute final judgments of the courts. If not enforced, such decisions become empty victories of the prevailing parties. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice.

R E S O L U T I O N

***PER CURIAM*:**

A sheriff's act of soliciting sexual favors in exchange for the implementation of a writ of execution is grave misconduct punishable by dismissal.

For resolution is this Administrative Matter, which arose from a Letter-Complaint[1] filed by Arlene S. Pineda (Pineda)

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[1] *Rollo*, pp. 75-76.

against Jaime N. Santos (Sheriff Santos), Sheriff III of Branch 3, Municipal Trial Court in Cities, Cabanatuan City, Nueva Ecija. She charged him with soliciting sexual favors and collecting execution expenses without receipt. After investigation, Executive Judge Kelly B. Belino (Judge Belino) found Sheriff Santos guilty of the charges and recommended his dismissal from service.[2]

In her handwritten Letter-Complaint dated September 22, 2015, Pineda alleged that Sheriff Santos solicited sexual favors from her in exchange for the implementation of a writ of execution issued in her favor in a collection of sum of money case.[3] She claimed that he obtained ₱300.00 from her as execution expenses, without issuing a proper receipt.[4]

In another handwritten Letter dated October 8, 2015,[5] Pineda alleged that Sheriff Santos offered her ₱10,000.00 so she would retract her Letter-Complaint. In another undated Letter,[6] Pineda further alleged that a certain Marlyn Magdalena (Magdalena), the Officer-in-Charge of Branch 5, Municipal Trial Court in Cities, Cabanatuan City, could corroborate her allegation on the ₱10,000.00 offer since she intervened for Sheriff Santos.[7] Pineda attached to her Letter screenshots[8] of her and Sheriff Santos' text messages to prove that he solicited sexual favors.

On November 12, 2015, Sheriff Santos filed his Comment.[9] He denied soliciting sexual favors from Pineda in exchange for the execution of the judgment. He explained that he failed

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[2] *Id*. at 222-234, Office of the Executive Judge Investigation Report.

[3] *Id*. at 17, Sheriff's Return, and 222, Office of the Executive Judge Investigation Report.

[4] *Id*. at 222.

[5] *Id*. at 27.

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

[7] *Id*. at 5.

[8] *Id*. at 10-13.

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

to serve the Alias Writ of Execution to the judgment debtor because the latter was neither known nor connected in the workplace that Pineda indicated.[10] He also denied that he collected ₱300.00 from Pineda without a receipt,[11] adding that her "tainted moral character"[12] belied her claims and credibility. Pineda, he claimed, had an affair with a married man and even assaulted a woman with a weapon.[13] To support his claims, he attached to his Comment his Sheriff's Return,[14] two (2) Official Receipts amounting to ₱300.00,[15] and photocopies of the barangay logbook entries[16] on the stabbing incident.

In its April 4, 2018 Resolution,[17] this Court, upon the recommendation of the Office of the Court Administrator, referred the Administrative Complaint to the Vice Executive Judge of the Municipal Trial Court in Cities, Cabanatuan City for investigation, report, and recommendation.

In a hearing held on July 16, 2018, Pineda narrated that she and Sheriff Santos, after failing to serve the Alias Writ of Execution, returned to the court. Sheriff Santos told her that they had to exchange cellphone numbers so they can communicate in relation to the writ's implementation. Thus, she gave her number. Pineda was still in the compound of the Cabanatuan City Hall of Justice when she received text messages from Sheriff Santos.[18] Based on the screenshots on her cellphone, the following conversation took place:

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[10] *Id*. at 14-15 and 17.

[11] *Id*. at 15.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 17.

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

[16] *Id*. at 20-23.

[17] *Id*. at 40-41. The administrative case was previously referred to the Executive Judge of Branch 2, Municipal Trial Court in Cities, Cabanatuan City, but it was revoked because of a pending administrative case against her.

[18] *Id*. at 222-223.

"Sheriff Jaime (09357519302)
[Sheriff Santos] (11:08 AM, Sept 15)
"Ingat"

[Pineda] (11:09AM, Sept 15)
"Slmt po bsta pg my tym kau pki2lungan nman po aq"

[Sheriff Santos]: "Anong klaseng tulong b ang gusto at ibibigay ko s u"

[Sheriff Santos] (11:14AM, Sept 15): "Bsta sbihin at kung kaya ko obibigay ko din he he"

[Sheriff Santos] (11:58AM, Sept 15): "Nakauwi k. n b"

[Pineda] (11:59AM, Sept 15)
"Dpa po d2 po aq doc2s"

[Sheriff Santos] (12:01PM, Sept 15): "Ano ginagawa mo.jan"

[Pineda] (12:02PM, Sept 15)
"My dnalw lng po e bka sardo p brgy daan sarile e pgktpos q d2 dun npo aq pu2nta

Sheriff Santos: "Ok akala ko aabangan kita s may joliber circum. He he"

[Pineda] (12:14PM, Sept 15)
"Bkt sir libre nyo q sna cnv nyo kanina ng aq nagtreat xenyo "

[Sheriff Santos] (12:15PM, Sept 15): "Kumain n ako kung gusto mo lang na abangan kita ngaun"

[Pineda] (12:16PM, Sept 15)
"Bkt sir treat nyo bq"

[Sheriff Santos] (12:17PM, Sept 15): "Ok d lang trip gusto mo b"

[Sheriff Santos] (12:20PM, Sept 15): "Ano abamgan n.kita at magbihis n. ulit ako gusto mo"

[Pineda] (Sept 15)
"Sir bkt mgb2hs p kau, ok n yn ska dpo b nak2ya n aq p treat nyo e aq nga nagp22long xenyo"

[Sheriff Santos] (12:25PM, Sept 15): "Tulungan nga kita at baka puede punta tau s katabi ng jolibee he he"

[Pineda] (12:26PM, Sept 15)
"Ay kau ha sir mdmi p aq lakarn bka nman pwd tx tx muna kc sir d nmn po aq gnun"

[Sheriff Santos] (12:28PM, Sept 15): "Alam ko nman baka lang puede"

[Pineda] (12:28Pm, Sept 15)
"Pwd po b mkil2 q muna kau"

[Sheriff Santos] (12:28PM, Sept 15): "Kilala muna akond b nagkita n tau kanina ok n un d b"

[Sheriff Santos] (12:33PM, Sept 15): "Hintayin n kita ngaun dun"

[Sheriff Santos] (12:35PM, Sept 15: "Ganun n rin un nahiya nga lang ako. Kanina s u maghihis n ako"

[Sheriff Santos] (12:38PM, Sept 15): "Bsta antay ako mgaun s u dun ok"

[Pineda] (12:39PM, Sept 15)
"Jollibee po sir"

[Sheriff Santos] (12:40PM, Sept 15): "Yes"

[Pineda] (12:40PM, Sept 15)
"Ok kain lng po ha"

[Sheriff Santos] (12:44PM, Sept 15): ".dto n ako s may sogo"

[Pineda] (12:45PM, Sept 15)
"Jolibee pod pa ndar jip w8 lng po JOLIBEE po"

[Pineda] (12:52PM, Sept 15)
"D2 npo jolibee "

[Pineda] (12:57PM, Sept 15)
"Xensya npo kau dq po alm n dun tlga dpo tlga q gnun slamt po ng mrmi s trbho nlng po xensya npo tlga"

[Sheriff Santos] (12:[58] PM, Sept 15): "Wait kita dto s may sogo"

[Pineda] (12:[59]PM, Sept 15)
"Sori po tlga dpo tlgapwd mrmi p po aq g2wn"

[Pineda] (1:04PM, Sept 15)
"XENSYA NPO TLGA HA DQP KC GWAIN UN NBGLA PO AQ XENSYO"

[Pineda] (1:09PM, Sept 15)
"Wg nyo po ikgalt dq pgpyag ayko po ng my glt skn maiilang po aq xenyo sir"

[Pineda] (1:12PM, Sept 15)
"kng ng2lt kau skn wla po aq mg2wa sir kc npkb2 nman po ng tngn nyo skn slmt po"

[Sheriff Santos] (1:28PM, Sept 15): "D naman ako galit kaya lang ewan ko.b bukas kaya puede"

[Pineda] (1:29PM, Sept 15)
"Gnun po b tlga kb2 tngn nyo skn d nman po aq byaran sir"

[Sheriff Santos] (1:30PM, Sept 15): "Alam ko naman kc kung gusto mas mainam d b walang.pilitan"

[Sheriff Santos (1:36PM, Sept 15): "kaya nga gusto dun tau para makilala mo ako ganun din ikaw jan knb daang sarile"

[Pineda] (1:39PM, Sept 15)
"Opo on d way n mhrap pla sumky circum dpo tlga aq gnun kng gnn po icp nyo skn at alm nyo snap o dnq nagbgy xenyo sna po maintndhn nyo"

[Pineda] (1:56PM, Sept 15)
"Wg nyo po icpn n mpgsmantla aq cnv q lng po ung to2o po"

[Pineda] (3:33 PM Sept 15)
"Bkt po kya sheriff my mga tao n mb2 ang og tngn s kpwa tma po b un d aq nagm2taas pepo d kc aq gnun kb2w pero mrunong aq mkisma un po maipagm2laki q d nyo kelngn mgtmpo kc wla kau dpt ipagtmpo pauwi nrn po aq at slmtpo ng marmi mg mrmi"

[Pineda] (4:00PM, Sept 15)
"GLT PO B, KAU SKN SHERIF GNUN PO B BSEHN NYO TLGA"

[Pineda] (6:04PM, Sept 15)
"Wg po sna kau mgalt skn wla aqng gngwang msma xenyo"

[Pineda] (6:06PM, Sept 15)
"Wg po sna maapek2hn trbho ntn ngaun plang po ayaw nyo ngsumgot wg nman gnyn kc ayko ng my ng2lt skun at kng s bgy n gnyn p"

[Pineda] (Sept 15)
"Wla npo aqng mg2wa bngy qnapo ang lht ng alm q kht n nging agresbo kau skn cguro po kng d nyo aq entertain e dpt my sherf ng

iba n h2wak s kso q kc my lead npo aq at c ate marlyn nlng ang t2wgn q kc ayaw nyo nmn sumgot bka lng po mgtaka cla bkt s knya p aq kola lm kc nla n bngy nyo n # nyo skn cge po wla po aq mg2wa if yn ang gusto nyo gudnyt. Po"

[Sheriff Santos] (7:19AM, Sept 16): "Morning"

[Pineda] (7:20AM, Sept 16)
"MORNING PO"

[Sheriff Santos] (7:21AM, Sept 16): "Musta k n ok n siguro ngaun"

[Sheriff Santos] (7:31AM, Sept 16): "Kung ayaw mo ok lang s akin san b talaga nag trabaho un pinuntahan natin kahapon"

[Pineda] (Sept 16)
"s mighty dw po anf prblma ilan arw n dw nkbkasyn ae nkdispalko ng pera dpo b pg mtgl n ng work dn my mku2ha dn un cigarillo dn po mighty lng"

[Sheriff Santos] (7:39AM, Sept 16): "Wala n makukuha un kung naka dispalko ng pera ng kompanya"

[Pineda] (Sept 16)
"Wla po nk2alm kng mhknu kc dw nagbibir hauz bgo umuwi bkt gnun cla kdli ila pkialman pera ng iba. Pinb2ntyn qpo kung umaakz n s umga kbv kc naglakd aq ngtnung"

[Sheriff Santos] (7:46AM, Sept 16): "Ok ligo mina ako at papasok at baka pumayag k just text me he he he

[Pineda] (7:48AM, Sept 16)
"Kau po bhla cge ligo n kau"

[Sheriff Santos] (7:51AM, Sept 16): "Payag k n"

[Sheriff Santos] (7:55AM, Sept 16): "Sandali lang naman.tayo wait kita. S dati txt mo akp pa.g nandun.k n "

[Sheriff Santos] (8:18AM, Sept 16): "D k n reply"

[Sheriff Santos] (9:15AM, Sept 16): "Ano n d k n reply"

[Pineda] (9:16AM, Sept 16)
"My gngwa po"

[Sheriff Santos] (9:17AM, Sept 16): "Ok lang"

[Pineda] (Sept 16):
"Umlz dw po c joy knina umga pgdtng po ng lbndera q mya t2nung q kng pumpsok n bka po my nkuha c cyang info"

[Pineda] (11:32AM, Sept 19):
"Sherif pumpsok n ulet kng ms2mhn nyo p aq smt po kng dna pkitxt nlng po"

[Pineda] (Sept 19):
"Mging profesional po tau wlang dmayn tx lng kelangn q at gus2 q po mlman nyo lht ng tx nyo s cp q pdq bnubura. Hntyn q sgot nyo slmt ho"

Len (09084552031)

"Sherif ok npo kht dnq mkcngl kng tlgang ayaw nyo n aqng smahn tnggp qna yn n aq nagasthn lng s kgus2hn q mkcngl 1 lng po s2vhn q xenyo mbait po aq mrunung makisma dna rin aq magre2quest ng ibng sheriff pero dpo kau nag ingat tex p tlga gnamt nyo lht po ng tx ntn wla aqng bnura kht 1 gnaglang q kau pero cguro po ipat2wag nlang kau pcnsya n kau lumpt aq xenyo kulang man pra xenyo bnyd q wla nman jc ngyari at my shod kau blang sheriff nagbyd aq ng s3kyn Arlene po i2 cguro po mghrap nlng tau nsa pwes2 kau kya nyo gwn gus2 nyo pero my icp din po aq slamt po ng mrmi "[19]

In the hearing, Sheriff Santos denied knowing the text conversations. He claimed that he did not own the Subscriber Identity Module (SIM) number 09357519302, though he could not recall what his number was then. He did admit, however, that he twice offered Pineda ₱10,000.00 in exchange for her withdrawal of the Administrative Complaint or her commitment that she would not attend the investigation hearings. He said the negotiation failed because Pineda demanded ₱100,000.00, while he could only afford ₱50,000.00.[20] He alleged that Pineda's motive in filing the case was the money she could get from him upon learning that he had filed his retirement application.[21]

For her part, Pineda admitted demanding ₱100,000.00 knowing that Sheriff Santos would haggle the amount.[22] She gave that

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[19] *Id*. at 223-227.

[20] *Id*. at 228-229.

[21] *Id*. at 229.

[22] *Id*.

amount after accounting for the expenses in filing the case, and considering that the amount awarded in her favor in the Decision on the collection of sum of money case was not enough.[23]

In her August 28, 2018 Investigation Report,[24] Judge Belino recommended Sheriff Santos' dismissal.[25] She found that Pineda was able to prove that Sheriff Santos solicited sexual favors from her:

> The afore-quoted text message conversation between the parties indeed transpired. This is substantiated by the saved messages in the cellular phone submitted by the complainant, and forming as integral part of this Report. Sheriff respondent's mere denial that the Subscriber Identity Module (SIM) number 09357519302 used in the conversation was not his cannot outweigh the positive statement of the complainant that she was able to save the said number when she and Sheriff Santos exchanged contact numbers on September 15, 2015. Moreover, when the undersigned randomly asked Ma. Magdalena C. Rodriguez, Branch Clerk of Court of MTCC Branch 3, Cabanatuan City, as to what contact number of Sheriff Santos was saved in her cellular phone, BCC Rodriguez dictated "09357519302." And as to when was the last communication between Rodriguez and Sheriff Santos, with the latter using the said SIM number, happened, Rodriguez stated that it was only this year.
>
> The tenor of the conversation that the respondent sheriff was asking to meet the complainant at Jollibee, Circumferential Road, Cabanatuan City, and then proceed to the nearby Sogo hotel is very clear and cannot be appreciated other than [an] act of soliciting sexual favors.[26]

Judge Belino noted that when Pineda rejected Sheriff Santos' request, he stopped answering her queries and follow-ups on the writ's implementation. He also failed to report to the court the actions he had taken regarding the writ's

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[23] *Id*. at 229.

[24] *Id*. at 222-234.

[25] *Id*. at 234.

[26] *Id*. at 229.

implementation, as required by Rule 39, Section 14[27] of the Rules of Court.[28]

Judge Belino did not give weight to Sheriff Santos' assertion that since he had already executed the writ on September 15, 2015, he did not solicit sexual favors as a condition to its implementation. She held that under Section 14, the duty to implement the writ continues until the writ's return is satisfied.[29]

Judge Belino held that Sheriff Santos violated Rule 141, Section 9[30] of the Rules of Court when he collected ₱300.00

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[27] RULES OF COURT, Rule 39, Sec. 14 provides:

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

[28] *Rollo*, p. 230.

[29] *Id*. at 230.

[30] RULES OF COURT, Rule 141, Sec. 9 provides:

SECTION 9. Sheriffs and Other Persons Serving Processes. —

. . . . . .

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each the kilometer of travel, guards' fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriffs expenses shall be taxed as costs against the judgment debtor.

as execution expenses without a proper receipt. She observed that the receipts he had presented were dated November 26, 2012, while the incident complained of happened on September 15, 2015. She noted that sheriffs do not collect execution fees, as they are directly paid to the Office of the Clerk of Court. There was also no evidence to prove that Sheriff Santos made a court-approved assessment of expenses for the writ's execution.[31]

Lastly, Judge Belino found it absurd that Sheriff Santos offered ₱10,000.00 as settlement amount, and even asked Pineda for forgiveness, if he truly did not commit the charges against him. He even admitted that he submitted a resignation letter before this Court to forestall an administrative case that would be filed against him.[32]

Judge Belino recommended:

> 1. That this case be RE-DOCKETED as a formal administrative case against JAIME N. SANTOS, Sheriff III, MTCC Branch 3, Cabanatuan City; and
>
> 2. That JAIME N. SANTOS, Sheriff III, MTCC Branch 3, Cabanatuan City, be held administratively liable for the charges of grave misconduct, conduct prejudicial to the interest of service, inefficiency and dereliction of duty, and further recommends that he be meted the penalty of dismissal from service with all the accompanying administrative disabilities provided under the Revised Rules on Administrative Cases in the Civil Service (RRACCS).[33] (Emphasis in the original)

This Court resolves the following issues:

First, whether or not respondent Sheriff Jaime N. Santos is guilty of gross misconduct for soliciting sexual favors;

Second, whether or not respondent is guilty of gross misconduct for collecting execution expenses;

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[31] *Rollo*, p. 232.

[32] *Id*. at 233.

[33] *Id*. at 234.

Third, whether or not respondent is guilty of gross misconduct for attempting to pay complainant Arlene S. Pineda in exchange for the withdrawal of the case or her non-appearance in the investigation hearings; and

Finally, whether or not respondent is guilty of gross misconduct for violating Rule 39, Section 14 of the Rules of Court.

This Court rules in the affirmative. We agree with the findings of Judge Belino and approve the recommended penalty.

Before going into the merits of the case, this Court emphasizes that once an administrative complaint against its employees has been filed before the court, the complainant can no longer withdraw the complaint. *Councilor Castelo v. Sheriff Florendo*[34] elucidates on this:

> This Court has an interest in the conduct and behavior of all officials and employees of the judiciary and in ensuring at all times the proper delivery of justice to the people. No affidavit of desistance can divest this Court of its jurisdiction under Section 6, Article VII of the Constitution to investigate and decide complaints against erring employees of the judiciary. The issue in an administrative case is not whether the complainant has a cause of action against the respondent, but whether the employees have breached the norms and standards of the courts.
>
> Certainly, an administrative complaint against public officers or employees cannot be withdrawn at any time by the simple expediency of a complainant's sudden change of mind. The people, whose faith and confidence in their government and its instrumentalities need to be maintained, should not be made to depend upon the whims and caprices of complainants who, in a real sense, are only witnesses.[35] (Citations omitted)

Here, this Court holds respondent liable for grave misconduct, conduct prejudicial to the interest of service, inefficiency, and dereliction of duty for: (1) soliciting sexual

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[34] 459 Phil. 581 (2003) [Per *J.* Austria-Martinez, Second Division].

[35] *Id*. at 595.

favors as a condition for the implementation of the Alias Writ of Execution; (2) collecting the amount of ₱300.00 as execution expenses; (3) attempting to pay off complainant for the withdrawal of the case or her non-appearance in the investigation hearings; and (4) failing to make a report to the court every 30 days on the proceedings taken in relation to the writ's implementation, in violation of Rule 39, Section 14 of the Rules of Court.

As to the first charge, this Court gives weight to the narration of complainant, which was supported by screenshots of their text message conversations. In their dialogue, respondent stated, "*Tulungan nga kita at baka puede punta tau s katabi ng jolibee he he*[.]"[36] Since the place respondent was referring to was a motel,[37] his statement implies that he will give his assistance to complainant if she accedes to his request for sexual favors. Failing to present evidence that he used a different cellphone number then, respondent's bare denial that he owned SIM Number 09357519302 is outright self-serving and uncorroborated. This number even matched his contact detail saved in the Branch Clerk of Court's mobile phone, further bolstering the claim that it was, indeed, his SIM number.

This Court cannot give merit to respondent's allegation that complainant had a monetary motive. This is highly implausible considering that he admitted filing his resignation letter *after* finding out that she would file a case against him.

As to the second and third charges, respondent admitted them. In presenting receipts, he implicitly admitted collecting ₱300.00. He also confirmed that he tried to offer complainant ₱10,000.00 for the case's withdrawal or her non-appearance in the hearings. Paying off complainant can only be read as an attempt to cover his guilt.

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[36] *Rollo*, p. 224.

[37] *Id*. at 225. In the text message conversation, respondent stated, "*.dto n ako s may sogo*."

This Court also finds that respondent, after initially making an effort, no longer tried to implement the writ after complainant informed him on the whereabouts of the judgment debtor. This was corroborated by the lack of a report he was mandated to submit. Hence, he violated Rule 39, Section 14 of the Rules of Court, which states:

> RULE 3
> Execution, Satisfaction and Effect of Judgments
>
> . . . . . .
>
> SECTION 14. Return of Writ of Execution. — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. *The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires*. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties. (Emphasis supplied)

In *Councilor Castelo*, this Court differentiated simple misconduct from grave misconduct:

> Misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers. . .
>
> To qualify as grave misconduct, there must be showing that the erring employee acted with wrongful intentions or that his acts were corrupt or inspired by an intention to violate the law.
>
> As we held in *Imperial vs. Santiago*:
>
> > Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. *To warrant dismissal from the service, [however], the misconduct must be grave, serious, important, weighty, momentous and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment.*

> The misconduct must also have a direct relation to and be connected with the performance of his official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office. *There must also be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law*.[38] (Emphasis in the original, citations omitted)

Meanwhile, conduct prejudicial to the best interest of service is defined as any misconduct that "need not be related or connected to the public officers[']s official functions [but tends to tarnish] the image and integrity of [their] public office."[39]

Soliciting sexual favors cannot be anything but an intentional act. It is neither a mere error of judgment nor a simple misdemeanor. It shows the wrongful intention and the corrupt motive of the person asking for it. Respondent brazenly used his position to take advantage of the needs of complainant. Not only did he tarnish the image and integrity of his public office; he also promoted distrust in the administration of justice, which this Court will not condone. For respondent's nefarious act, the most severe penalty of dismissal will be imposed, "not so much to punish [him] but primarily to improve public service and preserve the public's faith and confidence in the government."[40]

On a final note, this Court reminds our sheriffs on the importance of their role in the justice system, as explained in *Mendoza v. Sheriff IV Tuquero*:[41]

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[38] *Councilor Castelo v. Sheriff Florendo*, 459 Phil. 581, 597-598 (2003) [Per *J*. Austria-Martinez, Second Division].

[39] *Abos v. Borromeo*, 765 Phil. 10, 17 (2015) [Per *J*. Leonen, Second Division] *citing Largo v. Court of Appeals*, 563 Phil. 293, 305 (2007) [Per *J*. Ynares-Santiago, *En Banc*].

[40] *Rapsing v. Walse-Lutero*, A.M. No. MTJ-17-1894, April 4, 2017, 822 SCRA 296, 315-316 [Per *J*. Leonen, *En Banc*].

[41] 412 Phil. 435 (2001) [*Per Curiam*, *En Banc*].

Sheriffs play an important role in the administration of justice. They are tasked to execute final judgments of the courts. If not enforced, such decisions become empty victories of the prevailing parties. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice. In *Moya v. Bassig*, we dismissed respondent sheriff for his failure to execute the trial court's decision. There, we held:

> "It is indisputable that the most difficult phase of any proceeding is the execution of judgment. Hence the officers charged with the delicate task of the enforcement and/or implementation of the same must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the decisions, orders or other processes of the courts of justice and the like would be futile. Stated differently, the judgment if not executed would be just an empty victory on the part of the prevailing party."
>
> . . . . . .
>
> The conduct and behavior of every one connected with an office charged with the dispensation of justice, from the presiding judge to the lowest clerk, should be circumscribed with the heavy burden of responsibility. His conduct, at all times must not only be characterized by propriety and decorum but above all else must be above suspicion.[42]

(Citations omitted)

WHEREFORE, this Court finds respondent Jaime N. Santos, Sheriff III of Branch 3, Municipal Trial Court in Cities, Cabanatuan City, **GUILTY** of grave misconduct, conduct prejudicial to the interest of service, inefficiency, and dereliction of duty. He is **DISMISSED** from service with forfeiture of all retirement benefits except accrued leave and with prejudice to re-employment in the government, including government-owned or controlled corporations.

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[42] *Id*. at 441-442.

Respondent is further **ORDERED** to remit to complainant Arlene S. Pineda the amount of Three Hundred Pesos (₱300.00) that he received from her as execution expenses. This is subject to interest at the rate of six percent (6%) per annum from the finality of this Resolution until its full satisfaction.[43]

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, and *Inting, JJ.*, concur.

Del Castillo, J., on official business.

Perlas-Bernabe, J., on official leave.

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

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the merits had already been rendered by the lower court and it is the civil aspect of the case which the offended party is appealing; the offended party, not being satisfied with the outcome of the case, may question the amount of the grant or denial of damages made by the court below even without the participation of the OSG. (BDO Unibank, Inc. *vs.* Pua, G.R. No. 230923, July 8, 2019) p. 81

— Sec. 35, Chap. 12, Title III, Book IV of the Administrative Code of 1987 states that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers; the OSG shall represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings. (*Id.*)

AGGRAVATING CIRCUMSTANCES

Treachery — There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to the offender from the offended party's act of retaliation in self-defense; it is a circumstance that must be proven as indubitably as the crime itself. (People *vs.* Espina *y* Balasantos, G.R. No. 219614, July 10, 2019) p. 377

— Treachery has two (2) elements: (1) employment of means of execution which gives the person attacked no opportunity to defend or retaliate, and (2) such means of execution were deliberately or consciously adopted; its attendance cannot be presumed. (*Id.*)

AGRICULTURAL LAND REFORM CODE (R.A. NO. 3844)

Tenancy — Cultivation of an agricultural land will not *ipso facto* make one a *de jure* tenant; independent and concrete evidence is necessary to prove personal cultivation, sharing of harvest, and consent of the landowner; while implied tenancy is recognized in this jurisdiction, for it to arise,

AMENDED INSURANCE CODE (R.A. NO. 10607)

Application of — On August 15, 2013, R.A. No. 10607 or the Amended Insurance Code was signed into law; it provides for the new capitalization requirement for all life and non-life insurance companies, to wit: Sec. 194. Except as provided in Sec. 289, no new domestic life or non-life insurance company shall, in a stock corporation, engage in business in the Philippines unless possessed of a paid-up capital equal to at least One billion pesos (₱1,000,000,000.00): *Provided*, that a domestic insurance company already doing business in the Philippines shall have a net worth by June 30, 2013 of Two hundred fifty million pesos (₱250,000,000.00). (Sec. Purisima *vs*. Security Pacific Assurance Corp., G.R. No. 223318, July 15, 2019) p. 672

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Application of — "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are; bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud; gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected; it is the omission of that care which even inattentive and thoughtless men never fail to take on their own property. (Sabio *vs*. Sandiganbayan [First Div.], G.R. Nos. 233853-54, July 15, 2019) p. 679

Section 3 (e) — The following are the elements of Sec. 3(e) of R.A. No. 3019: 1. The offender is a public officer; 2. The act was done in the discharge of the public officer's official, administrative, or judicial functions; 3. The act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and 4. The public officer

Counsel's act binds the client — The general rule is that a client is bound by the counsel's acts, including even mistakes in the realm of procedural technique; the rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself; a recognized exception to the rule is when the reckless or gross negligence of the counsel deprives the client of due process of law; for the exception to apply, however, the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. (In Re: The Writ of Habeas Corpus for Michael Labrador Abellana, (Petitioner, detained at the New Bilibid Prisons, Muntinlupa City) *vs.* Hon. Meinrado P. Paredes, in his capacity as Presiding Judge, RTC, Cebu City, Br. 13, G.R. No. 232006, July 10, 2019) p. 516

Duties — A lawyer is first and foremost an officer of the court; as such, although he is required to serve his clients with utmost dedication, competence and diligence, his acts must always be within the bounds of law; graver responsibility is imposed upon him than any other to uphold the integrity of the courts and show respect to their processes; hence, any act on his part that obstructs, impedes and degrades the administration of justice constitutes professional misconduct necessitating the imposition of disciplinary sanctions against him. (Lukang *vs.* Atty. Llamas, A.C. No. 4178, July 8, 2019) p. 1

— As officers of the court, lawyers are expected to act with complete candor; they may not resort to the use of deception, not just in some, but in all their dealings; the CPR bars lawyers from committing or consenting to any falsehood, or from misleading or allowing the court to be misled by any artifice or guile in finding the truth.

into account several factors enumerated in Sec. 17 of R.A. No. 6657; the SAC was at no liberty to disregard the formula which was devised to implement the said provision; it may be true on the one hand that the SAC may relax the application of the DAR formulas, but this rests on the condition that it clearly explains its reasons for doing so. (JMA Agricultural Dev't.Corp. *vs*. Land Bank of the Phils.,G.R. No. 206026, July 10, 2019) p. 291

— Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the CARP. (*Id*.)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Application of — R.A. No. 9165 is clear and leaves no room for interpretation; any person convicted under the said law, regardless of the penalty imposed, cannot avail of the graduations under Art. 65 of the RPC as R.A. No. 9165 is a special law. (People *vs*. Court of Appeals, G.R. No. 227899, July 10, 2019) p. 454

Chain of custody rule — Court's mandatory policy to prove *chain of custody* under Sec. 21 of R.A. No. 9165, as amended: 1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Sec. 21(1) of R.A. No. 9165, as amended, and its IRR; 2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items; 3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court; Instead, he or she must refer the case for further preliminary investigation in order to determine the (non)

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. (People *vs*. Narvas *y* Bolasoc, G.R. No. 241254, July 8, 2019) p. 176

— Strict adherence to the chain of custody rule must be observed; the precautionary measures employed in every transfer of the seized drug item, proved to a moral certainty; the sheer ease of planting drug evidence *vis-a--vis* the severity of the imposable penalties in drugs cases compels strict compliance with the chain of custody rule. (People *vs*. Miranda, G.R. No. 218126, July 10, 2019) p. 339

— 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. (*Id*.)

— The failure of the arresting officers to immediately mark the seized drugs engendered serious doubts on whether the marijuana leaves bought by the poseur-buyer from appellant were indeed the very same ones indicated in the Chemistry Report. (People *vs*. Omamos *y* Pajo, G.R. No. 223036, July 10, 2019) p. 391

— The failure of the arresting officers to prepare the required inventory and photograph of the seized dangerous drug militated against the guilt of an accused; for under these circumstances, the integrity and evidentiary value of the *corpus delicti* cannot be deemed to have been preserved. (*Id*.)

— The presence of the witnesses prevents switching, planting, or contaminating the seized evidence, which taints the integrity and evidentiary value of the confiscated dangerous drugs; in line with this, jurisprudence requires the apprehending officers to immediately mark the seized items upon their confiscation, or at the "earliest reasonably available opportunity," because this serves as the primary

compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. (People *vs*. Barbac Retada, G.R. No. 239331, July 10, 2019) p. 644

— Without doubt, the strict compliance with the procedural safeguards provided by Sec. 21 is required of the arresting officers; yet, the law recognizes that a departure from the safeguards, may become necessary, and has incorporated a saving clause ("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"). (People *vs*. Muhammad *y* Gustaham, G.R. No. 218803, July 10, 2019) p. 363

Illegal sale of dangerous drugs — Courts are duty-bound to examine the conduct of the entrapment operation *vis-à-vis* the chain of custody rule and place under close scrutiny the precautions undertaken by the members of the apprehending team to safeguard the integrity of the seized illegal drugs. (People *vs*. Sampa *y* Omar, G.R. No. 242160, July 8, 2019) p. 200

— Under Sec. 5, Art. II, of R.A. No. 9165, or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (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. (People *vs*. Refe *y* Gonzales, G.R. No. 233697, July 10, 2019) p. 568

(People *vs*. Narvas *y* Bolasoc, G.R. No. 241254, July 8, 2019) p. 176

(People *vs*. Sarip *y* Bantog, G.R. No. 231917, July 8, 2019) p. 104

CONSPIRACY

COURT PERSONNEL

Complaint against — Once an administrative complaint against its employees has been filed before the court, the complainant can no longer withdraw the complaint; no affidavit of desistance can divest this Court of its jurisdiction under Sec. 6, Art. VII of the Constitution to investigate and decide complaints against erring employees of the judiciary; the issue in an administrative case is not whether the complainant has a cause of action against the respondent, but whether the employees have breached the norms and standards of the courts. (Pineda *vs*. Sheriff Santos, A.M. No.P-18-3890 [Formerly OCA IPI No. 16-4536-P], July 16, 2019) p. 886

Conduct of — It has been stressed that while every office in the government is a public trust, no position exacts a greater necessity for moral righteousness and uprightness from an individual that is part of the Judiciary; the image of a court of justice is reflected in the conduct of the personnel who work thereat, from the judge to the lowest of its personnel; court employees are enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the courts of justice; the conduct of court personnel must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch, but also to their behavior outside the court as private individuals. (Castillo-Macapuso *vs*. Atty. Castillejos, Jr., A.M. No.P-19-3985 [Formerly OCA I.P.I. No. 12-3839-P], July 10, 2019) p. 230

— The act of having sexual relations with a married person, or of married persons having relations outside their marriage as "disgraceful and immoral" conduct because such manifests deliberate disregard by the actor of the marital vows protected by the Constitution and our laws. (*Id*.)

Dishonesty — Dishonesty is the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate

prosecution, demanded by no less than the Constitution itself. (*Id*.)

— It is not an idle ceremony that can be brushed aside peremptorily, but an indispensable requirement of due process, the absence of which renders the proceedings against the accused void. (*Id*.)

Demurrer to evidence — Demurrer to evidence in criminal cases is governed by Rule 119, Sec. 23 of the Revised Rules of Criminal Procedure; a demurrer to evidence tests the sufficiency or insufficiency of the prosecution's evidence; as such, a demurrer to evidence or a motion for leave to file the same must be filed after the prosecution rests its case; but before an evidence may be admitted, the rules require that the same be formally offered, otherwise, it cannot be considered by the court. (BDO Unibank, Inc. *vs*. Choa, G.R. No. 237553, July 10, 2019) p. 614

Double jeopardy — As a general rule, the prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case; the reason is that a judgment of acquittal is immediately final and executory, and the prosecution is barred from appealing lest the constitutional prohibition against double jeopardy be violated. (People *vs*. Court of Appeals, G.R. No. 227899, July 10, 2019) p. 454

— Despite acquittal, however, either the offended party or the accused may appeal, but only with respect to the civil aspect of the decision; or, said judgment of acquittal may be assailed through a petition for *certiorari* under Rule 65 of the Rules of Court showing that the lower court, in acquitting the accused, committed not merely reversible errors of judgment, but also exercised grave abuse of discretion amounting to lack or excess of jurisdiction, or a denial of due process, thereby rendering the assailed judgment null and void; if there is grave abuse of discretion, granting petitioner's prayer is not tantamount to putting private respondents in double jeopardy. (*Id*.)

local government units, other public entities and public utilities; inasmuch as the principal's exercise of the power of eminent domain is subject to certain conditions, with more reason that the exercise of a delegated power is not absolute. (City of Manila *vs*. Prieto, G.R. No. 221366, July 8, 2019) p. 34

— In cases of land acquisitions by the government, when the property owner rejects the offer but hints for a better price, the government should renegotiate by calling the property owner to a conference; the government must exhaust all reasonable efforts to obtain by agreement the land it desires. (*Id*.)

— In resolving expropriation cases, this Court has always been reminded that the exercise of the power of eminent domain necessarily involves a derogation of fundamental right; the exercise of the power of eminent domain drastically affects a landowner's right to private property, which is as much a constitutionally-protected right necessary for the preservation and enhancement of personal dignity and intimately connected with the rights to life and liberty. (*Id*.)

— Requisites must concur before a local government unit can exercise the power of eminent domain, to wit: (1) an ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property; (2) the power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless; (3) there is payment of just compensation, as required under Sec. 9, Art. III of the Constitution, and other pertinent laws; and (4) a valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted. (*Id*.)

— Sec. 19 of the LGC also states that the exercise of such delegated power should be pursuant to the Constitution and pertinent laws; R.A. No. 7279 is such pertinent law

benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement; where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month for every year of service should be awarded as an alternative. (ABS-CBN Broadcasting Corp. *vs*. Hilario, G.R. No. 193136, July 10, 2019) p. 244

— The right of an employer to terminate employment is regulated by law; both the Constitution and our laws guarantee security of tenure to labor and, thus, an employee can only be validly dismissed from work if the dismissal is predicated upon any of the just or authorized causes allowed under the Labor Code; a dismissal that is not based on either of the said causes is regarded as illegal and entitles the dismissed employee to the payment of backwages and, in most cases, to reinstatement. (*Id*.)

Quitclaims — For a deed of release, waiver, and quitclaim to be valid, it must be shown that: (a) there was no fraud or deceit on the part of any parties; (b) that the consideration for the quitclaim is credible and reasonable; and (c) 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; the burden rests on the employer to prove that the quitclaim constitutes a credible and reasonable settlement of what an employee is entitled to recover, and that the one accomplishing it has done so voluntarily and with a full understanding of its import. (F.F. Cruz & Co., Inc. *vs*. Galandez, G.R. No. 236496, July 8, 2019) p. 150

— Quitclaims are contracts in the nature of a *compromise* where parties make concessions, a lawful device to *avoid litigation*; it is a valid and binding agreement between the parties, provided that it constitutes a credible and *reasonable settlement* and the one accomplishing it has done so voluntarily and with a full understanding of its import. (*Id*.)

— Under P.D. No. 1445 or the Government Auditing Code of the Philippines, the expenditure of public funds without the required appropriation renders the contract void. Secs. 85 and 87 of P.D. No. 1445 implement Sec. 29(1), Art. VI of the Constitution, which mandates: Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law; a violation of Sec. 85 of P.D. No. 1445 constitutes at the same time a violation of Sec. 29(1), Art. VI of the Constitution; it is clear that there must first be an appropriation before any contract involving expenditure of public funds is entered into, and any contract entered into in violation of this requirement renders such contract void. (*Id*.)

GOVERNMENT PROCUREMENT REFORM ACT (R.A. NO. 9184)

Application of— A government contract procured through any of the alternative methods of procurement is an exceptional method of entering into government contracts because the policy of the government is to conduct public bidding in all procurements in order to extend equal opportunity to all eligible and qualified private parties to participate in government procurement; the alternative methods of procurement such as negotiated contracts are an exception to the general practice of procurement of government contracts which generally involves public bidding; the law explicitly requires the Head of the Procuring Entity to be responsible for such government contract. (Re: Consultancy Services of Helen P. Macasaet, A.M. No. 17-12-02-SC, July 16, 2019) p. 708

— Any government contract below ₱500 Million entered into by the Supreme Court through alternative methods of procurement should be approved by the Supreme Court *En Banc* as Head of the Procuring Entity; Art. VIII, Sec. 6 of the Constitution provides that the Supreme Court "shall have administrative supervision over all courts and the personnel thereof; the administrative powers of the Court – which include entering into government contracts in the exercise of these powers of administration

a government contract entered into through any of the alternative methods of procurement. (Re: Consultancy Services of Helen P. Macasaet, A.M. No. 17-12-02-SC, July 16, 2019) p. 708

— Sec. 7 of the Government Procurement Reform Act provides that all procurements shall be included in the APP, and the APP must be consistent with the yearly approved budget of the Procuring Entity. (*Id*.)

— The law requires that it should be the Head of the Procuring Entity who approves or signs the government contract or in the alternative, an official who is duly authorized by the Head of the Procuring Entity through a written delegation of full authority to enter into the government contract; the requirement of a written authority is to ensure that the Head of the Procuring Entity or his or her respective duly authorized representative is responsible and accountable for the government contracts entered into on behalf of the Procuring Entity, and prevent unauthorized officials from signing and approving contracts. (*Id*.)

HABEAS CORPUS

Writ of — If a person's liberty is restrained by some legal process, the writ of *habeas corpus* is unavailing; the writ cannot be used to directly assail a judgment rendered by a competent court or tribunal which, having duly acquired jurisdiction, was not ousted of this jurisdiction through some irregularity in the course of the proceedings; however, jurisprudence has recognized that the writ of *habeas corpus* may also be availed of as a post-conviction remedy when, as a consequence of a judicial proceeding, any of the following exceptional circumstances is attendant: 1) there has been a deprivation of a constitutional right resulting in the restraint of a person; 2) the court had no jurisdiction to impose the sentence; or 3) the imposed penalty has been excessive, thus voiding the sentence as such excess. (In Re: The Writ of Habeas Corpus for Michael Labrador Abellana, (Petitioner, detained at the New Bilibid Prisons, Muntinlupa City)

— The sheriff's duty to execute a judgment is ministerial. He need not look outside the plain meaning of the writ of execution; and when a sheriff is faced with an ambiguous execution order, prudence and reasonableness dictate that he seek clarification from a judge. (*Id*.)

— The sheriff's duty to strictly adhere to the mandate of the orders regularly issued by the court for the execution stage of a judgment cannot be arbitrarily ignored or set aside, but must be faithfully discharged and complied with; the sheriff is bereft of the power or discretion to expand the mandate in any way. (*Id*.)

Immutability of — A definitive final judgment, however erroneous, is no longer subject to change or revision; a decision that has acquired finality becomes immutable and unalterable; this quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. (DOLE *vs*. Kentex Mfg. Corp., G.R. No. 233781, July 8, 2019) p. 137

Writ of execution— As a general rule, a writ of execution must strictly conform to every particular of the judgment to be executed; it should not vary the terms of the judgment it seeks to enforce, nor may it go beyond the terms of the judgment sought to be executed, otherwise, if it is in excess of or beyond the original judgment or award, the execution is void. (Montealegre *vs*. Sps. De Vera, G.R. No. 208920, July 10, 2019) p. 305

— The power of the courts in executing judgments extends only to properties unquestionably belonging to the judgment debtor and liability may even be incurred by the sheriff for levying properties not belonging to the judgment debtor. (*Id*.)

JUDICIAL DEPARTMENT

Judicial power — No less than the Constitution requires that the exercise of judicial power includes the duty of the courts to settle *actual* controversies, *viz*.: The Constitution provides that judicial power 'includes the duty of the

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION – STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Application of — The contract between the manning agency and the seafarer is strictly regulated by the Philippine Overseas Employment Administration due to the unaccounted consequences that these contracts produce, mostly in the form of work-related risks and injuries. (Esteva *vs*. Wilhelmsen Smith Bell Manning, Inc., G.R. No. 225899, July 10, 2019) p. 423

Disability benefits — If the seafarer does not contest the findings and fails to refer the assessment to a third doctor, "the company can insist on its disability rating even against a contrary opinion by another physician; securing a third doctor's opinion is the duty of the employee,who must actively or expressly request for it. (Esteva *vs*. Wilhelmsen Smith Bell Manning, Inc., G.R. No. 225899, July 10, 2019) p. 423

— It has been settled that the application of the 120/240 day rule shall depend on the circumstances of the case, including compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA, if one exists. (Centennial Transmarine Inc. *vs*. Sales, G.R. No. 196455, July 8, 2019) p. 22

— The entitlement of an overseas seafarer to disability benefits is governed by law, the employment contract, and the medical findings; the POEA Standard Employment Contract, which prescribes the procedure in recovering compensation from occupational hazards, is deemed incorporated in every seafarer's employment contract; the POEA Standard Employment Contract provides that the company-designated physician is responsible for determining a seafarer's disability grading or fitness to work; it outlines the procedure when the seafarer contests the company-designated physician's findings and assessment. (Esteva *vs*. Wilhelmsen Smith Bell Manning, Inc., G.R. No. 225899, July 10, 2019) p. 423

PRESUMPTIONS

principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. (People *vs*. BBB, G.R. No. 232071, July 10, 2019) p. 540

Qualified rape — In rape committed by a close kin, moral ascendancy takes the place of violence and intimidation; this is due to the fact that force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other. (People *vs*. BBB, G.R. No. 232071, July 10, 2019) p. 540

— Pursuant to Art. 266-B, par. 1, moreover, the rape is qualified when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim; the elements of the offense charged are that: (a) the victim is a female over 12 years but under 18 years of age; (b) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and (c) the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she is deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority. (*Id*.)

REVISED FORESTRY CODE (P.D. NO. 705)

Application of — The transfer of the entire chapter on charges on forest products to the Revised Forestry Code, as well as the duties and responsibilities of the BIR to the DENR did not, in any way, change the nature of forest charges

SHERIFFS

Conduct prejudicial to the best interest of the service — Defined as any misconduct that need not be related or connected to the public officers' official functions but tends to tarnish the image and integrity of their public office. (Pineda *vs*. Sheriff Santos, A.M. No.P-18-3890 [Formerly OCA IPI No. 16-4536-P], July 16, 2019) p. 886

Duties — They are tasked to execute final judgments of the courts; if not enforced, such decisions become empty victories of the prevailing parties; as agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice. (Pineda *vs*. Sheriff Santos, A.M. No.P-18-3890 [Formerly OCA IPI No. 16-4536-P], July 16, 2019) p. 886

Grave misconduct — Misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers; to qualify as grave misconduct, there must be showing that the erring employee acted with wrongful intentions or that his acts were corrupt or inspired by an intention to violate the law. (Pineda *vs*. Sheriff Santos, A.M. No.P-18-3890 [Formerly OCA IPI No. 16-4536-P], July 16, 2019) p. 886

SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Sexual abuse — The elements of sexual abuse under Sec. 5(b) of R.A. No. 7610 are: (1) The accused commits the act of sexual intercourse or lascivious conduct; (2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) The child, whether male or female, is below 18 years of age. (People *vs*. BBB, G.R. No. 232071, July 10, 2019) p. 540

TRUST RECEIPTS LAW (P.D. NO. 115)

Trust receipt transactions— A trust receipt transaction imposes upon the entrustee the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the same to the entruster. (BDO Unibank, Inc. *vs*. Choa, G.R. No. 237553, July 10, 2019) p. 614

— There are thus two obligations in a trust receipt transaction: the first, refers to money received under the obligation involving the duty to turn it over *(entregarla)* to the owner of the merchandise sold, while the second refers to merchandise received under the obligation to "return" it *(devolvera)* to the owner; a violation of any of these undertakings constitutes estafa defined under Art. 315 (1) (b) of the Revised Penal Code, as provided by Sec. 13 of Presidential Decree 115. (*Id*.)

WITNESSES

Credibility of — RTC's findings on the credibility of witnesses and their testimonies are entitled to great weight and respect and the same should not be overturned on appeal in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances which would have affected the case. (People *vs*. Avelino, Jr. *y* Gracillian, G.R. No. 231358, July 8, 2019) p. 94

— The concept of out-of-court identification and the factors to consider in determining its admissibility and reliability, thus: out-of-court identification is conducted by the police in various ways; it is done thru show-ups where the suspect alone is brought face to face with the witness for identification; it is done thru mug shots where photographs are shown to the witness to identify the suspect; it is also done thru line-ups where a witness identifies the suspect from a group of persons lined up for the purpose; since corruption of out-of-court identification contaminates the integrity of in-court identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements

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