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FROM

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PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 209735. July 17, 2019]

STANFILCO - A DIVISION OF DOLE PHILIPPINES, INC. and REYNALDO CASIÑO, *petitioners, vs.* **JOSE TEQUILLO and/or NATIONAL LABOR RELATIONS COMMISSION - EIGHTH DIVISION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION (NLRC); DECISION OR FINAL ORDER OF THE NLRC CANNOT BE APPEALED; REMEDY FROM AN ADVERSE DECISION OR FINAL ORDER THEREOF IS TO FILE A PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS (CA).— To begin with, the Court's power to decide Rule 45 petitions in labor cases is not unlimited. Under our labor laws, a decision or final order of the NLRC cannot be appealed. This, however, does not mean that parties are absolutely prohibited from seeking relief from adverse NLRC decisions. Appellate courts are still vested with the power to review such decisions even if the law is silent as to an explicit right to appeal. The remedy from an adverse decision or final order of the NLRC is to file a petition for *certiorari* before the CA on the ground that the former tribunal acted with grave abuse of discretion in arriving at its determination of the case. That said, a *certiorari* proceeding differs from an appeal in that the former concerns not errors of judgment, but errors of jurisdiction.

2. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT, THE SUPREME COURT'S POWER TO REVIEW THE COURT OF APPEALS' DECISION CONCERNS ONLY QUESTIONS OF LAW, ENQUIRING INTO THE LEGAL CORRECTNESS OF THE APPELLATE COURT'S DETERMINATION OF THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION IN THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) DECISION.— After the CA renders its decision, the losing party may then seek final review before the Court via a Rule 45 petition. Such petitions, by their very nature, concern only questions of law. It follows then that, in labor cases, the Court enquires into the legal correctness of the CA's determination of the presence or absence of grave abuse of discretion in the NLRC decision. As such, the Court is limited to: (1) Ascertaining the correctness of the CA's decision in finding the presence or absence of grave abuse of discretion. This is done by examining, on the basis of the parties' presentations, whether the CA correctly determined that at the NLRC level, all the adduced pieces of evidence were considered; no evidence which should not have been considered was considered; and the evidence presented supports the NLRC's findings; and (2) Deciding other jurisdictional error that attended the CA's interpretation or application of the law.

3. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; SERIOUS MISCONDUCT; REQUISITES.— Under the law, an employee's termination may be justified on the ground of serious misconduct. Misconduct is generally defined as "a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." In labor cases, misconduct, as a ground for dismissal, must be serious—that is, it must be of such grave and aggravated character and not merely trivial or unimportant. In addition, the act constituting misconduct must be connected with the duties of the employee and performed with wrongful intent. Hence, for an employee's termination to be justified on the ground of serious misconduct, the following requisites must concur: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's

duties, showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.

4. ID.; ID.; ID.; ID.; ID.; PHYSICAL VIOLENCE BETWEEN AND AMONG EMPLOYEES MAY CONSTITUTE SERIOUS MISCONDUCT REGARDLESS OF WHETHER SUCH VIOLENCE OCCURRED DURING WORKING HOURS AND WITHIN COMPANY PREMISES; NOT EVERY FIGHT WITHIN THE COMPANY WOULD AUTOMATICALLY WARRANT DISMISSAL FROM SERVICE; CONFRONTATION MUST BE ROOTED ON WORKPLACE DYNAMICS OR CONNECTED WITH THE PERFORMANCE OF THE EMPLOYEES' DUTIES; CASE AT BAR.— Both petitioner and the CA erred in equating work-relatedness to the time when and place where the offense was committed. To be sure, physical violence between and among employees may constitute serious misconduct regardless of whether such violence occurred during working hours and within company premises. Although the Court has recognized that workplace violence may constitute serious misconduct, it has also held that not every fight within company would automatically warrant dismissal from service. Jurisprudence requires that the confrontation be "rooted on workplace dynamics" or connected with the performance of the employees' duties. Stated otherwise, time and location do not, by themselves, determine whether violence should be classified as work-related. Rather, such determination will depend on the underlying cause of or motive behind said violence.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NLRC'S MISAPPRECIATION OF THE EVIDENCE AND UNDISPUTED FACTS CONSTITUTES GRAVE ABUSE OF DISCRETION WHICH THE COURT OF APPEALS SHOULD HAVE RECTIFIED.— Having said that, the NLRC clearly misappreciated the evidence and undisputed facts. Without a doubt, this constituted grave abuse of discretion that the CA should have rectified when the case was brought before it on *certiorari*. It follows then that the NLRC's resolution, "as well as the" CA decision affirming it, both declaring that Tequillo was illegally dismissed, must be set aside.

APPEARANCES OF COUNSEL

Seriña Sarceno Law Office for petitioners.
Mario T. Juni for respondent.

D E C I S I O N

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

Physical violence inflicted by one employee on another constitutes serious misconduct, which justifies the former's dismissal. Nevertheless, the employer bears the onus of proving that the attack was work-related and has rendered the erring employee unfit to continue working. This burden is not overcome by the mere fact that the act occurred within company premises and during work hours. Verily, the employer must establish a reasonable connection between the purported offense and the employee's duties.

Before the Court is a petition for review on *certiorari*[1] assailing the June 14, 2013 Decision[2] and October 14, 2013 Resolution[3] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 04698, through which the dismissal of the private respondent, Jose Tequillo (Tequillo), was declared illegal.

The Factual Antecedents

Stanfilco (petitioner) is a duly organized domestic corporation that operates a banana plantation in Lantapan, Bukidnon.[4] On the other hand, Tequillo was a Farm Associate who worked on petitioner's plantation from January 5, 2004 until he was terminated on May 24, 2010 for mauling his co-worker, Resel

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

[2] Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Marie Christine Azcarraga-Jacob and Edward B. Contreras concurring; *id.* at 39-48.

[3] *Id.* at 62-64.

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

Gayon (Gayon), and consuming intoxicating beverages within company premises and during work hours.[5]

Every week, petitioner hosts a company-initiated employee gathering known as the "*Kaibigan* Fellowship." While the assembly touches on matters that are not work-related, petitioner also uses it as a venue for company announcements and production updates.[6]

On September 12, 2009, petitioner held one such "*Kaibigan* Fellowship," and required all its employees to be present thereat. However, Tequillo, instead of attending the gathering, opted to go on a drinking spree at the farm shed area of petitioner's premises with several of his fellow workers. Gayon, who was sent to assist Tequillo at an assigned area of the farm, chanced upon the group, and was eventually prevailed upon to join them. At the time, Tequillo was expressing resentment towards petitioner's refusal to provide him with a performance incentive. Since Gayon was not yet a regular employee of petitioner, Tequillo advised him not to work at the plantation, warning the former that he, too, might meet the same fate, and not receive any incentive for his efforts. Instead of heeding to the advice, Gayon told Tequillo to air his grievances to petitioner's higher-ranking employees. Irked by the suggestion, Tequillo proceeded to maul Gayon.[7]

On September 15, 2009, petitioner served Tequillo with a memorandum, requiring him to explain why no disciplinary action should be taken against him for the drinking and mauling incident.[8] In response to the charge, Tequillo admitted to mauling Gayon, but averred that the act was done in self-defense. However, anent the accusation of drinking, the former remained silent.[9]

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[5] *Id*. at 40.

[6] *Id.* at 12.

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

[8] *Id.* at 40.

[9] *Id*.

Administrative hearings were held on October 17, 2009 and February 2, 2010, during which Tequillo was given the chance to explain his side.[10] However, petitioner found his explanations unsatisfactory, and eventually terminated him on May 24, 2010 on the ground of serious misconduct.[11]

Consequently, on October 6, 2010, Tequillo filed before the Labor Arbiter (LA) a complaint for illegal dismissal.[12]

The LA's Ruling

On January 31, 2011, the LA rendered a Decision[13] in favor of petitioner. In ruling Tequillo's dismissal to be valid, the LA held that the drinking and fighting incident had been duly proved. To the LA, Tequillo's acts constituted serious misconduct and willful disobedience to company rules, thus justifying petitioner's decision to dismiss him. The dispositive portion of the LA's January 31, 2011 Decision reads:

> WHEREFORE, in view of all the foregoing, judgment is hereby entered ordering the dismissal of the above-entitled case for lack of merit.
>
> SO ORDERED.[14]

Tequillo then appealed to the National Labor Relations Commission (NLRC), claiming that the LA erred in finding him guilty of serious misconduct.

The NLRC's Ruling

On August 24, 2011, the NLRC promulgated a Resolution,[15] reversing the LA's decision. According to the NLRC, Tequillo was illegally dismissed since he was not performing official work at the time he mauled Gayon. It followed, then, that

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[10] *Id.*

[11] *Id*.

[12] *Id*.

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

[14] *Id*. at 122.

[15] *Id*. at 124-133.

Tequillo's act could not be work-related. The NLRC then disposed of the case, thus:

> WHEREFORE, premises considered, the appeal is hereby GRANTED and the assailed decision is REVERSED and SET ASIDE. In lieu thereof, a new one is rendered declaring that complainant was illegally dismissed and accordingly DOLE STANFILCO and/or REYNALDO CASINO, Manager, are hereby ORDERED:
>
> (1) to immediately reinstate complainant to his former position or equivalent position without loss of seniority rights and other privileges as well as to his full backwages computed from the date his compensation was withheld from him up to the time of his actual reinstatement; and
>
> (2) to pay ten percent (10%) of the total amount due to as attorney's fees.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[16]

Petitioner then moved that the NLRC reconsider the above ruling, but to no avail. The former was thus compelled to seek relief before the CA through a petition for *certiorari*.

The CA's Ruling

On June 14, 2013, the CA affirmed the NLRC's resolution through the assailed Decision. Finding that no grave abuse of discretion tainted said resolution, the appellate court held that Tequillo's dismissal was illegal. According to the CA, the act of mauling Gayon was not work-related, and at most amounted only to simple misconduct. The *fallo* of the assailed CA decision reads:

> WHEREFORE, the petition is hereby DENIED. The National Labor Relations Commission, Eighth (8th) Division's (NLRC) Resolutions promulgated on August 24, 2011 and October 28, 2011 are hereby AFFIRMED.
>
> SO ORDERED.[17]

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[16] *Id*. at 132.

[17] *Id*. at 47.

Petitioner then moved for reconsideration only to be denied through the challenged October 14, 2013 Resolution.

Hence, the instant petition.

The Issue

Whether or not the CA erred in ruling that no grave abuse of discretion attended the NLRC's decision declaring Tequillo's dismissal illegal.[18]

The Court's Ruling

The petition is meritorious.

To begin with, the Court's power to decide Rule 45 petitions in labor cases is not unlimited.[19]

Under our labor laws, a decision or final order of the NLRC cannot be appealed.[20] This, however, does not mean that parties are absolutely prohibited from seeking relief from adverse NLRC decisions. Appellate courts are still vested with the power to review such decisions even if the law is silent as to an explicit right to appeal.[21]

The remedy from an adverse decision or final order of the NLRC is to file a petition for *certiorari* before the CA on the ground that the former tribunal acted with grave abuse of discretion in arriving at its determination of the case.[22] That said, a *certiorari* proceeding differs from an appeal in that the former concerns not errors of judgment, but errors of jurisdiction. As held in *Gabriel v. Petron Corporation*:[23]

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[18] *Id*. at 21.

[19] *Protective Maximum Security Agency, Inc. v. Fuentes*, 753 Phil. 482, 502 (2015).

[20] LABOR CODE, Art. 229.

[21] *Angelito N. Gabriel v. Petron Corporation, Alfred A. Trio, and Ferdinando Enriquez*, G.R. No. 194575, April 11, 2018.

[22] *St. Martin Funeral Home v. National Labor Relations Commission*, 356 Phil. 811, 823 (1998).

[23] *Supra,* 21.

Certiorari proceedings are limited in scope and narrow in character because they only correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion. Indeed, relief in a special civil action for *certiorari* is available only when the following essential requisites concur: (a) the petition must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (b) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction; and (c) there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law. **It will issue to correct errors of jurisdiction and not mere errors of judgment, particularly in the findings or conclusions of the quasi-judicial tribunals (such as the NLRC).**[24] (Emphasis and underscoring supplied, citations omitted)

After the CA renders its decision, the losing party may then seek final review before the Court via a Rule 45 petition.[25] Such petitions, by their very nature, concern only questions of law.[26] It follows then that, in labor cases, the Court enquires into the legal correctness of the CA's determination of the presence or absence of grave abuse of discretion in the NLRC decision.[27] As such, the Court is limited to:

(1) Ascertaining the correctness of the CA's decision in finding the presence or absence of grave abuse of discretion. This is done by examining, on the basis of the parties' presentations, whether the CA correctly determined that at the NLRC level, all the adduced pieces of evidence were considered; no evidence which should not have been considered was considered; and the evidence presented supports the NLRC's findings; and

(2) Deciding other jurisdictional error that attended the CA's interpretation or application of the law.[28]

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[24] *Id.*

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

[26] *Id.*

[27] *Stanley Fine Furniture v. Gallano*, 748 Phil. 624, 637 (2014).

[28] *Id.*

It is, therefore, inevitable to examine the CA's decision in the context of a petition for *certiorari*.[29] This entails that Rule 45 petitions in labor cases ultimately concern whether the NLRC's decision is tainted with grave abuse of discretion, and not whether said decision is correct on the merits.[30] In question form, the issue is presented as: "Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?"[31]

The answer, for reasons discussed below, is in the negative.

In the main, petitioner argued that Tequillo's act of drinking within company premises and subsequently mauling Gayon amounted to serious misconduct and willful disobedience.[32] Anent the first charge, petitioner insisted that since the "*Kaibigan* Fellowship" is considered working time, Tequillo's acts were work-related, as contemplated by the requisites of serious misconduct.[33] Anent the second charge, petitioner pointed to its own internal disciplinary rules, which prohibit the consumption of alcohol during work hours and within company premises. Maintaining that these rules are reasonable, petitioner asserted that Tequillo's deliberate disregard thereof justified his termination.[34]

Under the law, an employee's termination may be justified on the ground of serious misconduct.[35] Misconduct is generally defined as "a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in

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[29] *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 707 (2009).

[30] *Holy Child Catholic School v. Sto. Tomas*, 714 Phil. 427, 456-457 (2013).

[31] *Supra* note 19, at 503.

[32] *Rollo*, pp. 25-29.

[33] *Id*. at 29-30.

[34] *Id*. at 27.

[35] LABOR CODE, Art. 296 (formerly Art. 282) (a).

judgment."[36] In labor cases, misconduct, as a ground for dismissal, must be serious—that is, it must be of such grave and aggravated character and not merely trivial or unimportant.[37] In addition, the act constituting misconduct must be connected with the duties of the employee and performed with wrongful intent.[38] Hence, for an employee's termination to be justified on the ground of serious misconduct, the following requisites must concur:

(a) the misconduct must be serious;

(b) it must relate to the performance of the employee's duties, showing that the employee has become unfit to continue working for the employer; and

(c) it must have been performed with wrongful intent.[39]

In this case, the CA refused to characterize Tequillo's acts as work-related because he was not a participant in the "*Kaibigan* Fellowship.[40]" As may be recalled, Tequillo absented himself from the gathering to go on a drinking spree with several other farm workers. Petitioner countered that the "*Kaibigan* Fellowship" was held during work hours and within company premises. Relying on Section 6, Rule I of Book III of the Omnibus Rules Implementing the Labor Code,[41] which provides that lectures, meetings, training programs, and other similar activities are considered as working time, petitioner contented that Tequillo's acts are related to the performance of his duties.

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[36] *Sterling Paper Products Enterprises, Inc. v. KMM-Katipunan and Raymond Z. Esponga*, G.R. No. 221493, August 2, 2017, 834 SCRA 305, 316.

[37] *Imasen Philippine Manufacturing Corp. v. Alcon*, 746 Phil. 172, 181 (2014).

[38] *Supra*, note 36.

[39] *Ricardo G. Sy and Henry B. Alix v. Neat, Inc., Banana Peel and Paul Vincent Ng*, G.R. No. 213748, November 27, 2017.

[40] *Rollo*, p. 46.

[41] **SECTION 6.** *Lectures, meetings, training programs*. — Attendance at lectures, meetings, training programs, and other similar activities shall not be counted as working time if all of the following conditions are met:

The Court partly agrees.

Both petitioner and the CA erred in equating work-relatedness to the time when and place where the offense was committed. To be sure, physical violence between and among employees may constitute serious misconduct regardless of whether such violence occurred during working hours and within company premises. Although the Court has recognized that workplace violence may constitute serious misconduct, it has also held that not every fight within company would automatically warrant dismissal from service.[42] Jurisprudence requires that the confrontation be "rooted on workplace dynamics" or connected with the performance of the employees' duties.[43] Stated otherwise, time and location do not, by themselves, determine whether violence should be classified as work-related. Rather, such determination will depend on the underlying cause of or motive behind said violence.

In *Technol Eight Philippines Corporation v. National Labor Relations Commission*,[44] Dennis Amular (Amular) got into a fistfight with his team leader, Rafael Mendoza (Mendoza). The fight occurred not within company premises, but at the Surf City Internet Cafe in Sta. Rosa, Laguna. Because of the incident, Amular's employment was terminated, causing him to file a complaint for illegal dismissal before the LA. When the case eventually reached the Court, Almular's termination was deemed valid. Brushing aside the fact that the incident took place outside of company premises and after work hours, the Court held that the fight's work connection rendered Almular unfit to continue his employment with the company. It was found that Almular purposefully confronted Mendoza because of the latter's remarks

(a) Attendance is outside of the employee's regular working hours;
(b) Attendance is in fact voluntary; and
(c) The employee does not perform any productive work during such attendance.

[42] *Supreme Steel Pipe Corporation v. Bardaje*, 550 Phil. 326, 337 (2007).

[43] *Technol Eight Philippines Corporation v. National Labor Relations Commission*, 632 Phil. 261, 271 (2010).

[44] *Id*.

about the former's questionable behavior at work. Apparently, Mendoza made Almular the subject of a negative performance report. It was thus held that the assault was occasioned by Almular's urge to get even for a perceived wrong, which constituted a valid cause that justified his termination.

Clearly, then, the fact that the act complained of in this case, particularly the mauling of Gayon, took place at the plantation and while the "*Kaibigan* Fellowship" was being held is of no moment. Based on *Technol*, the enquiry should be into the proximate cause of or the motive behind the attack. This will allow the Court to determine whether Tequillo's act was related to the performance of his duties, whether it has rendered him unfit to work for petitioner, and whether it was performed with wrongful intent.

From the Court's perspective, the work-relatedness of and wrongful intent behind Tequillo's violent conduct cannot be questioned. Tequillo himself admitted that he mauled Gayon out of emotional disturbance, which was ultimately caused by petitioner's refusal to provide the former employee with a productivity incentive.[45] The attack was clearly unfounded, as it remains undisputed that petitioner's refusal to furnish said incentive was due to Tequillo's failure to meet his work quotas. Worse, Gayon had said or done nothing to sufficiently provoke the attack. Therefore, while it may be remains undisputed that petitioner's refusal to furnish said incentive was due to Tequillo's failure to meet his work quotas. Worse, Gayon had said or done nothing to sufficiently provoke the attack. Therefore, while it may be true that Tequillo acted out of resentment towards petitioner, the same resentment was essentially attributable to his own work-related neglect. It follows, then, that the attack was connected to the sub-standard performance of Tequillo's duties, and that it was fundamentally rooted in his confounded notion of workplace dynamics.

Further, there exists a substantial basis to believe that Tequillo is capable of repeating his violent act. As mentioned above,

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[45] *Rollo*, p. 128.

the attack occurred because he did not receive a productivity incentive. This shows that Tequillo may be irked without reason and that he possesses an egregious disposition that is detrimental not only to petitioner, but to his co-employees. Verily, to allow him to remain in petitioner's employ would put his fellow farm workers at risk of physical harm every time he feels wronged.

Taken together, these show that Tequillo's violent act amounted to serious misconduct. The incident disturbed the peace in the farm and breached the discipline expected by petitioner from its employees.[46] That Tequillo is ill-suited to continue working is shown by his perverse attitude and by the possibility that the attack may be repeated. On the other hand, his wrongful intent is shown by the arbitrary and unfounded manner in which he attacked Gayon. Hence, all the requisites of serious misconduct are present in this case.

Having said that, the NLRC clearly misappreciated the evidence and undisputed facts. Without a doubt, this constituted grave abuse of discretion that the CA should have rectified when the case was brought before it on *certiorari*. It follows then that the NLRC's resolution, "as well as the" CA decision affirming it, both declaring that Tequillo was illegally dismissed, must be set aside.

With the foregoing disquisition, the Court deems it unnecessary to belabor on the issue of willful insubordination.

WHEREFORE, the petition is **GRANTED**. The June 14, 2013 Decision, and the October 14, 2013 Resolution rendered by the Court of Appeals in CA-G.R. SP No. 04698 are **REVERSED** and **SET ASIDE**. The January 31, 2011 Decision of the Labor Arbiter dismissing private respondent Jose Tequillo's complaint is hereby **REINSTATED**.

SO ORDERED.

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

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[46] *Royo v. NLRC*, 326 Phil. 650, 659-660 (1996).

THIRD DIVISION

[G.R. No. 212885. July 17, 2019]

SPOUSES NOLASCO FERNANDEZ and MARICRIS FERNANDEZ, *petitioners, vs.* **SMART COMMUNICATIONS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY WHERE THE JUDGMENT OR FINAL ORDER IS NOT APPEALABLE; CASE AT BAR.—Under Section 1, Rule 65 of the Rules of Court, a petition for *certiorari* may be filed when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. An act of a court or tribunal is considered committed with grave abuse of discretion if it is whimsical, arbitrary, or capricious amounting to "an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility." An order of dismissal of the complaint is a final order that is subject to appeal. x x x The same provision also provides that no appeal may be taken from the following: x x x **(f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom;** x x x In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action for *certiorari* under Rule 65. Here, the RTC Order granting the motion to dismiss filed by petitioners is a final order because it terminates the proceedings against them. However, the final order falls within exception (f) of the Rule since the case involves several defendants, and the complaint for sum of money against EOL is still pending. There being no appeal, "or any plain, speedy, and adequate

remedy in law, the remedy of a special civil action for *certiorari* is proper as there is a need to promptly relieve the aggrieved party from the injurious effects of the acts of an inferior court or tribunal."

2. ID.; CIVIL PROCEDURE; PARTIES IN INTEREST, DEFINED; A COMPLAINT FILED AGAINST A PERSON WHO IS NOT A REAL PARTY IN INTEREST IN THE CASE SHOULD BE DISMISSED FOR FAILURE TO STATE A CAUSE OF ACTION; CASE AT BAR.— A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Thus, "[a]ny decision rendered against a person who is not a real party in interest in the case cannot be executed. Consequently, a "complaint filed against such a person should be dismissed for failure to state a cause of action."

3. ID.; ID.; CAUSE OF ACTION; THREE (3) ELEMENTS THEREOF THAT MUST BE SUFFICIENTLY AVERRED IN THE COMPLAINT; NON-CONCURRENCE OF THE ELEMENTS THEREOF MAKES THE COMPLAINT VULNERABLE TO A MOTION TO DISMISS ON THE GROUND OF FAILURE TO STATE A CAUSE OF ACTION.— As provided in *Zuniga-Santos v. Santos-Gran, et al.*: A complaint states a cause of action if it **sufficiently** avers the existence of the three (3) essential elements of a cause of action, namely: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of the named defendant to respect or not to violate such right; and (c) an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages. If the allegations of the complaint do not state the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.

4. MERCANTILE LAW; CORPORATION CODE; PRIVATE CORPORATIONS; INFERRED FROM A CORPORATION'S SEPARATE PERSONALITY IS THAT CONSENT BY A CORPORATION THROUGH ITS REPRESENTATIVE IS NOT CONSENT OF THE REPRESENTATIVE, PERSONALLY; AS A RULE, A CORPORATION'S

REPRESENTATIVES ARE NOT BOUND BY THE TERMS OF THE CONTRACT EXECUTED IN BEHALF OF THE CORPORATION.— It is basic in corporation law that a corporation is an artificial being invested by law with a personality separate and distinct from its stockholders and from other corporations to which it may be connected. Inferred from a corporation's separate personality is that "consent by a corporation through its representatives is not consent of the representative, personally." The corporate obligations, incurred through official acts of its representatives, are its own. Corollarily, a stockholder, director, or representative does not become a party to a contract just because a corporation executed a contract through that stockholder, director, or representative. As a general rule, a corporation's representatives are not bound by the terms of the contract executed by the corporation. "They are not personally liable for obligations and liabilities incurred on or in behalf of the corporation."

5. **ID.; ID.; ID.; ID.; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; A CORPORATION'S SEPARATE PERSONALITY MAY BE DISREGARDED UNDER CERTAIN CIRCUMSTANCES, SO THAT A CORPORATION AND ITS STOCKHOLDERS OR MEMBERS, OR A CORPORATION AND ANOTHER RELATED CORPORATION COULD BE TREATED AS A SINGLE ENTITY; TO JUSTIFY THE PIERCING OF THE CORPORATE FICTION, CLEAR AND CONVINCING PROOF THAT THE SEPARATE AND DISTINCT PERSONALITY OF THE CORPORATION WAS PURPOSELY EMPLOYED TO EVADE A LEGITIMATE AND BINDING COMMITMENT AND PERPETUATE A FRAUD OR LIKE WRONGDOING MUST BE ADDUCED.—** There are instances, however, when the distinction between personalities of directors, officers, and representatives, and of the corporation, are disregarded. This is piercing the veil of corporate fiction. 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 could be treated as a single entity. It is meant to apply only in situations where the separate corporate personality of a corporation is being abused or being used for wrongful purposes. The piercing

of the corporate veil must be done with caution. To justify the piercing of the veil of corporate fiction, "it must be shown by clear and convincing proof that the separate and distinct personality of the corporation was purposefully employed to evade a legitimate and binding commitment and perpetuate a fraud or like wrongdoings."

6. ID.; ID.; ID.; ID.; ID.; INSTANCES WHEN A CORPORATE DIRECTOR, TRUSTEE, OR OFFICER IS SOLIDARILY LIABLE WITH THE CORPORATION.— A corporate director, trustee, or officer is to be held solidarity liable with the corporation in the following instances: 1. When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons; 2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto; 3) When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the Corporation; or 4) When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action. These instances have not been shown in the case of petitioner Maricris. While the Amended Complaint alleged that EOL fraudulently refused to pay the amount due, nothing in the said pleading or its annexes would show the basis of Maricris' alleged fraudulent act that warrants piercing the corporate veil. No explanation or narration of facts was presented pointing to the circumstances constituting fraud which must be stated with particularity, thus rendering the allegation of fraud simply an unfounded conclusion of law. Without specific averments, "the complaint presents no basis upon which the court should act, or for the defendant to meet it with an intelligent answer and must, perforce, be dismissed for failure to state a cause of action."

7. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; FAILURE TO STATE A CAUSE OF ACTION; IN THE DETERMINATION OF THE SUFFICIENCY OF A CAUSE OF ACTION FOR PURPOSES OF RESOLVING A MOTION TO DISMISS, THE COURT MUST DECIDE,

HYPOTHETICALLY ADMITTING THE FACTUAL ALLEGATIONS IN A COMPLAINT, WHETHER IT CAN GRANT THE PRAYER IN THE COMPLAINT; CASE AT BAR.—In the determination of sufficiency of a cause of action for purposes of resolving a motion to dismiss, the court must decide, "hypothetically admitting the factual allegations in a complaint, whether it can grant the prayer in the complaint." The Court pronounced in *Guillermo, et al. v. Philippine Information Agency, et al.*, that: It is well to point out that the plaintiffs cause of action should not merely be "stated" but, importantly, the statement thereof should be "sufficient," This is why the elementary test in a motion to dismiss on such ground is whether or not the complaint alleges facts which if true would justify the relief demanded. As a corollary, it has been held that only ultimate facts and not legal conclusions or evidentiary facts are considered for purposes of applying the test. This is consistent with Section 1, Rule 8 of the Rules of Court which states that the complaint need only allege the ultimate facts or the essential facts constituting the plaintiffs cause of action. A fact is essential if they cannot be stricken out without leaving the statement of the cause of action inadequate. Since the inquiry is into the sufficiency, not the veracity, of the material allegations, it follows that the analysis should be confined to the four corners of the complaint, and no other. By merely stating a legal conclusion, the Amended Complaint presented no sufficient allegation against petitioner Maricris upon which the Court could grant the relief prayed for. The trial court correctly dismissed the complaint against Maricris on the ground of failure to state cause of action.

8. ID.; ID.; ID.; ID.; IN FILING THE MOTION, THE DEFENDANT HYPOTHETICALLY ADMITS THE TRUTH OF THE FACTS ALLEGED IN THE COMPLAINT THAT EXTENDS ONLY TO THE RELEVANT AND MATERIAL FACTS WELL PLEADED IN THE COMPLAINT, AS WELL AS INFERENCES FAIRLY DEDUCTIBLE THEREFROM; CASE AT BAR.— Again, in filing a motion to dismiss on the ground of failure to state a cause of action, a defendant hypothetically admits the truth of the facts alleged in the complaint. Since allegations of evidentiary facts and conclusions of law are normally omitted in pleadings, "the hypothetical admission extends only to the relevant and

material facts well pleaded in the complaint, as well as inferences fairly deductible therefrom." The following is clearly stipulated in Item 9 of the EOL Undertaking signed by Nolasco, *viz*.: 9. **The President and each one of the directors and officers of Everything Online, Inc. shall be held solidarily liable in their personal capacity with the franchisee or assignee for all charges for the use of the SMART cellphone units acquired by Everything Online, Inc.** Verily, the trial court erred in dismissing the complaint against petitioner Nolasco. The allegations in the complaint, regarding the possible personal liability of petitioner Nolasco based on Item 9 of EOL Undertaking, sufficiently stated a cause of action. The question of whether petitioner Nolasco is a real party-in-interest who would be benefited or injured by the judgment, would be better threshed out in a full-blown trial. Indeed, in cases that call for the piercing of the corporate veil, "parties who are normally treated as distinct individuals should be made to participate in the proceedings in order to determine if such distinction should be disregarded and, if so, to determine the extent of their liabilities."

APPEARANCES OF COUNSEL

Sarmiento Sarmiento Ruga Caringal Law Firm for petitioners.
Batuhan Blando Concepcion & Trillana for respondent.

D E C I S I O N

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

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the December 2, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 113832. The challenged ruling reversed the November 11, 2009 Order[2] of

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[1] Penned by Associate Justice Angelita A. Gacutan (retired), with Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta (retired) concurring; *rollo*, pp. 24-46.

[2] *Id*. at 90-94.

the Regional Trial Court (RTC) of Makati City, Branch 62, which dismissed the complaint against petitioners Nolasco Fernandez (Nolasco) and Maricris Fernandez (Maricris) as co-defendants in Civil Case No. 09-199.

The Facts

Everything Online, Inc. (EOL) is a corporation that offers internet services nationwide through franchisees.[3] Smart Communications, Inc. (SMART), on the other hand, is a mobile phone service provider.[4] Petitioners Nolasco and Maricris were the Chief Executive Officer (CEO) and Member of the Board of Directors of EOL, respectively.[5]

As alleged in the Amended Complaint,[6] EOL sought SMART sometime in 2006 to provide the mobile communication requirements for its expansion. Series of meetings ensued between the parties where it was determined that EOL would be needing approximately 2,000 post-paid lines with corresponding cell phone units. Nineteen (19) of these lines shall be under the corporate account of EOL while the rest of the lines and phones shall be distributed to EOL's franchisees.[7] In view of this, EOL's corporate president Salustiano G. Samaco III (Samaco III), signed on separate occasions, two (2) Corporate Service Applications (SAF) for the 2,000 post-paid lines with corresponding cell phone units. He also signed Letters of Undertaking[8] to cover for the 1,119 phone lines issued by SMART to EOL thus far. Paragraph 8 of these Letters of Undertaking read:

8. The President and each one of the directors and officers of the corporation shall be held solidarily liable in their personal capacity

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[3] *Id*. at 52.

[4] *Id*. at 53

[5] *Id.* at 52.

[6] *Id*. at 50-72.

[7] *Id*. at 53.

[8] Signed on June 22, 2006 and August 9, 2006, respectively, *id.* at 242-243.

with the SUBSCRIBER for all charges for the use of the SMART Celfones (sic) units acquired by the said SUBSCRIBER.[9]

In September 2006, EOL demanded the release of the remaining phone lines to cover its initial order of 2,000 units. SMART informed EOL that before it approved further phone line applications, the parties should restate and clarify the agreements between them, to which EOL agreed.[10]

In a letter dated September 13, 2006 (Letter Agreement), SMART specified the terms of the agreement over the 1,119 phone lines it already issued in favor of EOL.[11] In addition to the Letter Agreement, EOL executed an Undertaking[12] (EOL Undertaking) where it affirmed its availment of 1,119 SMART cell phones and services. EOL also agreed to assume full responsibility for the charges incurred on the use of all these units. The pertinent portion of the EOL Undertaking signed by Samaco III and petitioner Nolasco provides:

x x x x x x x x x

3. Everything Online, Inc. agrees that it shall be fully responsible for the settlement of whatever charges to be incurred under the above mobile numbers and shall fully comply with the terms and conditions pertaining to the Smart Corporate Service Application Form and other related Subscription Contracts. Likewise, Everything Online, Inc. shall bind itself to be continuously responsible regardless of assignment and movements of its designated users until such time that the units are validly transferred, after the expiration of the lock-in period, after twenty four (24) months for nineteen (19) lines at Plan 1200 and after thirty six (36) months for one thousand one hundred (1,100) lines at Plan 500, respectively.

x x x x x x x x x

9. **The President and each one of the directors and officers of Everything Online, Inc. shall be held solidarity liable in their**

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[9] *Id*.

[10] *Id*. at 57.

[11] *Id*.

[12] *Id*. at 231-241.

personal capacity with the franchisee or assignee for all charges for the use of the SMART cellphone units acquired by Everything Online, Inc.[13] (Emphases supplied)

SMART averred that after the execution of the EOL Undertaking, its credit and collection department sent, by email, phone bills to EOL that had been previously returned to SMART. These bills were for the collection of the monthly payment due on the lines that were supposedly given to EOL's franchisees. However, EOL allegedly refused to receive the bills, stating that it was not liable for the payment of bills of phone lines assigned to franchisees.[14]

On October 13, 2006, SMART notified EOL that its collectibles already amounted to at least ₱18,000,000.00 representing the costs of cell phone units and the plans usage. EOL officers were also reminded that under the EOL Undertaking and the Letter Agreements, it is bound to pay the bills of the franchisees, whether the phones were in the possession of the franchisees or not.[15]

On July 27, 2007, a meeting was purportedly held between the parties where EOL proposed to update the payments for 304 accounts of its franchisees and it would update and amend the monthly plan for the other 765 accounts. EOL then issued Banco De Oro Check No. 1003473 dated August 3, 2007 for ₱394,064.62 in favor of SMART as partial payment and as a sign of good faith. However, the BDO check was dishonored upon presentment due to insufficiency of funds.[16]

On November 8, 2007, SMART sent EOL a notice of final demand for the payment of the outstanding amount of ₱17,506,740.55. Despite receipt of the demand letter, EOL failed to pay the amount due. On January 2, 2008, another demand

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[13] *Id*. at 239.

[14] *Id*. at 61.

[15] *Id*. at 62.

[16] *Id*. at 64.

letter for ₱20,662,073.45[17] was sent by SMART to EOL. No payment was made by EOL. SMART claimed that the total due from EOL already amounted to ₱39,770,810.87 as of October 31, 2008.[18]

SMART failed to collect from EOL despite repeated demands. Thus, on April 1, 2009, an Amended Complaint[19] with an application for a writ of preliminary attachment was filed by SMART before the RTC of Makati, Branch 62 for Collection of Sum of Money docketed as Civil Case No. 09-199 against EOL and all its directors and officers including petitioners Nolasco and Maricris.

On April 20, 2009, the trial court gave due course to the application for the issuance of a writ of attachment and ordered the posting of an attachment bond in the amount of ₱39,770,810.87.[20]

On June 15, 2009, petitioners filed a Motion to Dismiss With a Very Urgent Motion to Lift and Discharge Writ of Preliminary Attachment issued against them.[21] Petitioners averred that they are not the real party in interest in the case.[22] Maricris claimed that the only allegation holding the directors and officers personally and solidarily liable with EOL was the alleged provisions in the Letter Agreements[23] and EOL Undertaking.[24] The Letter Agreements and EOL Undertaking failed to show

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[16] *Id*. at 64.

[17] *Id*.

[18] *Id*. at 65.

[19] *Id*. at 50-72.

[20] *Id*. at 334.

[21] *Id*. at 78-89.

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

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

[24] *Id*. at 231-241.

that she expressly agreed to be bound by the provisions contained therein. Accordingly, the complaint against her must be dismissed.[25]

With respect to Nolasco, petitioners argued that while his signature appears in the EOL Undertaking, it is not a sufficient ground to implead him in the complaint together with EOL. It was SMART that drafted the EOL Undertaking and Nolasco's participation is limited to the affixing of his signature thereon after EOL's President has already signed it. Nolasco signed in good faith and without the opportunity to read the contents of the same. Be that as it may, Nolasco is not the real party in interest in this case because he was no longer an Officer/Director of EOL at the time the complaint was filed as their entire share was already assigned to one of EOL's directors.[26]

The RTC Ruling

On November 11, 2009, the RTC issued an Order[27] granting the motions to dismiss. The dispositive portion of the Order reads:

> **WHEREFORE**, finding the defendant individuals' separate Motion to Dismiss being impressed with merit, the Court **GRANTS** the same. The Complaint against the named individuals is hereby ordered **DISMISSED**. Defendant Everything Online, Inc., is ordered to file its responsive pleading within the non-extendible period of five (5) days from notice hereof. Consequently, the writs of attachment as well as collateral papers issued in pursuance to the writ in so far as they involve properties belonging to the named defendant individuals are hereby **RECALLED** and **SET ASIDE**.
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> **SO ORDERED**.[28] (Emphasis in the original)

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[25] *Id*. at 79-82.

[26] *Id*. at 82-84.

[27] *Id*. at 90-94.

[28] *Id*. at 94.

EOL[29] and SMART[30] filed separate motions for partial reconsideration but these were denied by the trial court in its February 22, 2010 Order.[31]

Ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC, SMART elevated the case to the CA via a Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.[32]

Ruling of the CA

On December 2, 2013, the CA promulgated the assailed Decision[33] partly grating the respondent's petition for *certiorari*. The appellate court found grave abuse on the part of the trial court in dismissing the complaint against individual defendants. The CA ruled that there was overwhelming evidence indicating that Samaco III and Spouses Fernandez expressly bound themselves to be solidarily liable with EOL to SMART. The CA decreed as follows:

> **WHEREFORE**, premises considered, the instant petition is **PARTLY GRANTED**. Accordingly, the assailed Orders are hereby **MODIFIED** to **REINSTATE** the complaint against private individual respondents Salustiano Samaco III and spouses Nolasco and Maricris Fernandez being corporate officers of private respondent Everything Online Inc.
>
> **SO ORDERED**.[34] (Emphasis in the original)

Petitioners moved for reconsideration but, their Motion was denied by the CA in its Resolution[35] dated June 4, 2014, leading

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[29] *Id*. at 111-113. See Order dated February 22, 2010.

[30] *Id*. at 95-105.

[31] *Id*. at 111-113.

[32] *Id*. at 114-139.

[33] *Id*. at 24-46.

[34] *Id*. at 45.

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

the petitioners to file the instant recourse anchored on the following grounds:

-A-

THE PETITION FOR *CERTIORARI* UNDER RULE 65 SHOULD NOT BE THE PROPER REMEDY AGAINST A FINAL ORDER OF DISMISSAL ISSUED BY THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 62.

-B-

THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 62 DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE COMPLAINT AGAINST PETITIONERS.[36]

The petition essentially presents the following issues for the Court's resolution: (1) whether or not an order of dismissal of the complaint should be assailed via a petition for *certiorari* under Rule 65; and (2) whether or not there was a ground to dismiss complaint for a collection of sum of money against petitioners as corporate officer and director.

Ruling of the Court

Before going into the substance of the petition, the Court shall first resolve the procedural question the petitioners raised.

Petitioners' argument that the petition for *certiorari* under Rule 65 is a wrong remedy and should have been dismissed by the CA fails to persuade.

Under Section 1, Rule 65 of the Rules of Court, a petition for *certiorari* may be filed when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. An act of a court or tribunal is considered committed with grave abuse of discretion if it is whimsical,

[36] *Id*. at 12.

arbitrary, or capricious amounting to "an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."[37]

An order of dismissal of the complaint is a final order that is subject to appeal.[38] Section 1, Rule 41 of the Rules of Court reads:

> Section 1. — Subject of appeal. An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

The same provision also provides that no appeal may be taken from the following:

> (a) An order denying a petition for relief or any similar motion seeking relief from judgment;
> (b) An interlocutory order;
> (c) An order disallowing or dismissing an appeal;
> (d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
> (e) An order of execution;
> **(f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom;** or
> (g) An order dismissing an action without prejudice. (Emphasis supplied)

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action for *certiorari* under Rule 65.[39]

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[37] *Feliciano S. Pasok, Jr. v. Office of the Ombudsman-Mindanao and Rex Y. Dua,* G.R. No. 218413, June 6, 2018, citing *Callo-Claridad v. Esteban*, 707 Phil. 172, 186 (2013).

[38] *Editha S. Medina, Raymond A. Dalandan, and Clemente A. Dalandan, as their Attorney-in-Fact v. Sps. Nicomedes and Brigida Lozada*, G.R. No. 185303, August 1, 2018.

[39] Section 1, Rule 41 of the Rules of Court.

Here, the RTC Order[40] granting the motion to dismiss filed by petitioners is a final order because it terminates the proceedings against them. However, the final order falls within exception (f) of the Rule since the case involves several defendants, and the complaint for sum of money against EOL is still pending. There being no appeal, "or any plain, speedy, and adequate remedy in law, the remedy of a special civil action for *certiorari* is proper as there is a need to promptly relieve the aggrieved party from the injurious effects of the acts of an inferior court or tribunal."[41]

Having settled procedural matters, for resolution is the substantive issue of whether or not there was a ground to dismiss complaint for a collection of sum of money against petitioners as corporate officer and director.

The Court finds the petition partly meritorious.

Petitioners asseverated in their motion to dismiss that the complaint fails to state a cause of action because it was brought against defendants who are not the real parties in interest.

A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[42] Thus, "[a]ny decision rendered against a person who is not a real party in interest in the case cannot be executed."[43] Consequently, a "complaint filed against such a person should be dismissed for failure to state a cause of action."[44]

As provided in *Zuniga-Santos v. Santos-Gran, et al.*:[45]

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[40] *Rollo*, pp. 90-94.

[41] *Id*. at 95.

[42] Section 2, Rule 3 of the Rules of Court.

[43] *Aniceto G. Saludo, Jr. v. Philippine National Bank*, G.R. No. 193138, August 20, 2018, citing *Aguila, Jr. v. Court of Appeals*, 377 Phil. 257 (1999).

[44] *Aniceto G. Saludo, Jr. v. Philippine National Bank*, *supra*.

[45] 745 Phil. 172, 180 (2014).

A complaint states a cause of action if it **sufficiently** avers the existence of the three (3) essential elements of a cause of action, namely: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of the named defendant to respect or not to violate such right; and (c) an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages. If the allegations of the complaint do not state the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action. (Emphasis supplied)

A judicious examination of the Amended Complaint[46] shows that petitioners were impleaded in the instant action based on the provisions of the Letter Agreement[47] and EOL Undertaking,[48] which purportedly bound them to be solidarily liable with the corporation in its obligation with SMART. In effect, the Amended Complaint seeks to pierce the veil of corporate fiction against Nolasco and Maricris in their capacities as corporate officer and director of EOL.

It is basic in corporation law that a corporation is an artificial being invested by law with a personality separate and distinct from its stockholders and from other corporations to which it may be connected.[49] Inferred from a corporation's separate personality is that "consent by a corporation through its representatives is not consent of the representative, personally."[50] The corporate obligations, incurred through official acts of its representatives, are its own. Corollarily, a stockholder, director, or representative does not become a party to a contract just

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[46] *Rollo*, pp. 50-72.

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

[48] *Id*. at 231-241.

[49] *Zaragoza v. Tan*, G.R. No. 225544, December 4, 2017, 847 SCRA 437, 449.

[50] *Lanuza, Jr., et al. v. BF Corporation, et al.*, 744 Phil. 612, 635 (2014).

because a corporation executed a contract through that stockholder, director, or representative.[51]

As a general rule, a corporation's representatives are not bound by the terms of the contract executed by the corporation. "They are not personally liable for obligations and liabilities incurred on or in behalf of the corporation."[52]

There are instances, however, when the distinction between personalities of directors, officers, and representatives, and of the corporation, are disregarded. This is piercing the veil of corporate fiction.[53]

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 could be treated as a single entity. It is meant to apply only in situations where the separate corporate personality of a corporation is being abused or being used for wrongful purposes.[54]

The piercing of the corporate veil must be done with caution.[55] To justify the piercing of the veil of corporate fiction, "it must be shown by clear and convincing proof that the separate and distinct personality of the corporation was purposefully employed to evade a legitimate and binding commitment and perpetuate a fraud or like wrongdoings."[56]

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[51] *Id*.

[52] *Id.*

[53] *University of Mindanao, Inc. v. Bangko Sentral Ng Pilipinas, et al*., 776 Phil. 401, 439 (2016).

[54] *Veterans Federation of the Philippines v. Montenejo*, G.R. No. 184819, November 29, 2017, 847 SCRA 1, 26-27.

[55] *California Manufacturing Company, Inc. v. Advanced Technology System, Inc*., 809 Phil 425, 432 (2017).

[56] *Kukan International Corporation v. Hon. Amor Reyes, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 21, and*

A corporate director, trustee, or officer is to be held solidarily liable with the corporation in the following instances:

1. When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons;

2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto;

3) When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the Corporation; or

4) When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.[57]

These instances have not been shown in the case of petitioner Maricris. While the Amended Complaint alleged that EOL fraudulently refused to pay the amount due, nothing in the said pleading or its annexes would show the basis of Maricris' alleged fraudulent act that warrants piercing the corporate veil. No explanation or narration of facts was presented pointing to the circumstances constituting fraud which must be stated with particularity, thus rendering the allegation of fraud simply an unfounded conclusion of law. Without specific averments, "the complaint presents no basis upon which the court should act, or for the defendant to meet it with an intelligent answer and must, perforce, be dismissed for failure to state a cause of action."[58]

In the determination of sufficiency of a cause of action for purposes of resolving a motion to dismiss, the court must decide,

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Romeo M. Morales, doing business under the name and style "RM Morales Trophies and Plaques," 646 Phil. 216, 237 (2010).

[57] *Heirs of Fe Tan Uy v. International Exchange Bank*, 703 Phil. 477, 485-486 (2013).

[58] *Westmont Bank (now United Overseas Bank Phils.) v. Funai Phils. Corp., et al.*, 763 Phil. 245, 261 (2015).

"hypothetically admitting the factual allegations in a complaint, whether it can grant the prayer in the complaint."[59]

The Court pronounced in *Guillermo, et al. v. Philippine Information Agency, et al.*,[60] that:

> It is well to point out that the plaintiff's cause of action should not merely be "stated" but, importantly, the statement thereof should be "sufficient," This is why the elementary test in a motion to dismiss on such ground is whether or not the complaint alleges facts which if true would justify the relief demanded. As a corollary, it has been held that only ultimate facts and not legal conclusions or evidentiary facts are considered for purposes of applying the test. This is consistent with Section 1, Rule 8 of the Rules of Court which states that the complaint need only allege the ultimate facts or the essential facts constituting the plaintiffs cause of action. A fact is essential if they cannot be stricken out without leaving the statement of the cause of action inadequate. Since the inquiry is into the sufficiency, not the veracity, of the material allegations, it follows that the analysis should be confined to the four corners of the complaint, and no other.[61]

By merely stating a legal conclusion, the Amended Complaint presented no sufficient allegation against petitioner Maricris upon which the Court could grant the relief prayed for. The trial court correctly dismissed the complaint against Maricris on the ground of failure to state cause of action.

This is not the case with petitioner Nolasco. Nolasco, as CEO, signed the EOL Undertaking purportedly binding himself to be "held solidarily liable in his personal capacity with the franchisee or assignee for all charges for the use of SMART cell phone units acquired by Everything Online, Inc." Such allegation proffers hypothetically admitted ultimate facts, which would warrant an action for a collection for sum of money based on the provision of the EOL Undertaking.[62]

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[59] *Guillermo, et al. v. Philippine Information Agency, et al.*, 807 Phil. 555, 557 (2017).

[60] *Guillermo, et al. v. Philippine Information Agency, et al.*, *supra*.

[61] *Id*. at 566-567, citing *Zuniga-Santos v. Santos-Gran, et al.*, 745 Phil. 171, 180 (2014).

[62] *Rollo*, pp. 50-72.

Again, in filing a motion to dismiss on the ground of failure to state a cause of action, a defendant hypothetically admits the truth of the facts alleged in the complaint.[63] Since allegations of evidentiary facts and conclusions of law are normally omitted in pleadings, "the hypothetical admission extends only to the relevant and material facts well pleaded in the complaint, as well as inferences fairly deductible therefrom."[64]

The following is clearly stipulated in Item 9 of the EOL Undertaking signed by Nolasco, *viz.*:

> 9. **The President and each one of the directors and officers of Everything Online, Inc. shall be held solidarily liable in their personal capacity with the franchisee or assignee for all charges for the use of the SMART cellphone units acquired by Everything Online, Inc.**[65]

Verily, the trial court erred in dismissing the complaint against petitioner Nolasco. The allegations in the complaint, regarding the possible personal liability of petitioner Nolasco based on Item 9 of EOL Undertaking,[66] sufficiently stated a cause of action. The question of whether petitioner Nolasco is a real party-in-interest who would be benefited or injured by the judgment, would be better threshed out in a full-blown trial. Indeed, in cases that call for the piercing of the corporate veil, "parties who are normally treated as distinct individuals should be made to participate in the proceedings in order to determine if such distinction should be disregarded and, if so, to determine the extent of their liabilities."[67]

WHEREFORE, premises considered, the petition is **PARTLY GRANTED**. The December 2, 2013 Decision of Court

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[63] *Pilipinas Shell Foundation, Inc., et al. v. Fredeluces, et al.*, 785 Phil. 411, 437 (2016).

[64] *Westmont Bank (now United Overseas Bank Phils.) v. Funai Phils. Corp., et al.*, *supra* note 58, at 261.

[65] *Rollo*, p. 239. Emphasis supplied.

[66] *Id.* at 50-72.

[67] *Lanuza, Jr., et al. v. BF Corporation, et al.*, *supra* note 50, at 641.

of Appeals in CA-G.R. SP. No. 113832 is hereby **MODIFIED** to the extent that the complaint against petitioner Maricris Fernandez is dismissed for failure to state a cause of action.

SO ORDERED.

Leonen (*Acting Chairperson*), *Gesmundo,*[*] *Hernando*, and *Inting, JJ.*, concur.

THIRD DIVISION

[G.R. No. 213009. July 17, 2019]

BOOKMEDIA PRESS, INC. and BENITO J. BRIZUELA, *petitioners, vs.* **LEONARDO**[*] **SINAJON**[**] **and YANLY ABENIR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF THE LABOR ARBITER WHICH WERE AFFIRMED BY BOTH THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND THE COURT OF APPEALS ARE BINDING AND CONCLUSIVE UPON THE SUPREME COURT.— [T]he LA's finding — that there was established only one instance *(i.e.,* on July 20, 1997) where respondents had left work early after having their time cards punched-in — was affirmed in the proceedings *a quo* by both the NLRC and the CA. Accordingly, and in the absence of compelling circumstances that could cast doubt on its veracity,

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[*] Designated additional Member, per raffle dated January 3, 2019.

[*] Also referred to as Leonard in some parts of the *rollo.*

[**] "Sanin" in some parts of the *rollo.*

such finding, factual as it is, ought to be binding and conclusive upon us insofar as the present petition is concerned.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES FOR THE DISMISSAL OF AN EMPLOYEE.— The law enumerates what it considers as just causes for the dismissal of an employee. Article 297 of the Labor Code provides: ARTICLE 297. *Termination by Employer.* — An employer may terminate an employment for any of the following causes: (a) Serious misconduct **or willful disobedience by the employee of the lawful orders of his employer** or representative in connection with his work; (b) Gross and habitual neglect by the employee of his duties; (c) **Fraud** or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and (e) Other causes analogous to the foregoing.

3. ID.; ID.; ID.; ID.; SERIOUS MISCONDUCT; DEFINED AS THE TRANSGRESSION OF SOME ESTABLISHED AND DEFINITE RULE OF ACTION, A FORBIDDEN ACT, A DERELICTION OF DUTY, WILLFUL IN CHARACTER, AND IMPLIES WRONGFUL INTENT AND NOT MERE ERROR OF JUDGMENT.— In *Ha Yuan Restaurant v. NLRC,* we defined the just cause of serious misconduct as: [T]he transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, **willful in character, and implies wrongful intent and not mere error of judgment.**

4. ID.; ID.; ID.; ID.; WILLFUL DISOBEDIENCE OF AN EMPLOYER'S ORDER; REQUISITES.— In *Gold City Integrated Port Services, Inc. (IMPORT) v. NLRC,* on the other hand, we described what willful disobedience of an employer's lawful order entails: Willful disobedience of the employer's lawful orders, as a just cause for the dismissal of an employee, envisages the concurrence of at least two (2) requisites: **the employee's assailed conduct must have been willful or intentional, the wilfulness being characterized by a "wrongful and perverse attitude";** and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.

5. ID.; ID.; ID.; ID.; DISHONESTY; DEFINED AS THE DISPOSITION TO LIE, CHEAT, DECEIVE, OR DEFRAUD.— In *National Power Corp. v. Olandesca,* we elucidated upon the concept of dishonesty — an allied notion of fraud — as follows: [D]ishonesty is defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.

6. ID.; ID.; ID.; JUST CAUSES OF SERIOUS MISCONDUCT, WILLFUL DISOBEDIENCE OF AN EMPLOYER'S LAWFUL ORDER, AND FRAUD ALL IMPLY THE PRESENCE OF WILLFULNESS OR WRONGFUL INTENT ON THE PART OF THE EMPLOYEE; TO WARRANT THE ULTIMATE PENALTY OF DISMISSAL, IT IS ESSENTIAL THAT THE INFRACTION COMMITTED BY AN EMPLOYEE IS SERIOUS, NOT MERELY TRIVIAL, AND BE REFLECTIVE OF A CERTAIN DEGREE OF DEPRAVITY OR INEPTITUDE ON THE EMPLOYEE'S PART; IMPOSITION OF THE PENALTY OF DISMISSAL, NOT PROPER IN CASE AT BAR.— [T]he just causes of serious misconduct, willful disobedience of an employer's lawful order, and fraud all imply the presence of *"willfulness"* or *"wrongful intent"* on the part of the employee. Hence, serious misconduct and willful disobedience of an employer's lawful order may only be appreciated when the employee's transgression of a rule, duty or directive has been the product of *"wrongful intent"* or of a *"wrongful and perverse attitude*," but not when the same transgression results from simple negligence or *"mere error in judgment."* In the same vein, fraud and dishonesty can only be used to justify the dismissal of an employee when the latter commits a dishonest act that reflects a disposition to deceive, defraud and betray his employer. The requirement of willfulness or wrongful intent in the appreciation of the aforementioned just causes, in turn, underscores the intent of the law to reserve only to the gravest infractions the ultimate penalty of dismissal. It is essential that the infraction committed by an employee is serious, not merely trivial, and be reflective of a certain degree of depravity or ineptitude on the employee's part, in order for the same to be a valid basis for the termination of his employment. The actions of the respondents on July 20,

1997, to our mind, lack the elements of willfulness or seriousness so as to warrant their dismissal. The respondents' act of leaving the workplace early, though unauthorized and violative of company time policy, was certainly not motivated by any wanton desire to transgress said policy. As explained by the respondents in their letters, they only felt compelled to leave work early on July 20, 1997 because of emergencies they had to address in their respective homes. Viewed in such context, the failure of the respondents to seek permission prior to leaving early could thus be attributed to a momentary lapse of judgment on their part, rather than to some design to circumvent Bookmedia's time policy. For this reason, such transgression of a company policy cannot be characterized either as serious misconduct or a willful disobedience of the employer's order. While Abenir may have also committed dishonesty when he had another person punch-out his (Abenir's) time card later in the day of July 20, 1997, we find that the same may be somewhat mitigated by the fact that Abenir did render work up until 5:00 p.m. of the same day. As Abenir explained, he only asked another person to punch-out his (Abenir's) time card because he forgot to do so when he left work at around 5:00 p.m. of July 20, 1997. Certainly, given such background, the dishonest act of Abenir does not equate to the fraud contemplated by the law that could warrant the imposition of the penalty of dismissal.

7. ID.; ID.; ID.; ID.; STRAINED RELATIONS BETWEEN PARTIES RENDER REINSTATEMENT NOT FEASIBLE OR VIABLE; SEPARATION PAY *IN LIEU* OF REINSTATEMENT, TO BE RECKONED FROM THE TIME OF ILLEGAL DISMISSAL UP TO THE TIME OF FINALITY OF DECISION, AWARDED IN CASE AT BAR.— Be that as it may, we are of the view that the reinstatement of the respondents would no longer be feasible or viable in this case. In coming to such conclusion, we took into account the understandable strained relations between the parties that no doubt had to fester because of the inordinate length of time that has passed — some 22 years in total — between the dismissal of the respondents and the promulgation of this decision. Given such strained relations, the reinstatement of the respondents is already rendered impractical considering that one of their duties as in-house security personnel is to secure the person of petitioner Brizuela. Since separation pay *in lieu* of reinstatement is awarded,

the end point of respondents' backwages will no longer be their actual reinstatement but the finality of the instant decision. In other words, respondents' backwages should now be reckoned from the time of illegal dismissal **up to the time the instant decision becomes final.** This case, therefore, has to be remanded to the LA for purposes of computing the amount of separation pay *in lieu* of reinstatement that each respondent is entitled to, and recomputing respondents' backwages in accordance with this decision.

APPEARANCES OF COUNSEL

Cruz Enverga & Lucero for petitioners.
Gervacio Dieta for respondents.

D E C I S I O N

PERALTA, *J.*:

This case is an appeal[1] from the Decision[2] dated September 11, 2013 and Resolution dated June 9, 2014[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 127981.

The facts:

Petitioner Bookmedia Press, Inc. *(Bookmedia)* is a local printing company. Petitioner Benito J. Brizuela *(Brizuela),* on the other hand, is the president of Bookmedia.

Bookmedia hired respondents Yanly Abenir *(Abenir)* and Leonardo Sinajon *(Sinajon)* in 1995 and 1996, respectively, as in-house security personnel.[4] As in-house security personnel,

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[1] *Rollo,* pp. 10-29. The appeal was filed as a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

[2] *Id.* at 33-41. The decision was penned by Associate Justice Amelita G. Tolentino, with the concurrence of Associate Justices Ramon R. Garcia and Danton Q. Bueser.

[3] *Id.* at 43-44.

[4] *Id.* at 65.

respondents were tasked with *"secur[ing] the safety and well-being of x x x Brizuela [and also of] monitor [ing] the actuations and conditions of certain contractual workers within [Bookmedia's] plant while x x x Brizuela is not around[.]"*[5]

On July 20, 1997, Brizuela received a report from one Larry Valdoz *(Valdoz),* a security guard of Bookmedia, which claims that respondents, earlier in the day, had left the company premises moments after punching-in their respective time cards.[6] The report also alleges that Sinajon returned on the evening of the same day and punched-out his and Abenir's time cards.[7]

After receiving such report, Brizuela immediately summoned both respondents for an explanation.[8] Respondents, however, apparently ignored Brizuela.[9]

The following morning, however, respondents submitted their letters-explanations[10] to Brizuela. In the letters, the respondents admitted to punching-in their time cards and then leaving work early on July 20, 1997, but explained that they merely did so because they had to attend to some emergency in their respective homes on that day:[11]

a. For Abenir, he stated that he left early on July 20, 1997 because he received a call from his wife urging him to come home immediately because his brother was in trouble. Respondent Abenir said he left work at around 5:00 p.m., but as he forgot to punch-out his time card, he asked another person to do it for him;[12] and

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[5] *Id.* at 34.

[6] *Id.* at 61.

[7] *Id.*

[8] *Id.*

[9] *Id.*

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

[11] *Id.*

[12] *Id.* at 62.

b. For Sinajon, he stated that he had to leave work early on July 20, 1997 because of a call informing him that the roof of his house was destroyed and, as a storm is impending, is in urgent need of repair. Sinajon said that he also had to take care of his wife who was, at that time, suffering from a fever. He manifested that he tried to return to work immediately after attending to his concerns but, due to strong rains, was only able to make it back at around 6:00 p.m. He stayed and waited in the company premises until the arrival of his replacement, one named Abe.[13]

The next day, or on July 22, 1997, Bookmedia fired both respondents.

Contending that their firing has been effected without cause and observance of due process, the respondents filed before the Labor Arbiter *(LA)* a complaint for illegal dismissal[14] against petitioners.

The petitioners, for their part, denied the contention. They alleged that the incident on July 20, 1997 was only the latest in a string of past incidents where respondents were caught skipping work after punching-in their time cards. Petitioners submit that the respondents' repeated infractions of the company's time policy thus made the latter susceptible to being dismissed on account of, among others, *serious misconduct, willful disobedience of an employer's lawful order, or fraud.*

To substantiate their allegation, the petitioners submitted before the LA the mentioned letters-explanations of the respondents.

On April 1, 1998, the LA rendered a Decision[15] finding as illegal the dismissal of the respondents due to the failure of the petitioners to prove otherwise. The LA pointed out that petitioners really presented no evidence to support their

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[13] *Id.* at 63.

[14] The complaint also included claims for underpayment of salaries, and nonpayment of overtime, holiday and 13th month pay.

[15] *Rollo,* pp. 65-75.

accusation that respondents have *repeatedly* been leaving work early after punching-in their time cards.[16]

According to the LA, the only evidence presented by the petitioners to fortify their allegations were the letters-explanations of the respondents which, as it happens, only contained the respondents' admissions with respect to the incident on July 20, 1997.[17] In the letters, the respondents did admit to punching-in their cards and then leaving work early — but only on July 20, 1997 — and merely because they had to attend to some emergency.[18] Hence, per the records, there was only one instance established where the respondents had actually committed an infraction of Bookmedia's time policy.[19]

The LA opined that a single instance of said infraction cannot be considered as a just cause for the dismissal of the respondents; the penalty itself being too harsh given the circumstances. According to the LA, a *"written reprimand with a warning that commission of the same offense would be dealt with more severely* would have been the reasonable penalty to impose against the respondents.[20]

Verily, the LA ordered the petitioners to, among others,[21] reinstate the respondents without loss of seniority rights and pay them backwages.

The petitioners appealed to the National Labor Relations Commission *(NLRC).*

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[16] *Id.* at 68

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] See *rollo,* pp. 131-137. The LA likewise awarded unpaid overtime pay, premium pay for holidays and rest days, holiday pay and 13th month pay in the aggregate amounts of ₱43,419.02 for Sinajon and ₱64,627.17 for Abenir. In addition, the LA also decreed payment of respondents' salaries from July 16 up to July 22, 1997 in the amounts of ₱1,470.00 for Sinajon and ₱1,498.00 for Abenir. Finally, the LA awarded attorney's fees of ₱10,594.35 for each of the respondents.

The petitioners' appeal was initially dismissed by the NLRC on October 12, 1998 for their failure to file a bond along with such appeal. After an unsuccessful motion for reconsideration, the petitioners filed with the CA a petition for *certiorari* to challenge the dismissal of their appeal. On September 15, 2005, the CA granted such petition and ordered the reinstatement of petitioners' appeal with the NLRC.[22]

On July 25, 2012, the NLRC issued a Decision[23] denying, on the merits, the appeal of the petitioners and affirming the LA decision. Petitioners next filed a petition for *certiorari* before the CA.

On September 11, 2013, the CA rendered a Decision[24] dismissing petitioners' *certiorari* petition and affirming the NLRC decision. Petitioners moved for reconsideration, but the CA remained steadfast.[25]

Hence, this petition for review on *certiorari.*

OUR RULING

We deny the petition.

I

We emphasize, at the outset, that the LA's finding — that there was established only one instance *(i.e.,* on July 20, 1997) where respondents had left work early after having their time cards punched-in — was affirmed in the proceedings *a quo* by both the NLRC and the CA. Accordingly, and in the absence of compelling circumstances[26] that could cast doubt on its

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[22] See *rollo,* p. 35.

[23] *Rollo,* pp. 95-101.

[24] *Id.* at 33-41.

[25] *Id.* at 43-44.

[26] The case of *The Insular Life Assurance Co., Ltd. v. Court of Appeals* (472 Phil. 11, 22-23 [2004]) enumerates the exceptions when factual findings affirmed by the CA may be disturbed by the Supreme Court, to wit: "(1) when the findings are grounded entirely on speculation, surmises or conjectures;

veracity, such finding, factual as it is, ought to be binding and conclusive upon us insofar as the present petition is concerned.

Thus, the only real issue left to be resolved here is whether the actions of the respondents on that solitary incident on July 20, 1997 constituted just causes for the dismissal of the respondents.

The law enumerates what it considers as just causes for the dismissal of an employee. Article 297 of the Labor Code[27] provides:

ARTICLE 297. *Termination by Employer.* — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct **or willful disobedience by the employee of the lawful orders of his employer** or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) **Fraud** or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

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(2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion."

[27] Presidential Decree No. 442, as amended. Article 297 of the Labor Code was originally Article 282, before being renumbered by DOLE Department Advisory No. 1, series of 2015.

(e) Other causes analogous to the foregoing.

We agree with the LA, the NLRC and the CA in holding that the actions of the respondents on July 20, 1997 do not qualify as just causes for the latter's dismissal. Such actions, taken with the attendant circumstances of this case, cannot be considered as *serious misconduct, willful disobedience of an employer's lawful order, or fraud.*

In *Ha Yuan Restaurant v. NLRC,*[28] we defined the just cause of serious misconduct as:

> [T]he transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, **willful in character, and implies wrongful intent and not mere error of judgment.**[29] (Emphasis supplied.)

In *Gold City Integrated Port Services, Inc. (INPORT) v. NLRC,*[30] on the other hand, we described what willful disobedience of an employer's lawful order entails:

> Willful disobedience of the employer's lawful orders, as a just cause for the dismissal of an employee, envisages the concurrence of at least two (2) requisites: **the employee's assailed conduct must have been willful or intentional, the wilfulness being characterized by a "wrongful and perverse attitude";** and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[31] (Emphasis supplied; citation omitted.)

Lastly, In *National Power Corp. v. Olandesca,*[32] we elucidated upon the concept of dishonesty — an allied notion of fraud — as follows:

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[28] 516 Phil. 124 (2006).

[29] *Id.* at 128.

[30] 267 Phil. 863 (1990).

[31] *Id.* at 872.

[32] 633 Phil. 278 (2010).

[D]ishonesty is defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[33]

As can be observed from the foregoing pronouncements, the just causes of serious misconduct, willful disobedience of an employer's lawful order, and fraud all imply the presence of *"willfulness"* or *"wrongful intent"* on the part of the employee. Hence, serious misconduct and willful disobedience of an employer's lawful order may only be appreciated when the employee's transgression of a rule, duty or directive has been the product of "*wrongful intent"* or of a "*wrongful and perverse attitude*,"[34] but not when the same transgression results from simple negligence or *"mere error in judgment."*[35] In the same vein, fraud and dishonesty can only be used to justify the dismissal of an employee when the latter commits a dishonest act that reflects a disposition to deceive, defraud and betray his employer.[36]

The requirement of willfulness or wrongful intent in the appreciation of the aforementioned just causes, in turn, underscores the intent of the law to reserve only to the gravest infractions the ultimate penalty of dismissal. It is essential that the infraction committed by an employee is serious, not merely trivial, and be reflective of a certain degree of depravity or ineptitude on the employee's part, in order for the same to be a valid basis for the termination of his employment.[37]

The actions of the respondents on July 20, 1997, to our mind, lack the elements of willfulness or seriousness so as to warrant their dismissal.

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[33] *Id.* at 288, citing *Phil. Amusement and Gaming Corp. v. Rilloraza,* 412 Phil. 114 (2001).

[34] See notes 29 and 31.

[35] See note 29.

[36] *The Hongkong & Shanghai Banking Corp. v. NLRC,* 328 Phil. 1156, 1165 (1996).

[37] *Id.* See also *Farrol v. Court of Appeals,* 382 Phil. 212, 220-221 (2000).

The respondents' act of leaving the workplace early, though unauthorized and violative of company time policy, was certainly not motivated by any wanton desire to transgress said policy. As explained by the respondents in their letters, they only felt compelled to leave work early on July 20, 1997 because of emergencies they had to address in their respective homes. Viewed in such context, the failure of the respondents to seek permission prior to leaving early could thus be attributed to a momentary lapse of judgment on their part, rather than to some design to circumvent Bookmedia's time policy. For this reason, such transgression of a company policy cannot be characterized either as serious misconduct or a willful disobedience of the employer's order.

While Abenir may have also committed dishonesty when he had another person punch-out his (Abenir's) time card later in the day of July 20, 1997, we find that the same may be somewhat mitigated by the fact that Abenir did render work up until 5:00 p.m. of the same day. As Abenir explained, he only asked another person to punch-out his (Abenir's) time card because he forgot to do so when he left work at around 5:00 p.m. of July 20, 1997. Certainly, given such background, the dishonest act of Abenir does not equate to the fraud contemplated by the law that could warrant the imposition of the penalty of dismissal.

In *The Hongkong & Shanghai Banking Corp. v. NLRC,* we reminded that the penalty of dismissal authorized under the Labor Code should not be imposed on just *"any act of dishonesty"* committed by an employee, but only upon those whose depravity is commensurate to such penalty:[38]

> Like petitioner bank, this Court will not countenance nor tolerate ANY form of dishonesty. **But at the same time, we cannot permit the imposition of the maximum penalty authorized by our labor laws for JUST ANY act of dishonesty, in the same manner that death, which is now reinstated as the supreme sanction under the penal laws of our country, is not to be imposed for just any**

[38] *Id.*

killing. The penalty imposed must be commensurate to the depravity of the malfeasance, violation or crime being punished. A grave injustice is committed in the name of justice when the penalty imposed is grossly disproportionate to the wrong committed.

In the context of the instant case, dismissal is the most severe penalty an employer can impose on an employee. It goes without saying that care must be taken, and due regard given to an employee's circumstances, in the application of such punishment. **Moreover, private respondent's acts of dishonesty — his first offense in his seven years of employment, as noted by the respondent NLRC — did not show deceit nor constitute fraud and did not result in actual prejudice to petitioner. Certainly, such peremptory dismissal is far too harsh, too severe, excessive and unreasonable under the circumstances.** (Emphases supplied.)

On the other hand, no similar dishonesty could be attributed against Sinajon. Sinajon never admitted to punching-out his time card upon returning at 6:00 p.m. of July 20, 1997. Neither is there evidence on record that proves that he did. Hence, Sinajon cannot be said to have deceived Bookmedia with respect to his actual working hours on July 20, 1997.

All in all, and considering the fact that this is the first and only time that the respondents had committed any infraction against Bookmedia, we are constrained to approve the liberal stance of the LA, the NLRC and the CA. Respondents have been illegally dismissed.

II

Be that as it may, we are of the view that the reinstatement of the respondents would no longer be feasible or viable in this case. In coming to such conclusion, we took into account the understandable strained relations between the parties that no doubt had to fester because of the inordinate length of time that has passed — some 22 years in total — between the dismissal of the respondents and the promulgation of this decision. Given such strained relations, the reinstatement of the respondents is already rendered impractical considering that one of their duties

as in-house security personnel is to secure the person of petitioner Brizuela.

Since separation pay *in lieu* of reinstatement is awarded, the end point of respondents' backwages will no longer be their actual reinstatement but the finality of the instant decision. In other words, respondents' backwages should now be reckoned from the time of illegal dismissal **up to the time the instant decision becomes final.**[39]

This case, therefore, has to be remanded to the LA for purposes of computing the amount of separation pay *in lieu* of reinstatement that each respondent is entitled to, and recomputing respondents' backwages in accordance with this decision.

WHEREFORE, premises considered, the petition for review on *certiorari* is **DENIED**. The Decision dated September 11, 2013 and the Resolution dated June 9, 2014 of the Court of Appeals in CA-G.R. SP No. 127981 are **AFFIRMED with MODIFICATION** in that the order directing petitioners Bookmedia Press, Inc. and Benito J. Brizuela to reinstate respondents Yanly Abenir and Leonardo Sinajon is **DELETED.**

Judgment is hereby rendered **DIRECTING PETITIONERS TO PAY EACH RESPONDENT SEPARATION PAY *IN LIEU* OF REINSTATEMENT.**

This case is remanded to the Labor Arbiter for purposes of computing the amount of separation pay *in lieu* of reinstatement that each respondent is entitled to, and recomputing respondents' backwages in accordance with this decision.

SO ORDERED.

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

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[39] *Bani Rural Bank, Inc., et al. v. De Guzman, et al.,* 721 Phil. 84, 104 (2013).

THIRD DIVISION

[G.R. No. 214593. July 17, 2019]

DANA S. SANTOS, *petitioner, vs.* **LEODEGARIO R. SANTOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; PETITION FOR RELIEF FROM JUDGMENT UNDER RULE 38; DOES NOT STAY THE EXECUTION OF THE JUDGMENT BUT THE GRANT THEREOF REOPENS THE CASE FOR A NEW TRIAL; CASE AT BAR.— There is indeed no showing in the record that Dana moved for reconsideration or new trial from the RTC decision. She, nevertheless, filed an appeal. However, probably cognizant of the proscription in Section 20 of A.M. No. 02-11-10-SC, which makes the filing of a motion for reconsideration or a motion for new trial a precondition for filing an appeal, she withdrew her appeal and filed a petition for relief from judgment. There is no provision in A.M. No. 02-11-10-SC prohibiting resort to a petition for relief from judgment in a marriage nullity case. Furthermore, the said Rule sanctions the suppletory application of the Rules of Court to cases within its ambit. It cannot, therefore, be said that Dana availed of an inappropriate remedy to question the decision of the trial court. Indeed, the trial court admitted Dana's petition for relief, heard the parties on the issues thereon, and rendered an order denying the petition. Dana then properly and seasonably assailed the order of denial via *certiorari* to the CA. It is, therefore, clear that the proceedings in Civil Case No. 03-6954 continued even after the trial court had rendered judgment and even after the lapse of the 15-day period for appealing the decision. x x x The 1997 Rules of Civil Procedure changed the nature of an order of denial of a petition for relief from judgment, making it unappealable and, hence, assailable only *via* a petition for *certiorari*. Nevertheless, the appellate court, in deciding such petitions against denials of petitions for relief, remains tasked with making a factual determination, *i.e.*, whether or not the trial court committed grave abuse of discretion in denying the petition. To do so, it is still obliged, as *Service Specialists*

instructs, to "*determine not only the existence of any of the grounds relied upon whether it be fraud, accident, mistake or excusable negligence, but also and primarily the merit of the petitioner's cause of action or defense, as the case may be*." Stated otherwise, the finality of the RTC decision cannot bar the appellate court from determining the issues raised in the petition for relief, if only to determine the existence of grave abuse of discretion on the part of the trial court in denying such petition. While a Rule 38 Petition does not stay the execution of the judgment, the grant thereof reopens the case for a new trial; and thus, if merit be found in Dana's *certiorari* petition assailing the trial court's denial of her petition for relief, the case will be reopened for new trial. The CA, therefore, erred in refusing to reopen Dana's petition on the basis of the finality of the trial court decision.

2. ID.; JUDGMENTS; JUDGMENT UPON COMPROMISE; A COMPROMISE AGREEMENT GIVEN JUDICIAL APPROVAL IS ENTERED AS A DETERMINATION OF A CONTROVERSY, HAS THE FORCE AND EFFECT OF A JUDGMENT, IMMEDIATELY EXECUTORY AND NOT APPEALABLE EXCEPT FOR VICES OF CONSENT OR FORGERY; WHEN A JUDGMENT UPON A COMPROMISE IS CONTRARY TO LAW, IT IS A VOID JUDGEMENT THAT HAS NO LEGAL AND BINDING EFFECT; CASE AT BAR.— On one hand, the immutability and immediate effect of judgments upon compromise is well-settled. In *Magbanua v. Uy*, it was held that: When a compromise agreement is given judicial approval, it becomes more than a contract binding upon the parties. Having been sanctioned by the court, it is entered as a determination of a controversy and has the force and effect of a judgment. It is immediately executory and not appealable, except for vices of consent or forgery. The nonfulfillment of its terms and conditions justifies the issuance of a writ of execution; in such an instance, execution becomes a ministerial duty of the court. However, like any other judgment, a judgment upon compromise which is contrary to law is a void judgment; and "[a] void judgment or order has no legal and binding effect. It does not divest rights, and no rights can be obtained under it; all proceedings founded upon a void judgment are equally worthless." On the other hand, Article 2035(2) and Article 5 of the New Civil Code provide: ART. 2035. No

compromise upon the following questions shall be valid: x x x (2) The validity of a marriage or a legal separation; x x x ART. 5. Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. Again, the Court reiterates, at the risk of being repetitive, that the petition which gave rise to these proceedings is for the declaration of *nullity* of Dana and Leodegario's marriage. Dana's petition for *certiorari* with the CA, which is nothing but a consequence of the proceedings before the RTC, alleges the fraudulent deprivation of her chance to refute and controvert Leodegario's allegations and to present her side of the issue, which she also lays down in her petition. The core issue of Dana's petition is, therefore, the validity of her marriage to Leodegario. The termination of the case by virtue of the compromise agreement, therefore, necessarily implies the settlement by compromise of the issue of the validity of Dana and Leodegario's marriage.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMPROMISES; COMPRISE ONLY THOSE OBJECTS WHICH ARE DEFINITELY STATED THEREIN, OR WHICH BY NECESSARY IMPLICATION FROM ITS TERMS SHOULD BE DEEMED TO HAVE BEEN INCLUDED IN THE SAME; CASE AT BAR.— The Court cannot give its imprimatur to the dismissal of the case at bar even if, as the appellate court held, it was Dana's intention to have the case terminated upon the execution of the compromise agreement. Nevertheless, the Court agrees with the appellate court when it ruled that the scope of the compromise agreement is limited to Dana and Leodegario's property relations *vis-à-vis* their children, as Article 2036 of the Civil Code provides that "[a] compromise comprises only those objects which are definitely stated therein, or which by necessary implication from its terms should be deemed to have been included in the same." As held by the appellate court: The agreement makes no mention of the marital ties between [Leodegario] and [Dana] but is limited only to their property relations *vis-à-vis* their children. However, despite the error committed by the appellate court, absent vices of consent or other defects, the compromise agreement remains valid and binding upon Dana and Leodegario, as they have freely and willingly agreed to, and have already complied with, the covenants therein. The agreement operates as a partial

compromise on the issue of the disposition of the properties of the marriage. Nevertheless, the Court is constrained to uphold the appellate court's decision, because the trial court's denial of Dana's petition for relief from judgment does not amount to grave abuse of discretion.

4. REMEDIAL LAW; RULES OF COURT; PETITION FOR RELIEF FROM JUDGMENT UNDER RULE 38; EXTRINSIC OR COLLATERAL FRAUD; DEFINED AS FRAUD THAT PREVENTED THE UNSUCCESSFUL PARTY FROM FULLY AND FAIRLY PRESENTING HIS/HER CASE OR DEFENSE AND FROM HAVING AN ADVERSARIAL TRIAL OF THE ISSUE; ABSENT IN CASE AT BAR.— While the remaining issues in the petition partake of a factual nature, the Court deems it necessary to write *finis* to this case at this level in order to avoid remanding the case to the appellate court. It has been held that "remand is not necessary if the Court is in a position to resolve a dispute on the basis of the records before it; and if such remand would not serve the ends of justice." A careful perusal of the petitions filed by Dana before the trial court, the appellate court, and this Court betrays the lack of allegations sufficient to support a petition for relief from judgment under Rule 38. Jurisprudence provides that fraud, as a ground for a petition for relief, refers to extrinsic or collateral fraud which, in turn, has been defined as fraud that prevented the unsuccessful party from fully and fairly presenting his case or defense and from having an adversarial trial of the issue, as when the lawyer connives to defeat or corruptly sells out his client's interest. Extrinsic fraud can be committed by a counsel against his client when the latter is prevented from presenting his case to the court. x x x Turning now to the case at bar, it is clear that Dana's allegations in her petition for relief fall way short of the jurisprudential threshold for extrinsic fraud. x x x Dana's petition is anchored on two main allegations: first, that her counsel failed to notify her of the hearings dated February 26 and March 26, 2009; and second, that her counsel nonchalantly told her that it was their mutual decision to not present any evidence. However, she categorically admits that she "does not accuse her previous counsel [of] any wrongdoing or neglect, or any other parties probably in cahoots with her said counsel." Furthermore, the petition makes no specific citation of other acts or circumstances attributable to her counsel

that fraudulently deprived Dana of her opportunity to fully ventilate her claims and defenses with the trial court. The acts complained of in the petition constitute neither "gross and palpable negligence" nor corruption or collusion amounting to extrinsic fraud. The general rule, which binds the client to the negligence of her counsel, remains applicable to this case. All told, the trial court did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed her petition for relief.

APPEARANCES OF COUNSEL

C.B. Brillantes Law Office for petitioner.
Napoleon Uy Galit for respondent.

D E C I S I O N

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

This is a petition for review on *certiorari*[1] under Rule 45 of the Revised Rules of Court, dated November 24, 2014, assailing two Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 115420, respectively dated April 15, 2014,[2] which denied petitioner Dana S. Santos' (Dana) Motion to Open and/or Reinstate Petition; and September 26, 2014,[3] which denied Dana's Motion for Reconsideration and/or to Submit Petition for Decision (with Plea to Preserve Marital Union). The case arose from a petition for relief from judgment against the Decision[4] dated June 24, 2009 of the Regional Trial Court (RTC) of Antipolo City, Branch 72, in Civil Case No. 03-6954 declaring the marriage between Dana and respondent Leodegario S. Santos (Leodegario) null and void on the ground of psychological

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[1] *Rollo*, pp. 8-28.

[2] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Mario V. Lopez and Socorro B. Inting concurring; *id*. at 33-39.

[3] *Id*. at 41-43.

[4] Rendered by Judge Ruth C. Santos; *id*. at 70-79.

incapacity under Article 36 of Executive Order No. 209, otherwise known as the Family Code of the Philippines.

The Facts

Dana and Leodegario first met each other in 1982, in a wake, through a common friend. Their relationship developed into a romance. Soon, the couple began living together. Their cohabitation produced two children. As their business ventures prospered, Dana and Leodegario married each other on December 3, 1987, before a Catholic priest. Two more children were born to the couple after the marriage. However, their relationship started to deteriorate as time passed by. Heated arguments and suspicions of infidelity marred their marriage so much, so that in 2001, Dana and Leodegario filed a joint petition for the dissolution of their conjugal partnership, which was granted.[5]

The final straw came on September 11, 2003, when Leodegario filed a petition for declaration of absolute nullity of marriage with the RTC, docketed as Civil Case No. 03-6954, alleging psychological incapacity on the part of Dana. The case was assigned to Branch 72 of the aforesaid court. On April 2, 2004, Dana filed her Answer, alleging that Leodegario filed the petition in order to marry his paramour, with whom he had a son.[6]

The case proceeded to trial on the merits. The Public Prosecutor found no evidence of collusion between Dana and Leodegario. Both parties appeared in the pre-trial conference and marked their documentary exhibits. Leodegario presented as witnesses a clinical psychologist, a former employee of the couple's joint business, and himself. However, when it was Dana's turn to present evidence, her counsel failed to appear despite notice. On February 26, 2009, the trial court issued an Order declaring Dana to have waived her right to present evidence and ordering Leodegario to submit his memorandum, after which the case would be deemed submitted for decision.[7]

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[5] *Id*. at 11.

[6] *Id*. at 52-65.

[7] *Id*. at 80.

On June 24, 2009, the trial court rendered its Decision.[8] It declared the marriage between Dana and Leodegario null and void on the ground of psychological incapacity. The court held that Dana was afflicted with grave, incurable, and juridically antecedent Histrionic Personality Disorder. Dana received a copy of the decision on August 26, 2009.

Dana filed a Notice of Appeal on September 4, 2009; but she withdrew her appeal and instead filed a Petition for Relief from Judgment with the RTC, dated October 19, 2009, alleging that extrinsic fraud and mistake prevented her from presenting her case at the trial. Leodegario filed a comment on the petition.

In an Order[9] dated February 17, 2010, the trial court denied Dana's petition, ruling that there was no sufficient allegation of fraud or mistake in the petition.

Dana filed a motion for reconsideration, which the trial court denied in an Order[10] dated April 22, 2010. Aggrieved, she filed a petition for *certiorari* with the CA,[11] ascribing grave abuse of discretion on the part of the trial court when it denied her petition for relief and allowed the Decision dated June 24, 2009 to stand despite her inability to present her evidence. After a further exchange of pleadings, the appellate court, in a Resolution[12] dated February 7, 2011, referred Dana's petition to the Philippine Mediation Center.

On June 6, 2011, under the auspices of the appellate court mediator, Dana and Leodegario entered into a compromise agreement,[13] where they agreed to transfer the titles to their conjugal real properties in the name of their four common children. On June 16, 2011, Dana moved for the archival of

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[8] *Id*. at 70-79.

[9] *Id*. at 91 -94.

[10] *Id*. at 103.

[11] Docketed as CA-G.R. SP No. 115420; *id*. at 104-127.

[12] *Id*. at 148.

[13] *Id*. at 149-150.

the case. On July 19, 2011, the CA issued a Resolution[14] declaring the case closed and terminated by virtue of the compromise agreement and ordering the issuance of entry of judgment.

On July 3, 2012, Dana filed a Manifestation[15] alleging that Leodegario was not complying with the compromise agreement. She reiterated this allegation in her Motion to Reopen and/or Reinstate the Petition[16] which she filed on August 14, 2012. Ordered by the appellate court to comment on the Motion to Reopen, Leodegario countered that he has complied with the essential obligations under the compromise agreement. He, subsequently, filed a Manifestation showing such compliance, attaching the copies of the transfer certificates of title with the required annotations thereon, deeds of sale in favor of their common children, and the new transfer certificates of title in the names of their common children.[17]

Resolution dated April 15, 2014

On April 15, 2014, the Former 15th Division of the CA rendered the first assailed Resolution[18] denying Dana's Motion to Reopen, thusly:

> **WHEREFORE**, the motion to open and/or reinstate the petition is hereby DENIED for lack of merit. Respondent's manifestation showing compliance with the compromise agreement is hereby NOTED.
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> **SO ORDERED.**[19]

The appellate court noted Leodegario's Manifestation showing his compliance with the terms of the compromise agreement; on the other hand, it found that Dana did not make any allegation or showing of her compliance with the terms of the compromise

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[14] *Id*. at 151.

[15] *Id*. at 154-156.

[16] *Id*. at 157-161.

[17] *Id*. at 37.

[18] *Id*. at 32-39.

[19] *Id*. at 39.

agreement. It then concluded that the motion was unmeritorious since Dana, as a party to the compromise agreement herself, should also prove her faithful compliance therewith.

Undaunted, Dana filed a Motion for Reconsideration and/or to Submit Petition for Decision (with Plea to Preserve Marital Union),[20] asserting that the compromise agreement was never intended to settle the issue of the validity and subsistence of her marriage to Leodegario.

Resolution dated September 26, 2014

On September 26, 2014, the Former 15th Division of the CA rendered the second assailed Resolution[21] denying Dana's Motion for Reconsideration and/or to Submit Petition for Decision, disposing, thus:

WHEREFORE, the Motion for Reconsideration and/or to Submit Petition for Decision is **DENIED** for lack of merit.

SO ORDERED.[22]

The appellate court found the Motion for Reconsideration and/or to Submit Petition for Decision unmeritorious. It held that the marital ties between Dana and Leodegario had been severed by the trial court's decision of June 24, 2009; hence, the compromise agreement did not involve the validity of their marriage but only their property relations. Furthermore, the appellate court found that Dana, in her Motion to Archive Case, had conceded her intention to have the case dismissed upon compliance with the stipulations of the Compromise Agreement.[23]

Aggrieved, Dana filed the present petition for review on *certiorari* before this Court on November 24, 2014. The Office of the Solicitor General (OSG) and Leodegario filed their respective Comments on the petition.

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[20] *Id*. at 162-166.

[21] *Id*. at 40-43.

[22] *Id*. at 43.

[23] *Id*.

The Issues

Dana raises the following issues for resolution by this Court:

1) Whether or not the assailed resolutions of the CA, which terminated her case by reason of the compromise agreement, were erroneous for being contrary to the State's legal mandate to defend the sanctity of marriage;

2) Whether or not the assailed resolutions of the CA, which in effect upheld the order of the trial court dismissing her petition for relief, violated her right to due process; and

3) Whether or not the CA erred in ruling that the trial court's decision declaring the marriage void had attained finality despite the filing of the petition for relief from judgment.[24]

Dana argues that she never intended to compromise the issue of the validity of her marriage, as this cannot be the subject of compromise under Article 2035 of the New Civil Code. She further asserts that under Article 2041 of the New Civil Code, as applied in *Miguel v. Montanez*,[25] she is entitled to simply consider the compromise agreement as rescinded, since Leodegario committed a breach of the agreement. Dana also claims that the termination of the case on the basis of the compromise agreement violated her right to due process, since she was unable to present her side of the controversy. Lastly, she contends that the appellate court erred in ruling that the trial court decision declaring the marriage void had become final, claiming that her petition for relief amounted to a motion for new trial, the filing of which is one of the requirements for filing an appeal under A.M. No. 02-11-10-SC.[26]

The *defensor vinculi*, in his Comment, asserts that Dana's failure to file a motion for reconsideration or an appeal paved the way for the trial court judgment to attain finality. Due to

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[24] *Id*. at 196-205.

[25] 680 Phil. 356 (2012).

[26] The Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages.

Dana's failure to file an appeal in accordance with Section 20 of A.M. No. 02-11-10-SC, the OSG now contends, as the appellate court similarly concluded, that the trial court decision had attained finality.

Ruling of the Court

The petition has no merit.

The core issue in this petition is the propriety of setting aside the judgment upon compromise rendered by the court *a quo*. Dana maintains that the judgment should be vacated because of Leodegario's alleged breach of their compromise; and because she did not intend to compromise the issue of the validity of her marriage. To bolster her stand, she invokes Sections 1 and 2, Article XV of the Constitution and urges the State to uphold, or at least try to uphold, her marriage. Leodegario, on the other hand, asserts the binding force of the trial court's decision and the judgment on compromise, claiming that the courts *a quo* acted according to law and jurisprudence in rendering the assailed judgments.

It must be borne in mind that Civil Case No. 03-6954 is a proceeding for the declaration of nullity of the marriage between Dana and Leodegario on the ground of psychological incapacity. The applicable substantive laws are, therefore, the Family Code and the New Civil Code, while the governing procedural law is A.M. No. 02-11-10-SC, with the Rules of Court applying suppletorily.[27]

In the case at bar, the CA[28] and the OSG[29] both concluded that the trial court decision had attained finality after Dana's inability to file an appeal therefrom. The two resolutions of the appellate court presuppose that the judgment on the validity of Dana and Leodegario's marriage had attained finality. Dana, on the other hand, asserts that it had not.

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[27] A.M. No. 02-11-10-SC, Section 1.

[28] Resolution dated September 26, 2014, *rollo*, p. 42.

[29] Comment of the OSG, *id.* at 199-200.

The Court agrees with the conclusion of the CA and the *defensor vinculi* regarding the finality of the RTC decision; however, we do not agree with their assertions as to the effect of the decision on the subsequent proceedings *a quo*.

There is indeed no showing in the record that Dana moved for reconsideration or new trial from the RTC decision. She, nevertheless, filed an appeal. However, probably cognizant of the proscription in Section 20[30] of A.M. No. 02-11-10-SC, which makes the filing of a motion for reconsideration or a motion for new trial a precondition for filing an appeal, she withdrew her appeal and filed a petition for relief from judgment.

There is no provision in A.M. No. 02-11-10-SC prohibiting resort to a petition for relief from judgment in a marriage nullity case. Furthermore, the said Rule sanctions the suppletory application of the Rules of Court[31] to cases within its ambit. It cannot, therefore, be said that Dana availed of an inappropriate remedy to question the decision of the trial court. Indeed, the trial court admitted Dana's petition for relief, heard the parties on the issues thereon, and rendered an order denying the petition. Dana then properly and seasonably assailed the order of denial via *certiorari* to the CA. It is, therefore, clear that the proceedings in Civil Case No. 03-6954 continued even after the trial court had rendered judgment and even after the lapse of the 15-day period for appealing the decision.

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[30] **SEC. 20.** *Appeal.* —

(1) Pre-condition. — No appeal from the decision shall be allowed unless the appellant has filed a motion for reconsideration or new trial within fifteen days from notice of judgment.

(2) Notice of appeal. — An aggrieved party or the Solicitor General may appeal from the decision by filing a Notice of Appeal within fifteen days from notice of denial of the motion for reconsideration or new trial. The appellant shall serve a copy of the notice of appeal on the adverse parties.

[31] Pertinently, Section 1 of Rule 38 provides that the petition for relief from judgment shall be filed in the same court that rendered the assailed judgment or final order; and that the petition shall be filed in the *same case*.

Nevertheless, considering the nature and office of a petition for relief, which is to set aside a *final* judgment,[32] the Court cannot agree with Dana's assertion that the decision of the RTC in Civil Case No. 03-6954 had not attained finality. In fact, the decision has already been annotated in their marriage contract.[33] This finding, however, does not detract from the fact that the proceedings in Civil Case No. 03-6954 *continued* even after the trial court had rendered judgment, precisely because Dana filed a petition for relief from that judgment. From the denial of her petition, she sought recourse to the appellate court. The appellate court, in dismissing the case upon the parties' compromise on their conjugal properties, invoked the finality of the RTC decision as a bar to the litigation of the other issues raised by Dana's petition. This conclusion is untenable.

In *Samia v. Medina*,[34] which involved the application of the statutory ascendant of Rule 38 in the old Code of Civil Procedure, the Court held:

> There is a great deal of similarity between an order granting a motion for a new trial based upon "accident or surprise which ordinary prudence could not have guarded against" under section 145 of the Code of Civil Procedure, and an order granting a motion for a new trial based upon "mistake, inadvertence, surprise, or excusable neglect," under section 113 of the Code of Civil Procedure, as both set aside the judgment, order, or proceeding complained of; both call for a new trial, and in both the injured party may question the order granting the motion for the new trial upon appeal from the new judgment rendered upon the merits of the case. The only fundamental difference lies in this, that while the judgment, order, or proceeding coming under section 145 of the Code of Civil Procedure is not final, that coming under section 113 is final. But this does not alter the nature or effect of the order granting the new trial, for **this order does not put an end to the litigation in the sense that the party injured thereby has no other remedy short of appeal; he may question the propriety of**

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[32] *Aboitiz International Forwarders, Inc. v. CA*, 577 Phil. 452, 465 (2006).

[33] *Rollo*, p. 234.

[34] 56 Phil. 613 (1932).

the new trial on appeal from an adverse judgment rendered after such trial.[35] (Emphasis and underscoring Ours)

In *Servicewide Specialists, Inc. v. Sheriff of Manila*,[36] decided prior to the enactment of the 1997 Rules of Civil Procedure, the Court held:

> There is no question that a judgment or order denying relief under Rule 38 is final and appealable, unlike an order granting such relief which is interlocutory. However, the second part of the above-quoted provision (that in the course of an appeal from the denial or dismissal of a petition for relief, a party may also assail the judgment on the merits) may give the erroneous impression that in such appeal the appellate court may reverse or modify the judgment on the merits. This cannot be done because the judgment from which relief is sought is already final and executor. x x x
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> The purpose of the rule is to enable the appellate court to determine not only the existence of any of the grounds relied upon whether it be fraud, accident, mistake or excusable negligence, but also and primarily the merit of the petitioner's cause of action or defense, as the case may be. If the appellate court finds that one of the grounds exists and, what is of decisive importance, that the petitioner has a good cause of action or defense, it will reverse the denial or dismissal, set aside the judgment in the main case and remand the case to the lower court for a new trial in accordance with Section 7 of Rule 38.[37] (Citations omitted)

The 1997 Rules of Civil Procedure changed the nature of an order of denial of a petition for relief from judgment, making it unappealable[38] and, hence, assailable only *via* a petition for *certiorari*.[39] Nevertheless, the appellate court, in deciding such petitions against denials of petitions for relief, remains tasked with making a factual determination, *i.e.*, whether or not the trial court committed grave abuse of discretion in denying the

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[35] *Id*. at 613-614.

[36] 229 Phil. 165 (1986).

[37] *Id*. at 173-174.

[38] 1997 RULES OF CIVIL PROCEDURE, Rule 41, Section 1(a).

[39] *Azucena v. Foreign Manpower Services*, 484 Phil. 316, 325-326 (2004).

petition. To do so, it is still obliged, as *Service Specialists* instructs, to "*determine not only the existence of any of the grounds relied upon whether it be fraud, accident, mistake or excusable negligence, but also and primarily the merit of the petitioner's cause of action or defense, as the case may be*."[40] Stated otherwise, the finality of the RTC decision cannot bar the appellate court from determining the issues raised in the petition for relief, if only to determine the existence of grave abuse of discretion on the part of the trial court in denying such petition. While a Rule 38 Petition does not stay the execution of the judgment,[41] the grant thereof reopens the case for a new trial;[42] and thus, if merit be found in Dana's *certiorari* petition assailing the trial court's denial of her petition for relief, the case will be reopened for new trial.

The CA, therefore, erred in refusing to reopen Dana's petition on the basis of the finality of the trial court decision.

The Court now resolves the question regarding the propriety of setting aside the judgment on compromise.

On one hand, the immutability and immediate effect of judgments upon compromise is well-settled. In *Magbanua v. Uy*,[43] it was held that:

> When a compromise agreement is given judicial approval, it becomes more than a contract binding upon the parties. Having been sanctioned by the court, it is entered as a determination of a controversy and has the force and effect of a judgment. It is immediately executory and not appealable, except for vices of consent or forgery. The nonfulfillment of its terms and conditions justifies the issuance of a writ of execution; in such an instance, execution becomes a ministerial duty of the court.[44]

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[40] *Servicewide Specialists, Inc. v. Sheriff of Manila*, *supra* note 36, at 173-174.

[41] Rule 38, Section 5. See also *Lui Enterprises, Inc. v. Zuellig Pharma Corp., et al.*, 729 Phil. 440, 472 (2014).

[42] Rule 38, Section 6.

[43] 497 Phil. 511 (2005).

[44] *Id.* at 519.

However, like any other judgment, a judgment upon compromise which is contrary to law is a void judgment; and "[a] void judgment or order has no legal and binding effect. It does not divest rights, and no rights can be obtained under it; all proceedings founded upon a void judgment are equally worthless."[45]

On the other hand, Article 2035(2) and Article 5 of the New Civil Code provide:

> ART. 2035. No compromise upon the following questions shall be valid:
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> x x x x x x x x x
>
> (2) The validity of a marriage or a legal separation;
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> x x x x x x x x x
>
> ART. 5. Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.

Again, the Court reiterates, at the risk of being repetitive, that the petition which gave rise to these proceedings is for the declaration of *nullity* of Dana and Leodegario's marriage. Dana's petition for *certiorari* with the CA, which is nothing but a consequence of the proceedings before the RTC, alleges the fraudulent deprivation of her chance to refute and controvert Leodegario's allegations and to present her side of the issue, which she also lays down in her petition. The core issue of Dana's petition is, therefore, the validity of her marriage to Leodegario. The termination of the case by virtue of the compromise agreement, therefore, necessarily implies the settlement by compromise of the issue of the validity of Dana and Leodegario's marriage.

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[45] *American Power Conversion Corporation; American Power Conversion Singapore PTE. LTD; American Power Conversion (A.P.C.), B. V.; American Power Conversion (Phils.) B. V.; David W. Plumer, Jr.; George Kong; and Alicia Hendy v. Jayson Yu Lim*, G.R. No. 214291, January 11, 2018, citing *Go v. Echavez*, 765 Phil. 410, 424 (2015).

In *Uy v. Chua*,[46] which also involves an issue not subject to compromise under Article 2035, the Court held:

> The Compromise Agreement between petitioner and respondent, executed on 18 February 2000 and approved by RTC-Branch 9 in its Decision dated 21 February 2000 in Special Proceeding No. 8830-CEB, obviously intended to settle the question of petitioner's status and filiation, i.e., whether she is an illegitimate child of respondent. In exchange for petitioner and her brother Allan acknowledging that they are not the children of respondent, respondent would pay petitioner and Allan ₱2,000,000.00 each. **Although unmentioned, it was a necessary consequence of said Compromise Agreement that petitioner also waived away her rights to future support and future legitime as an illegitimate child of respondent. Evidently, the Compromise Agreement dated 18 February 2000 between petitioner and respondent is covered by the prohibition under Article 2035 of the Civil Code.**[47] (Emphasis and underscoring Ours)

In a long line of cases,[48] the Court has censured and punished lawyers, and even judges, who have drafted agreements to dissolve marriages or to sanction adulterous relations. The rule applies *a fortiori* to the CA. It was, therefore, erroneous for the appellate court to terminate Dana's suit - which puts in issue the validity of her marriage - by virtue of the execution of the compromise agreement which only covers the property relations of the spouses. While these issues are intertwined, a compromise of the latter issue should not and cannot operate as a compromise of the former, per Article 2035 of the Civil Code.

The Court cannot give its imprimatur to the dismissal of the case at bar even if, as the appellate court held, it was Dana's intention[49] to have the case terminated upon the execution of

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[46] 616 Phil. 768 (2009).

[47] *Id*. at 780.

[48] *Espinosa, et al. v. Atty. Omaña*, 675 Phil. 1 (2011); *Albano v. Mun. Judge Gapusan*, 162 Phil. 884 (1976); *Selanova v. Judge Mendoza*, 159-A Phil. 360 (1975); *Balinon v. De Leon, et al.*, 94 Phil. 277 (1954); *In re: Atty. Roque Santiago*, 70 Phil. 66 (1940); *Biton v. Momongan*, 62 Phil. 7 (1935); and *Pañganiban v. Borromeo*, 58 Phil. 367 (1933).

[49] *Rollo*, p. 43. See also Manifestation filed by petitioner Dana, *rollo*, p. 155.

the compromise agreement. Nevertheless, the Court agrees with the appellate court when it ruled that the scope of the compromise agreement is limited to Dana and Leodegario's property relations *vis-à-vis* their children, as Article 2036 of the Civil Code provides that "[a] compromise comprises only those objects which are definitely stated therein, or which by necessary implication from its terms should be deemed to have been included in the same." As held by the appellate court:

> The agreement makes no mention of the marital ties between [Leodegario] and [Dana] but is limited only to their property relations vis-à-vis their children.[50]

However, despite the error committed by the appellate court, absent vices of consent or other defects, the compromise agreement remains valid and binding upon Dana and Leodegario, as they have freely and willingly agreed to, and have already complied with, the covenants therein. The agreement operates as a partial compromise on the issue of the disposition of the properties of the marriage.

Nevertheless, the Court is constrained to uphold the appellate court's decision, because the trial court's denial of Dana's petition for relief from judgment does not amount to grave abuse of discretion.

While the remaining issues in the petition partake of a factual nature, the Court deems it necessary to write *finis* to this case at this level in order to avoid remanding the case to the appellate court. It has been held that "remand is not necessary if the Court is in a position to resolve a dispute on the basis of the records before it; and if such remand would not serve the ends of justice."[51] A careful perusal of the petitions filed by Dana before the trial court, the appellate court, and this Court betrays the lack of allegations sufficient to support a petition for relief from judgment under Rule 38.

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

[51] *Canlas v. Republic of the Phils*., 746 Phil. 358, 381 (2014).

Jurisprudence provides that fraud, as a ground for a petition for relief, refers to extrinsic or collateral fraud[52] which, in turn, has been defined as fraud that prevented the unsuccessful party from fully and fairly presenting his case or defense and from having an adversarial trial of the issue, as when the lawyer connives to defeat or corruptly sells out his client's interest. Extrinsic fraud can be committed by a counsel against his client when the latter is prevented from presenting his case to the court.[53] In *Lasala v. National Food Authority*,[54] the Court defined extrinsic fraud in relation to parties represented by counsel, *viz.*:

> Extrinsic fraud x x x refers to "any fraudulent act of the prevailing party in litigation committed outside of the trial of the case, where the defeated party is prevented from fully exhibiting his side by fraud or deception practiced on him by his opponent, such as by keeping him away from court, by giving him a false promise of a compromise, or where an attorney fraudulently or without authority connives at his defeat."
>
> Because extrinsic fraud must emanate from the opposing party, extrinsic fraud concerning a party's lawyer often involves the latter's collusion with the prevailing party, such that his lawyer connives at his defeat or corruptly sells out his client's interest.
>
> In this light, we have ruled in several cases that a lawyer's mistake or gross negligence does not amount to the extrinsic fraud that would grant a petition for annulment of judgment.
>
> We so ruled not only because extrinsic fraud has to involve the opposing party, but also because the negligence of counsel, as a rule, binds his client.[55] (Citations omitted)

Given this definition, the Court found the following circumstances sufficient to make out a case for extrinsic fraud:

> The party in the present case, the NFA, is a government agency that could rightly rely solely on its legal officers to vigilantly protect

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[52] *City of Dagupan v. Maramba*, 738 Phil. 71, 90 (2014), citing *Sy Bang, et al. v. Sy, et al.*, 604 Phil. 606, 625 (2009) and *Garcia v. Court of Appeals*, 279 Phil. 242, 249 (1991).

[53] *City of Dagupan v. Maramba*, *supra*, at 91.

[54] 767 Phil. 285 (2015).

[55] *Id.* at 301-302.

its interests. The NFA's lawyers were not only its counsel, they were its employees tasked to advance the agency's legal interests.

Further, the NFA's lawyers acted negligently several times in handling the case that it appears deliberate on their part.

First, Atty. Mendoza caused the dismissal of the NFA's complaint against Lasala by negligently and repeatedly failing to attend the hearing for the presentation of the NFA's evidence-in-chief. Consequently, the NFA lost its chance to recover from Lasala the employee benefits that it allegedly shouldered as indirect employer.

Atty. Mendoza never bothered to provide any valid excuse for this crucial omission on his part. Parenthetically, this was not the first time Atty. Mendoza prejudiced the NFA; he did the same when he failed to file a motion for reconsideration and an appeal in a prior 1993 case where Lasala secured a judgment of ₱34,500,229.67 against the NFA.

For these failures, Atty. Mendoza merely explained that the NFA's copy of the adverse decision was lost and was only found after the lapse of the period for appeal. Under these circumstances, the NFA was forced to file an administrative complaint against Atty. Mendoza for his string of negligent acts.

Atty. Cahucom, Atty. Mendoza's successor in handling the case, notably did not cross-examine Lasala's witnesses, and did not present controverting evidence to disprove and counter Lasala's counterclaim. Atty. Cahucom further prejudiced the NFA when he likewise failed to file a motion for reconsideration or an appeal from the trial court's September 2, 2002 decision, where Lasala was awarded the huge amount of ₱52,788,970.50, without any convincing evidence to support it.

When asked to justify his failure, Atty. Cahucom, like Atty. Mendoza, merely mentioned that the NFA's copy of the decision was lost and that he only discovered it when the period for appeal had already lapsed.

The trial court's adverse decision, of course, could have been avoided or the award minimized, if Atty. Cahucom did not waive the NFA's right to present its controverting evidence against Lasala's counterclaim evidence. Strangely, when asked during hearing, Atty. Cahucom refused to refute Lasala's testimony and instead simply moved for the filing of a memorandum.

The actions of these lawyers, that at the very least could be equated with unreasonable disregard for the case they were handling and with

obvious indifference towards the NFA's plight, lead us to the conclusion that Attys. Mendoza's and Cahucom's actions amounted to a concerted action with Lasala when the latter secured the trial court's huge and baseless counterclaim award. By this fraudulent scheme, the NFA was prevented from making a fair submission in the controversy.[56]

Lasala has been subsequently reiterated in *Cagayan Economic Zone Authority v. Meridien Vista Gaming Corporation*,[57] where the Court held that:

[I]n cases of gross and palpable negligence of counsel and of extrinsic fraud, the Court must step in and accord relief to a client who suffered thereby. x x x [F]or the extrinsic fraud to justify a petition for relief from judgment, it must be that fraud which the prevailing party caused to prevent the losing party from being heard on his action or defense. Such fraud concerns not the judgment itself but the manner in which it was obtained. Guided by these pronouncements, the Court in the case of *Apex Mining, Inc. vs. Court of Appeals* wrote:

> If the incompetence, ignorance or inexperience of counsel is so **great** and the error committed as a result thereof is so **serious** that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the **litigation may be reopened** to give the client another chance to present his case. Similarly, when an unsuccessful party has been prevented from fully and fairly presenting his case as a result of his lawyer's professional delinquency or infidelity, the litigation may be reopened to allow the party to present his side. Where counsel is guilty of **gross ignorance, negligence** and **dereliction of duty**, which resulted in the clients being held liable for damages in a damage suit, the client is deprived of his day in court and the **judgment may be set aside on such ground**.[58] (Citations omitted and emphases in the original)

As in *Lasala*, the Court found sufficient factual justification for the grant of CEZA's petition for relief, *viz.*:

At the inception, CEZA was already deprived of its right to present evidence during the trial of the case when Atty. Baniaga filed a joint

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[56] *Id*. at 303-304.

[57] 779 Phil. 492 (2016).

[58] *Id*. at 503-504.

manifestation submitting the case for decision based on the pleadings without informing CEZA. In violation of his sworn duty to protect his client's interest, Atty. Baniaga agreed to submit the case for decision without fully substantiating their defense. Worse, after he received a copy of the decision, he did not even bother to inform his client and the OGCC of the adverse judgment. He did not even take steps to protect the interests of his client by filing an appeal. Instead, he allowed the judgment to lapse into finality. Such reckless and gross negligence deprived CEZA not only of the chance to seek reconsideration thereof but also the opportunity to elevate its case to the CA.[59]

Turning now to the case at bar, it is clear that Dana's allegations in her petition for relief fall way short of the jurisprudential threshold for extrinsic fraud. The Court quotes the allegations Dana made in her petition for relief with the trial court:

> In all candor, [Dana] wanted to present her side of the controversy and all she intended was to take the witness stand. Without her knowing it, however, her time to present her evidence passed without her being able to do so. Her previous counsel did not remind, much less advice [sic], her of the hearing dates to present her case. Particularly, she was not simply aware of the hearings held by this [h]onorable [c]ourt on February 26 and March 26, 2009. She can only surmise that somebody must have maneuvered to impress, if not mislead, the [h]onorable [c]ourt that she was not interested to present her side.
>
> This must be so since after [Dana] confronted her counsel about the promulgation of the Decision without her being able to present evidence, her counsel nonchalantly told her that it was their mutual decision not to present any evidence. This was not what [Dana] thought and knew. In the first place, she filed her Answer to the petition and assailed all the material allegations therein. She found no reason to abandon her case.
>
> **[Dana], by these assertions does not accuse her previous counsel any wrongdoing or neglect, or any other parties probably in cahoots with her said counsel.** But it certainly had caused some harm to and, in fact, defrauded this [h]onorable [c]ourt which was led into believing that [Dana] was not interested in presenting her evidence.

[59] *Id.* at 507.

Hence, this [h]onorable [c]ourt found that [Dana] failed to appear despite notice as already mentioned above. Had it known that she was interested on [sic] presenting her side, this [h]onorable [c]ourt certainly would not have denied her that right. Otherwise put, by the deception, this Honorable Court was not aware that [Dana] was deprived of her day in court.[60] (Emphasis and underlining Ours)

Dana's petition is anchored on two main allegations: first, that her counsel failed to notify her of the hearings dated February 26 and March 26, 2009; and second, that her counsel nonchalantly told her that it was their mutual decision to not present any evidence. However, she categorically admits that she "does not accuse her previous counsel [of] any wrongdoing or neglect, or any other parties probably in cahoots with her said counsel."[61] Furthermore, the petition makes no specific citation of other acts or circumstances attributable to her counsel that fraudulently deprived Dana of her opportunity to fully ventilate her claims and defenses with the trial court. The acts complained of in the petition constitute neither "gross and palpable negligence" nor corruption or collusion amounting to extrinsic fraud. The general rule, which binds the client to the negligence of her counsel, remains applicable to this case. All told, the trial court did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed her petition for relief.

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Resolutions dated April 15, 2014 and September 26, 2014 of the Court of Appeals in CA-G.R. SP No. 115420, are hereby **AFFIRMED** insofar as they declared the proceedings **CLOSED** and **TERMINATED**.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Gesmundo*,[*] and *Hernando, JJ*., concur.

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[60] *Rollo*, pp. 84-85.

[61] *Id.* at 84.

[*] Designated additional member per Raffle dated June 26, 2019 *vice* Associate Justice Henri Jean Paul B. Inting.

SECOND DIVISION

[G.R. No. 216754. July 17, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HAVIB GALUKEN *y* SAAVEDRA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); THE IDENTITY AND INTEGRITY OF THE SEIZED DANGEROUS DRUGS SHOULD BE ESTABLISHED WITH MORAL CERTAINTY; 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 INTERGRITY 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 completely disregarded the requirements of Section 21. *First,* none of the required witnesses was present at the place of arrest. The police officers merely called-in a Barangay Kagawad and media representative when they were already at the police station to sign the inventory receipt which they had already prepared prior to the arrival of said witnesses. Thus, it is clear that they failed to comply with the mandatory requirements of the law. x x x 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. Moreover, their failure to comply with the mandatory requirements laid down in Section 21 of RA 9165 is immensely condemnable, especially because it is not their first time to conduct a buy-bust operation. As testified by IO1 Falle, he has been a member of the PDEA for almost two (2) years. Hence, he and his team should have already been well familiar with the standard operating procedures in conducting a buy-bust operation. In addition, the police officers admitted that they only "called-in" the mandatory witnesses when they were already at the police station. Even more bothersome is the fact that they were unaware and unsure of who called the said Barangay Kagawad and media representative 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. Lastly, the conflicting testimonies of the members of the buy-bust team make their credibility questionable.

3. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN PERFORMANCE OF OFFICIAL DUTIES; CANNOT PREVAIL OVER THE STRONGER PRESUMPTION OF INNOCENCE ESPECIALLY WHEN THERE IS BLATANT DISREGARD BY THE BUY-BUST TEAM OF THE ESTABLISHED PROCEDURES UNDER THE LAW.— The CA held that the police officers enjoy the presumption of regularity in the performance of their official duties. However, the Court finds that this presumption does not hold water in this case. The Court has repeatedly held that since a buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual. As applied in this case, the presumption of regularity cannot stand because of the buy-bust

team's blatant disregard of the established procedures under Section 21 of RA 9165. In this connection, the presumption of regularity in the performance of official duty cannot overcome the stronger presumption of innocence in favor of the accused. The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right. Thus, it would be a patent violation of the Constitution to uphold the importance of the presumption of regularity in the performance of official duty over the presumption of innocence, especially in this case where there are more than enough reasons to disregard the former.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

This is an Appeal[1] under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated November 5, 2014 of the Court of Appeals (CA) in CA-G.R. CR No. 00972-MIN, which affirmed the Judgment[3] dated June 22, 2010 rendered by the Regional Trial Court, Branch 20, Tacurong City in Criminal Case No. 3144, finding accused-appellant Havib Galuken *y* Saavedra (Havib) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

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[1] See Notice of Appeal dated November 19, 2014, *rollo,* pp. 17-18.

[2] *Rollo,* pp. 3-16. Penned by Associate Justice Pablito A. Perez with Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting (now a member of this Court), concurring.

[3] CA *rollo,* pp. 48-67. Penned by Judge Milanio M. Guerrero.

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

The Facts

Havib was charged with violating Section 5, Article II of RA 9165. The Information[5] filed against Havib pertinently reads:

> That on or about 5:35 o'clock in the afternoon of May 26, 2009 beside MCI Commercial Building, Purok 9, Barangay Poblacion, Tacurong City, Province of Sultan Kudarat, Philippines and within the jurisdiction of this Honorable Court, the said accused, not being authorized by law, did then and there, willfully, unlawfully and feloniously sell and found to have sold to 101 Roderick P. Falle two (2) sachets weighing zero point one two four two (0.1242) gram of Methamphetamine Hydrochloride commonly known as Shabu, a dangerous drug.
>
> CONTRARY TO LAW.[6]

Upon arraignment, Havib pleaded not guilty to the charge.[7]

Version of the Prosecution

The version of the prosecution, as summarized by the Solicitor General and adopted by the CA, is as follows:

> At about 3:00 [o]'clock in the afternoon of 26 May 2009, I03 Adrian Alvariño (I03 Alvariño), Philippine Drug Enforcement Agency (PDEA) Provincial Director for South Cotabato and Sultan Kudarat, briefed I01 Llano, I01 Falle, a monitoring officer and the confidential informant on the narcotics operation to be conducted against appellant in Tacurong City.
>
> During the briefing, I01 Falle was designated as the poseur buyer. He was given one (1) five hundred peso bill to be used in the operation, which he marked with his initials "RPF".
>
> After the briefing, I01 Falle and the confidential informant proceeded to Caltex Station fronting Tacurong City Fit Mart, where the appellant was waiting. On the other hand, I01 Llano, who was designated as the arresting officer, and his two (2) companions followed I01 Falle and the confidential informant using a separate motorcycle.

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[5] Records, p. 1.

[6] *Id.*

[7] *Rollo,* p. 4.

When they reached the gasoline station, the confidential informant and I01 Falle approached the appellant. The confidential informant introduced I01 Falle as his cousin who wanted to buy shabu. The confidential informant negotiated with the appellant. After, I01 Falle told appellant to move faster because there might be PDEA agents on the lookout. Immediately, appellant pulled from his pocket two (2) transparent plastic bags containing shabu and after examining and confirming that the contents of the bags were actually shabu, I01 Falle handed to said person the buy-bust money.

I01 Falle lighted a cigarette, as a pre-arranged signal to alert his other companions who were, at that time, strategically positioned in the area.

Appellant ran toward the round ball but I01 Llano was able to apprehend him near MCI Commercial.

The team bought the appellant and the confiscated items at the Tacurong City Police Station. I01 Falle marked the two (2) sachets with "RPF" and "RPF-1". The police officers likewise prepared an inventory receipt signed by Barangay Poblacion Kagawad Pamplona and took photographs of the seized items.

At 9:00 o'clock in the evening of the same day, I01 Falle, I01 Llano and I03 Alvariño brought appellant to PDEA Regional Office in General Santos City. The two (2) sachets remained in the custody of I01 Falle.

At the PDEA Regional Office, I01 Falle prepared his affidavit and endorsed the sachets of shabu to I01 Llano.

The following day, I01 Falle and I01 Llano delivered the sachets to the PNP Regional Crime Laboratory Office 12 in General Santos City for examination. PO2 Edmund Delos Reyes received the sachets from them.

On the same day, PO2 Delos Reyes endorsed the sachets with a letter request for laboratory examination to Police Inspector Lily Grace Mapa, a Forensic Chemist.

Police Inspector Mapa personally examined the items, which yielded positive for methamphetamine hydrochloride, as reflected in her report. After the examination, she turned over the sachets to the evidence custodian of the Laboratory Office, PO2 Sotero Tauro, Jr.[8]

[8] *Id.* at 4-6.

Version of the Defense

On the other hand, the version of the defense, as summarized by the Public Attorney's Office and adopted by the CA, is as follows:

> On May 26, 2012, [a]ppellant went to Tacurong Fit Mart located at Tacurong City in order to buy [a] T- Shirt. After buying one, he went to the Tacurong City Public Market to take his lunch. After eating, he walked his way to the terminal for passenger vehicles located near the round ball and was arrested by unknown persons.[9]

Ruling of the RTC

In the assailed Judgment dated June 22, 2010, the RTC convicted Havib of the less serious offense of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 instead of the offense of Illegal Sale Dangerous Drugs under Section 5, Article II of RA 9165, as charged in the Information.

The dispositive portion of the Judgment reads:

> Wherefore, upon all the foregoing considerations, the Court finds the guilt of accused **HAVIB GALUKEN Y SAAVEDRA** to the crime of Illegal Possession of Methamphetamine Hydrochloride, otherwise known as shabu[,] beyond reasonable doubt and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from **TEN** (10) **YEARS** of prision mayor, as minimum, to **SEVENTEEN** (17) **YEARS** and **FOUR** (4) **MONTHS** of reclusion temporal, as maximum and to pay the fine of **THREE HUNDRED THOUSAND PESOS (₱300,000.00).**
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> x x x x x x x x x
>
> **IT IS SO ORDERED.**[10]

The RTC ruled that the evidence presented by the prosecution is insufficient to prove the crime of Illegal Sale of Dangerous Drugs.[11] The alleged poseur-buyer is not actually a buyer, but

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[9] *Id*. at 6.

[10] CA *rollo*, pp. 65-66.

[11] *Id.* at 61.

a delivery man.[12] Moreover, the prosecution was not able to present the confidential informant who negotiated for the sale of the dangerous drugs.[13] Although Havib may not be convicted of the crime charged, he can however be convicted of the crime of Illegal Possession of Dangerous Drugs.[14] The offense of Illegal Sale of Dangerous Drugs necessarily includes the offense of Illegal Possession of Dangerous Drugs, the latter being offense which the prosecution has proved.[15] Lastly, the defense of denial by Havib is a weak defense which is self-serving.[16]

Aggrieved, Havib appealed to the CA.

Ruling of the CA

In the assailed Decision dated November 5, 2014, the CA affirmed Havib's conviction with modifications. The dispositive portion of the Decision reads:

> **ACCORDINGLY,** the Judgment dated 22 June 2010 finding accused appellant guilty is **AFFIRMED** with **MODIFICATION.** The accused-appellant Havib Galuken y Saavedra is found **GUILTY** beyond reasonable doubt of illegal sale of dangerous drugs and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00, without eligibility for parole.
>
> SO ORDERED.[17]

The CA ruled that Havib should be convicted of Illegal Sale of Dangerous Drugs as charged, not Illegal Possession of Dangerous Drugs.[18] In stark contrast to the findings of the RTC, the CA found that all the elements of Illegal Sale of Dangerous

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[12] *Id*.

[13] *Id*. at 62.

[14] *Id*.

[15] *Id*.

[16] *Id*. at 63.

[17] *Rollo*, p. 16.

[18] See *id*. at 8.

Drugs are present.[19] During the trial, IO1 Roderick P. Falle (IO1 Falle) categorically described the sale from the time he received two (2) sachets of *shabu* from Havib, the payment of the consideration, and the subsequent arrest of Havib.[20] Notwithstanding that it was the informant who made initial contact with Havib, the CA was convinced that IO1 Falle did not simply act as *delivery man* of the marked money.[21] *First,* it is explicit in IO1 Falle's testimony that understandably it was the informant who would initiate the transaction by introducing the former as the potential buyer of the *shabu.*[22] *Second,* it was IO1 Falle who told Havib to hurry up the transaction as PDEA agents might be around the area.[23] It further ruled that the inconsistencies in the testimonies of IO1 Falle and IO1 Cielito E. Llano (IO1 Llano) pertained to minor, inconsequential or trivial matters that do not impair the proven elements of the commission of Illegal Sale of Dangerous Drugs.[24] Lastly, it ruled that the police officers substantially complied with the requirements of Section 21.[25]

Hence, the instant appeal.

Issue

Whether the CA erred in finding Havib guilty of the crime of Illegal Sale of Dangerous Drugs.

The Court's Ruling

The petition is meritorious. Havib is accordingly acquitted.

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[19] *Id*. at 9.

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

[21] *Id*. at 11.

[22] *Id*.

[23] *Id*.

[24] *Id*. at 12.

[25] *Id.* at 14.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[26] and the fact of its existence is vital to sustain a judgment of conviction.[27] It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.[28] 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.[29]

In this connection, the Court has repeatedly held that Section 21,[30] 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

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[26] *People* v. *Sagana,* G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

[27] *Derilo v. People,* 784 Phil. 679, 686 (2016).

[28] *People v. Alvaro,* G.R. No. 225596, January 10, 2018, accessed at <http://elibrary,judiciary.gov.ph/thebookshelf&/showdocs/1/6387>.

[29] *People v. Manansala,* G.R. No. 229092, February 21, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf&/showdocs/1/63871>.

[30] The said section reads as follows:

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

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

public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ).[31]

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.**[32]

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[33] 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.[34]

However, in the case at bar, the police officers completely disregarded the requirements of Section 21.

First, none of the required witnesses was present at the place of arrest. The police officers merely called-in a Barangay Kagawad and media representative when they were already at the police station to sign the inventory receipt which they had already prepared prior to the arrival of said witnesses. Thus,

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[31] 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/the bookshelf/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>.

[32] *People v. Angeles,* G.R. No. 237355, November 21, 2018, accessed at <http://elibrary.judiciary.gov.ph/the bookshelf/showdocs/1/64869>.

[33] *People v. Sanchez,* 590 Phil. 214, 234 (2008).

[34] *People v. Ceralde,* G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

it is clear that they failed to comply with the mandatory requirements of the law. As testified by IO1 Llano:

Q - How about this person wearing short pants and ball cap?

A - That is Honorable Dante Pamplona, Barangay Kagawad of Poblacion, Tacurong, sir.

Q - How come that Barangay Kagawad Dante Pamplona was there during the taking of the photographs?

A - Maybe our team leader called for him, sir.

Q - So you are not sure who called for that Barangay [K]agawad?

A - Yes, sir.

x x x x

Q - Again there are two pictures here. Please look at these and examine these pictures and tell us who are depicted in these pictures?

A - This person who pointed the 500-peso bill is the arrested suspect. (Witness pointed to Havib Galuken)

Q - How about the other person?

A - A media representative, Anter Alcos of Brigada, sir.

Q - How come that this Anter Alcos was there?

A - I believe [that] he was called by the team leader to sign the inventory of [the] seized evidence, sir.

x x x x x x x x x

Q - Why you have to execute your affidavit of justification? What is this all about? *(sic)*

A - Because there was no representative from the DOJ to sign the inventory of seized evidence, sir.

Q - No representative from the DOJ during the operation?

A - Yes, sir.[35]

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[35] TSN, February 9, 2010, pp. 10-15.

Second, the police officers did not conduct the marking, inventory, and photography of the seized items at the place of arrest. Their explanation that the crowd became uncontrollable is hardly plausible considering that they conducted the buy-bust operation at a Caltex Station[36] and it is highly unbelievable that there would be a crowd in the said area that would pose a danger to their lives. As testified by the police officers:

[**IO1 Falle:**]

Q Aside from preparing the inventory of evidence/property at Tacurong City Police Station, what else did your group do in the police station?

A I myself marked the confiscated evidence, sir.

Q How about picture taking?

A Yes we do the picture taking also at Tacurong City Police station, sir. *(sic)*[37]

[**IO1 Llano:**]

Q - Why at the Tacurong City Police Station that you conducted an inventory when Section 21 of RA 9165 required that the inventory be conducted at the place where those items were seized? *(sic)*

A - At that time the crowd is uncontrollable considering the security of the group, our team leader decided to bring the suspect to the Tacurong City Police Station, your Honor.

x x x x x x x x x

Q - Who prepared the inventory of the property seized?

A - It was me, sir.[38]

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-

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[36] *Rollo,* p. 5.

[37] TSN, November 10, 2009 (afternoon), p. 8.

[38] TSN, Februarys 2010, pp. 6-7.

compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*,[39]

> 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.**[40] (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. Moreover, their failure to comply with the mandatory requirements laid down in Section 21 of RA 9165 is immensely condemnable, especially because it is not their first time to conduct a buy-bust operation. As testified by IO1 Falle, he has been a member of the PDEA for almost two (2) years.[41] Hence, he and his team should have already been well familiar with the standard operating procedures in conducting a buy-bust operation.

In addition, the police officers admitted that they only "called-in" the mandatory witnesses when they were already at the

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[39] G.R. No. 231989, September 4, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>.

[40] *Id*., citing *People v. Sipin,* G.R. No. 224290, June 11, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>.

[41] TSN, November 10, 2009 (morning), p. 5.

police station. Even more bothersome is the fact that they were unaware and unsure of who called the said Barangay Kagawad and media representative 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.[42]

Lastly, the conflicting testimonies of the members of the buy-bust team make their credibility questionable. Thus, to the mind of the Court, there is doubt whether there was even really a buy-bust operation. For one, IO1 Llano initially testified that they were able to recover three (3) sachets from Havib – two (2) sachets were recovered by IO1 Falle and one (1) sachet was recovered by IO1 Llano when he conducted a body search of Havib. However, he subsequently changed his testimony and denied recovering one (1) sachet from Havib:

Q - What again did you recover from the accused?

A - ₱500 with marking RTF, sir.

Q - What else if any did you recover?

A - Nothing more, sir.

Q - Yesterday when you testified you mentioned that you also recovered one(l) sachet from the said suspect aside from the buy bust money?

A - I changed it because I did not recover any sachet, sir.

Q - And why did you say earlier that you were able to recover one(1) sachet?

A - I was not able to glance or read my case folder because I came from Cotabato City and we came to the court late, sir.[43]

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[42] *People v. Tomawis,* G.R. No. 228890, April 18, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241>.

[43] TSN, February 9, 2010, pp. 4-5.

The presumption of innocence of the accused is superior over the presumption of regularity in performance of official duties.

The CA held that the police officers enjoy the presumption of regularity in the performance of their official duties.[44] However, the Court finds that this presumption does not hold water in this case.

The Court has repeatedly held that since a buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.[45] As applied in this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165.

In this connection, the presumption of regularity in the performance of official duty cannot overcome the stronger presumption of innocence in favor of the accused.[46] The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[47] Thus, it would be a patent violation of the Constitution to uphold the importance of the presumption of regularity in the performance of official duty over the presumption of innocence, especially in this case where there are more than enough reasons to disregard the former.

All told, the prosecution failed to prove the *corpus delicti* of the crime charged due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug. In other words, the

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[44] *Rollo,* p. 12.

[45] *People v. Zheng Bai Hui,* 393 Phil. 68, 133 (2000).

[46] *People v. Mendoza,* 736 Phil. 749, 769-770 (2014).

[47] CONSTITUTION, Art. III, Sec. 14, par. (2): "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

prosecution was not able to overcome the presumption of innocence of Havib.

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.[48]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED.** The Decision dated November 5, 2014 of the Court of Appeals in CA-G.R. CR No. 00972-MIN, is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant **HAVIB GALUKEN *y* SAAVEDRA** is **ACQUITTED** of the crime of Section 5, Article II of Republic Act No. 9165 on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Penal Superintendent of the Davao Prison and Penal Farm, Dujali, Davao del Norte for immediate implementation. The said Penal Superintendent is **ORDERED** to **REPORT** to this Court within

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[48] See *People v. Jugo,* G.R. No. 231792, January 29, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63908>.

five (5) days from receipt of this Decision the action he has taken.

Further, the Philippine National Police is hereby **DIRECTED** to **CONDUCT AN INVESTIGATION** on the police officers involved in the buy-bust operation conducted in this case.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

SECOND DIVISION

[G.R. No. 218434. July 17, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PILAR BURDEOS *y* OROPA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; FOUR CONNECTING LINKS TO PROVE THE UNBROKEN CHAIN, NOT ESTABLISHED IN CASE AT BAR.—Section 21 and 21 (a) are the summation of the chain of custody rule. It consists of four (4) connecting links: **One**. The seizure and marking of the illegal drug recovered from the accused by the apprehending officer; **Two**. The turnover of the illegal drug seized by the apprehending officer to the investigating officer; **Three.** The turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and **Four**. The turnover and submission of the marked illegal drug seized by the forensic chemist to the court. Here, all four (4) links had never at any point joined into one (1) unbroken chain.

2. ID.; ID.; ID.; REPEATED BREACH IN THE CHAIN OF CUSTODY DESTROYED THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI*; PROSECUTION'S FAILURE TO PROVIDE JUSTIFIABLE GROUNDS FOR NON-COMPLIANCE RESULTS IN APPELLANT'S ACQUITTAL.—[T]he repeated breach of the chain of custody rule here was a fatal flaw which had destroyed the integrity and evidentiary value of the *corpus delicti*. We have clarified that a perfect chain may be impossible to obtain at all times because of varying field conditions. In fact, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. x x x Here, both POs Guevarra and Hernaez offered no explanation which would have excused the buy-bust team's stark failure to comply with the chain of custody rule. In other words, the condition for the saving clause to become operational was not complied with. For the same reason, the proviso "so long as the integrity and evidentiary value of the seized items are properly preserved," too, will not come into play. Consequently, in light of the prosecution's failure to provide justifiable grounds for non-compliance with the chain of custody rule, appellant's acquittal is in order.

3. REMEDIAL LAW; EVIDENCE; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES WAS OVERTURNED BY COMPELLING EVIDENCE ON RECORD OF THE REPEATED BREACH OF THE CHAIN OF CUSTODY.—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. Here, the presumption was amply overturned by compelling evidence on record of the repeated breach of the chain of custody rule.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal seeks to reverse the Decision[1] dated May 7, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05981 affirming the conviction of appellant Pilar Burdeos *y* Oropa for violation of Section 5, Art. II of Republic Act 9165 (RA 9165)[2] and imposing on her the corresponding penalties.

The Proceedings Before the Trial Court
The Charge

By Information dated August 21, 2008, appellant was charged with violation of Section 5, Art. II of RA 9165, *viz*:

> That on or about the 19th day of August 2008, in the City of Muntinlupa, 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 sell, trade, deliver and give away to another, Ephedrine, a dangerous drug, weighing 0.03 gram, contained in one (1) heat-sealed transparent plastic sachet, in violation of the above-cited law.
>
> Contrary to law.[3]

The case was raffled to the Regional Trial Court (RTC)-Branch 204, Muntinlupa City.

On arraignment, appellant pleaded not guilty.[4]

At the pre-trial, the prosecution and the defense stipulated on the identity of the accused, the trial court's jurisdiction, and the qualifications of PS/Insp. Abraham Tecson as an expert witness.[5]

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[1] *Rollo*, pp. 2-16.

[2] The Comprehensive Dangerous Drugs Act of 2002.

[3] Record, p. 1.

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

[5] *Id.* at 34.

During the trial, police officers Eddie Guevarra and Rondivar Hernaez, members of the Anti-Illegal Drugs-Special Operation Task Group of Muntinlupa City, testified for the prosecution. On the other hand, appellant herself, Bejohn Reyes, and Lilibeth Janaban testified for the defense.

Prosecution's Version

On August 19, 2008, Chief Superintendent Alfredo Valdez received a text message about rampant illegal drug activities in Muntinlupa. The members of the Anti-Illegal Drugs-Special Operation Task Force were instructed to conduct surveillance specifically on a certain Pilar Burdeos who turned out to be herein appellant. After confirmation of appellant's illegal drug activity, the task force immediately planned a buy-bust operation on her. Police officer (PO) Eddie Guevarra was designated as poseur buyer, PO Rondivar Hernaez as immediate back up, and POs Bornilla, Gastanez and, Genova as members. The buy-bust team coordinated with the Philippine Drug Enforcement Agency (PDEA), prepared the buy-bust money, and entered the buy bust operation in the blotter.[6]

Around 10 o'clock in the evening, the buy-bust team and the police asset proceeded to appellant's house on board a trolley. There, the asset and PO Guevarra approached appellant who was sitting on a bench in front of a "*carinderia*." The asset introduced PO Guevarra to appellant as a taxi driver interested to buy shabu. Appellant asked PO Guevarra how much he wanted to buy, to which the latter replied ₱500.00 worth of shabu. Appellant told PO Guevarra that shabu was expensive and ₱500.00 could not buy much. PO Guevarra explained he only needed a little amount of shabu anyway. PO Guevarra then handed the buy-bust money to appellant. Thereafter, appellant took a plastic sachet from her pocket and handed it to PO Guevarra who flicked his lighter to signal that the sale had been consummated. The back-up team shortly closed in and placed appellant under arrest.[7]

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[6] TSN dated February 25, 2009, pp. 4-8; TSN dated May 28, 2009, pp. 5-13.

[7] TSN dated February 25, 2009, pp. 8-15; TSN dated May 28, 2009, pp. 13-20.

PO Hernaez informed appellant of her constitutional rights, frisked her, and recovered from her the buy-bust money. The team then brought appellant to the police station where the seized items were marked, inventoried, and photographed in the presence of appellant herself and a civilian named Dennis de Lumban. A request for laboratory examination of the seized plastic sachet was also prepared. PO Guevarra and PO Hernaez brought the request and seized plastic sachet to the crime laboratory.[8]

Per Physical Science Report No. D-336-085, Forensic Chemist PS/Insp. Abraham Tecson found the contents of the plastic sachet positive for ephedrine, a dangerous drug.[9]

The prosecution offered the following in evidence: Pre-Operational Report and Coordination Form submitted to the PDEA, Certificate of Coordination issued by the PDEA, photocopy of the buy-bust money, Certificate of Inventory, photograph of appellant and the seized dangerous drug, Request for Laboratory Examination, Physical Science Report, Booking and Information Sheet, and Sinumpaang Salaysay of POs Guevarra and Hernaez.[10]

Defense's Version

On August 19, 2008, around 9 o'clock in the evening, she was at home with her grandchildren and live-in partner when police POs Guevarra, Hernaez, and Martinez suddenly arrived and accused her of being a "pusher." Appellant denied she was selling illegal drugs. The police officers asked if they could search her house. She readily agreed. When the search yielded nothing, the police officers invited her to the police station for investigation. Again, she agreed because she knew she did not do anything wrong. At the police station, she was forced to

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[8] TSN dated February 25, 2009, pp. 16-24; TSN dated May 28, 2009, pp. 20-29.

[9] Record, p. 127.

[10] *Id*. at 119-134.

list down the names of the "pushers" in their area. She refused because she did not know anyone who was engaged in selling *shabu*. The police officers got angry and uttered "*tuluyan na 'to.*"[11]

Bejohn Reyes and Lilibeth Janaban, appellant's grandson and daughter, respectively, corroborated appellant's testimony that her house was searched and the police officers did not recover anything.[12]

The Trial Court's Ruling

By Judgment dated November 28, 2012, the trial court rendered a verdict of conviction, *viz*:

> WHEREFORE, premises considered and finding the accused GUILTY beyond reasonable doubt of the crime herein charged, accused PILAR BURDEOS y OROPA is sentenced to LIFE IMPRISONMENT and to pay a FINE of Php500,000.00.
>
> The preventive imprisonment undergone by the accused shall be credited in her favor.
>
> The drug evidence are ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.
>
> Issue a MITTIMUS committing accused PILAR BURDEOS y OROPA to the Correctional Institute for Women for the service of her sentence pending any appeal that she may file in this case.
>
> SO ORDERED.[13]

The trial court ruled that as between the testimony of POs Guevarra and Hernaez, on one hand, and the testimony of appellant, her grandson, and daughter, on the other, the former was more worthy of belief. It upheld the entrapment operation on appellant and rejected the latter's defense of denial.

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[11] TSN dated June 23, 2010, pp. 3-21.

[12] Bejohn Reyes' testimony, TSN dated March 10, 2011, pp. 3-22; Lilibeth Janaban's testimony, TSN dated June 22, 2011, pp. 3-9.

[13] CA *rollo*, pp. 76-83; Record, pp. 196-203.

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court when it allegedly overlooked the following fatal omissions during the supposed buy-bust operation, *viz*: lack of search warrant and failure to immediately mark the seized plastic sachet at the place of arrest. Appellant also faulted the trial court when it gave credence to the purported inconsistent testimonies of POs Guevarra and Hernaez pertaining to who had custody of the seized drug from the police station *en route* to the crime laboratory.[14]

For its part, the Office of the Solicitor General (OSG), through Assistant Solicitor General Magtanggol M. Castro and Associate Solicitor Eileen C. Paloma, countered in the main: 1) the presumption of regularity in the performance of their official functions in favor of the buy-bust team prevails over appellant's bare denial; 2) the warrantless search on appellant's person was a valid incident to appellant's arrest *in flagrante delicto*; 3) there was substantial compliance with the chain of custody rule; and 4) the inconsistent claims pertaining to who had custody of the seized item was irrelevant to the essential elements of the crime charged.[15]

The Court of Appeals' Ruling

By Decision dated May 7, 2014, the Court of Appeals affirmed. It found that there was substantial compliance with the chain of custody rule and the integrity of the seized drug was properly preserved. Thus, despite the failure to mark the items immediately upon confiscation, the chain of custody had remained intact. There is no doubt, therefore, that the seized dangerous drug was the same one submitted to the crime laboratory for testing and subsequently presented in court as evidence. It gave credence to the testimonies of the prosecution witnesses who as police officers are presumed to have regularly performed their official functions.

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[14] CA *rollo*, pp. 53-73.

[15] *Id*. at 98-114.

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for her acquittal. In compliance with Resolution[16] dated August 3, 2015, both appellant and the OSG manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[17]

The Core Issues

1) Was the chain of custody complied with? 2) Assuming in the negative, did the saving clause operate to cure the procedural infirmities, if any, pertaining to the integrity and evidentiary value of the seized drug?

Ruling

On the first issue, the Court rules in the negative.

Petitioner was charged with violation of Section 5, Art. II of RA 9165 (illegal sale of dangerous drugs) allegedly committed on August 19, 2008. The applicable law is RA 9165 before its amendment in 2014.

In cases involving violations of RA 9165, the *corpus delicti* refers to the drug itself. It is, therefore, the duty of the prosecution to prove that the drugs seized from the accused were the same items presented in court.[18]

Section 21 of RA 9165 sets out the step by step procedure to ensure that the *corpus delicti* has been preserved, thus:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of

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[16] *Rollo*, pp. 21-22.

[17] Appellant's Manifestation, *id.* at 24-25; The People's Manifestation, *id.* at 28-30.

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

dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

x x x x x x x x x

The Implementing Rules and Regulations of RA 9165 relevantly ordains:

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

x x x x x x x x x

Section 21 and 21 (a) are the summation of the chain of custody rule. It consists of four (4) connecting links:

One. The seizure and marking of the illegal drug recovered from the accused by the apprehending officer;

Two. The turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Three. The turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Four. The turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[19]

Here, all four (4) links had never at any point joined into one (1) unbroken chain. Consider:

First. Marking of the seized drug was not immediately done after seizure at the place of arrest. POs Guevarra and Hernaez both testified that following appellant's arrest, the buy-bust team went back to the police station and only there did PO Guevarra mark the seized drug. *En route*, the item remained unmarked. It was clearly exposed to switching, planting, and contamination. Notably, no one from the buy-bust team explained why the prescribed procedure for marking was not followed.

In ***People v. Ismael***, the Court noted that there was already a significant break in the chain of custody when the seized dangerous drugs were not marked at the place where the accused was arrested. There were also no explanations why marking was not done immediately. The Court ruled that because of this break in the chain of custody there can be no assurance that switching, planting, or contamination did not actually take place.[20]

Second. As required, the physical inventory and photograph of the seized drugs immediately after seizure or confiscation shall be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected local official.

Here, PO Guevarra testified:

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[19] See *People v. Gayoso*, 808 Phil. 19, 31 (2017).

[20] See *supra* note 18, at 34.

Q: When you made the Inventory there was no representative or counsel, media or any representative form the Department of Justice or any elected public officer, is it not?

A: I do not know, sir.[21]

On the other hand, PO Hernaez stated:

Q: And you made the Certificate of Inventory in your office?

A: Yes, sir.

Q: And witnessed by a certain Dennis Lumban who is a civilian?

A: Yes, sir.[22]

Both prosecution witnesses testified that the inventory and photograph of the seized item were done only in the presence of appellant herself and a certain civilian named Dennis Lumban. The witnesses did not mention that a DOJ representative, a media representative, and a local elected official were themselves also present during the inventory and photograph. The prosecution again failed to acknowledge this deficiency, let alone, offer any explanation therefor. The prosecution offered no explanation either why a certain civilian Dennis Lumban served as witness during the inventory and photograph, in lieu of the three (3) required witnesses.

In ***People v. Macud***, the Court acquitted the accused in light of the arresting team's non-compliance with the three-witness rule. In that case, the prosecution likewise failed to satisfactorily explain the absence of the DOJ representative, media representative, and local elective official during the marking, inventory, and photograph of the seized dangerous drug.[23]

Third. Who took custody of the seized item from the place of arrest *en route* to the police station? Who turned it over to the police investigator? Who between PO Guevarra and PO

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[21] TSN dated March 26, 2009, p. 23.

[22] TSN dated February 18, 2010, p. 8.

[23] G.R. No. 219175, December 14, 2017, 849 SCRA 294, 323.

Hernaez took hold of the seized drug *en route* the crime laboratory? In their respective testimonies, the police officers pointed to each other as the custodian of the seized drug at every instance. Indubitably, this inconsistency marks another breach of the chain of custody rule.

Every person who takes possession of seized drugs must show how it was handled and preserved while it remains in his or her custody to prevent any switching or replacement. The Court acquitted the accused in ***People v. Ismael*** due to, among others, the contradictory claims of the investigating officer pertaining to who gave him the seized drugs. Due to these apparent inconsistent claims, it was highly possible that there was switching or tampering of the seized drugs.[24]

Fourth. Who received the seized item when it was delivered to the crime laboratory? The prosecution was conspicuously silent on this.

People v. Enriquez considered there was a break in the chain of custody of the seized drugs when the prosecution failed to offer in evidence the testimonies of all persons who handled the specimen. In that case, the arresting officers failed to identify the person to whom they turned over the seized items. There is, therefore, a crucial missing link, *i.e*. what happened to the seized items after they left the hands of the arresting officers?[25]

Fifth. The last remaining link refers to how the seized item was stored in the crime laboratory pending its delivery to the court for presentation as evidence. Who actually delivered it to the court for the purpose of presenting it as evidence? To this moment, this question has not been answered.

In ***People v. Hementiza***, the accused was acquitted for illegal sale of dangerous drugs because the records are bereft of any evidence as to how the illegal drugs were brought to court. The forensic chemist therein merely testified that she made a

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[24] *Supra* note 18, at 35.

[25] See 718 Phil. 352, 368 (2013).

report confirming that the substance contained in the sachets brought to her was positive for *shabu*. There was no evidence how the shabu was stored, preserved or labeled nor who had custody thereof before it was presented before the trial court.[26]

Indeed, the repeated breach of the chain of custody rule here was a fatal flaw which had destroyed the integrity and evidentiary value of the *corpus delicti*.

We have clarified that a perfect chain may be impossible to obtain at all times because of varying field conditions.[27] 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.[28] Section 21 (a) of the Implementing Rules and Regulations of RA 9165 contains the following proviso:

> Section 21. (a) xxx 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 this score, ***People v. Jugo*** specified the twin conditions for the saving clause to apply:

> [F]or the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Moreover, the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[29]

Here, both POs Guevarra and Hernaez offered no explanation which would have excused the buy-bust team's stark failure to

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[26] See 807 Phil. 1017, 1038 (2017).

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

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

[29] G.R. No. 231792, January 29, 2018.

comply with the chain of custody rule. In other words, the condition for the saving clause to become operational was not complied with. For the same reason, the proviso "so long as the integrity and evidentiary value of the seized items are properly preserved," too, will not come into play.

Consequently, in light of the prosecution's failure to provide justifiable grounds for non-compliance with the chain of custody rule, appellant's acquittal is in order. On this score, ***People v. Crispo*** is apropos:

> Since compliance with the procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.[30]

Suffice it to state that the presumption of regularity in the performance of official functions[31] 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.[32] Here, the presumption was amply overturned by compelling evidence on record of the repeated breach of the chain of custody rule.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated May 7, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05981 is **REVERSED** and **SET ASIDE.**

Appellant Pilar Burdeos *y* Oropa is **ACQUITTED**. The Superintendent of the Correctional Institution for Women, Mandaluyong City is ordered to (a) immediately release appellant

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[30] G.R. No. 230065, March 14, 2018.

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

[32] *People v. Cabiles*, 810 Phil. 969, 976 (2017).

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

Let an entry of final judgment be issued immediately.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

SECOND DIVISION

[G.R. No. 219772. July 17, 2019]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **P/SUPT. CRISOSTOMO P. MENDOZA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LAW INSTITUTIONALIZING THE DOCTRINE OF "COMMAND RESPONSIBILITY" IN ALL GOVERNMENT OFFICES PARTICULARLY IN THE PHILIPPINE NATIONAL POLICE AND OTHER LAW ENFORCEMENT AGENCY (E.O. 226); APPLIES ONLY WHEN THE SUPERIOR HAD NO DIRECT PARTICIPATION IN THE ACT COMPLAINED OF.—The provisions of E.O. No. 226 clearly indicate that the law seeks to penalize the failure of superiors to take any disciplinary actions against their subordinates who have committed a crime or irregularity. It presupposes that the superior has no involvement in the actions of the subordinates, otherwise, the superior should be penalized in accordance with his or her direct participation in the questionable conduct his or her subordinates may have committed. Thus, it is readily

apparent that E.O. No. 226 is inapplicable in the present case because Mendoza is accused of taking part in Muhad's extortion, and not merely for failing to discipline his police officers involved therein.

2. ID.; ID.; GRAVE MISCONDUCT; SUBSTANTIAL EVIDENCE EXISTS TO HOLD RESPONDENT GUILTY OF GRAVE MISCONDUCT.—In the present case, the Court finds that the decision of the OMB in the administrative case against Mendoza should be respected as it is supported by substantial evidence. Muhad narrated that Naguera and the other police officers accosted him while he was merely tending his store and was brought to Police Station 6. There, Naguera demanded ₱200,000.00 in exchange for his liberty and was eventually released when the money was delivered. This was corroborated by Diamungan and Rasul, who both saw Muhad being arrested by the police. They later learned that the police officers were asking money for Muhad's freedom. As a result, they asked for help from Ampaso, who accompanied them to the police station and was the one who gave money to the police. Then, Rasul was brought inside Mendoza's office where he saw the latter received a portion of the extortion money.

3. REMEDIAL LAW; EVIDENCE; AFFIDAVITS OF WITNESSES GIVEN PROBATIVE VALUE.—Unlike the cases cited by Mendoza, there is no reason to discredit the affidavits of Muhad and his witnesses. *First*, there was no showing that they were coerced into making the statements against the police officers. *Second*, the affidavits were executed shortly after the extortion incident making it unlikely that they were merely concocted to frame the police officers. *Third*, their statements were not hearsay in that they were based on personal knowledge of the facts. As such, the OMB was correct in giving probative value to the narrations given by Muhad and his witnesses.

4. ID.; ID.; DEFENSE OF DENIAL AND ALIBI; RESPONDENT'S DEFENSE OF DENIAL AND ALIBI CANNOT STAND IN VIEW OF THE POSITIVE IDENTIFICATION OF A WITNESS.—Mendoza's defense of denial and alibi has no leg to stand on. As above-mentioned, Rasul positively identified Mendoza as the one who received a

portion of the extortion money from Naguera. In turn, Mendoza denied the same claiming that he attended a religious activity with his sect. However, Mendoza's allegations are unsubstantiated and uncorroborated by statements of other participants of the said religious activity.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Balgos Gumaru Faller Tan & Javier for respondent.

D E C I S I O N

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

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the October 10, 2014 Decision[1] and July 31, 2015 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 131931, which reversed and set aside the January 21, 2013 Decision[3] and the April 18, 2013 Joint Order[4] of the Office of the Ombudsman (OMB).

Factual Antecedents

On January 11, 2010, at around 9:30 P.M., Muhad Pangandaman *y* Makatanong (Muhad), was arrested by police officers of Police Station 6 and was released after giving ₱200,000.00 in exchange for his liberty. As a consequence, Muhad filed an administrative case before the OMB against the police officers involved.

In his *Sinumpaang Salaysay*,[5] Muhad particularly alleged that: while tending his store in Litex IBP Road in Quezon City,

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[1] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Mario V. Lopez and Ramon A. Cruz, concurring; *rollo*, pp. 12-25.

[2] *Id.* at 27-33.

[3] *Id.* at 175-181.

[4] *Id.* at 182-187.

[5] *Id.* at 112-113.

SPO2 Dante Naguera (Naguera), with five other police officers in civilian clothing, arrested him; Muhad was brought to Police Station 6 in Batasan Hills and was asked to give ₱200,000.00 in exchange for his freedom; Muhad's relatives Diamungan Pangandaman (Diamungan) and Mampao Rasul (Rasul) gave the ₱200,000.00 to Naguera; and Naguera threatened Muhad that he would be arrested again if he squealed on them.

In their *Pinagsamang Salaysay*,[6] Diamungan and Rasul corroborated Muhad's narration. Specifically, they averred that: while they were at their stalls, they saw police officers in civilian clothing approached Muhad's store; they saw the police officers arrested Muhad and heard that it was for violating the gun ban; at around 1:00 A.M. of January 12, 2010, Muhad's sister-in-law Nanayaon Sangcopan Mute went to their homes, informed them that the police officers were asking ₱200,000.00 for Muhad's release and asked them to request assistance from Mangorsi Ampaso (Ampaso), the president of the Muslim Vendors Association in Litex; when they went to Ampaso's office, they reiterated the demand of the police officers and Ampaso accompanied them to Police Station 6 where Ampaso gave the money to Naguera; they were told to leave and Muhad would then be released; they gave an additional ₱50,000.00 after Ampaso went to their house and informed them that the police officers were demanding for the said amount; and Muhad was released after the payment of the additional amount.

Diamungan and Rasul executed another affidavit to provide supplemental details to their earlier *Pinagsamang Salaysay*. In their *Karagdagan Sinumpaang Salaysay*,[7] they averred that before they left the police station, Naguera accompanied Rasul inside the office of respondent P/Supt. Crisostomo P. Mendoza (Mendoza) where Rasul saw Naguera hands ₱100,000.00 to Mendoza.

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[6] *Id.* at 114.

[7] *Id.* at 116.

In his Counter-Affidavit,[8] Mendoza denied the accusations against him claiming that Naguera was neither assigned nor detailed at Police Station 6. He explained that Muhad's arrest was done without his knowledge and that he would never tolerate any wrongdoings done by his subordinates. Mendoza expounded that he was not the one who arrested Muhad and he was only implicated in the additional statement given by Diamungan and Rasul. He lamented that the narrations of Muhad's relatives were inconsistent and contrary to what Ampaso had stated in his Affidavit, who had denied that he gave money to Naguera. Mendoza added that at the time of the incident, he was at a church in Pasig attending religious services.

OMB Decision

In its February 8, 2013 Decision, the OMB found Mendoza, along with some police officers implicated in Muhad's complaint, guilty of grave misconduct and meted the penalty of dismissal from the service. It ruled that there is substantial evidence to hold Mendoza and his co-respondents guilty of the administrative charge levied against them. The OMB noted that Ampaso admitted that there was a demand and an exchange of money for Muhad's release. While Ampaso denied Naguera's involvement, it ruled that his statement still confirmed the claims of Muhad and his relatives that Mendoza and his cohorts extorted money for Muhad's release. The OMB disregarded the defense of denial and alibi in light of the positive identification done by Muhad, Diamungan and Rasul. It ruled:

> **WHEREFORE, P[/]Supt. Crisostomo Mendoza, SPO1 Amor Guiang, PO2 Rodger Ompoy, SPO2 Dante [Naguera]** and **PO3 Jerry Ines** are hereby found **GUILTY** of Grave Misconduct and are meted the penalty of Dismissal from the Service with its accessory penalties namely, disqualification to hold public office, forfeiture of retirement benefits, cancellation of civil service eligibilities and bar from taking future civil service examinations.
>
> **PROVIDED**, that in case respondents are already retired from the government service, the alternative penalty of **FINE** equivalent

[8] *Id.* at 117-120.

to **ONE YEAR** salary is hereby imposed, with the same accessory penalties mentioned above.

Let a copy of this Decision be forwarded to the Secretary, Department of Interior and Local Government, and the Chief, Philippine National Police for appropriate action and implementation.

As to the other respondents, namely Mangorsi Ampaso, PO3 Polito, PO3 Perez and PO2 Vacang, the instant administrative case against them is DISMISSED.

SO ORDERED.[9]

Undeterred, Mendoza and the other police officers who were found guilty of grave misconduct, moved for reconsideration but was denied by the OMB in its April 18, 2013 Joint Order.

As such, Mendoza filed a petition for review before the CA questioning the decision of the OMB in the administrative case against him.

CA Decision

In its October 10, 2014 Decision, the CA granted Mendoza's petition and absolved him from any liability in connection with the administrative case filed against him. The CA posited that there was no substantial evidence to find Mendoza guilty of grave misconduct because the OMB's decision was mainly anchored on the affidavits of Muhad, Diamungan and Rasul without any documentary evidence to corroborate the same. It pointed out that the OMB based Mendoza's participation on the allegations of Diamungan and Rasul's second affidavit. The CA noted that Diamungan and Rasul's first affidavit did not implicate Mendoza. The CA found Mendoza's belated inclusion suspicious, considering that it was an important detail to be forgotten or omitted in the initial affidavit.

Further, the CA highlighted that while the OMB relied on Ampaso's affidavit to establish that a demand for money took place, he never mentioned any participation of Mendoza in the extortion. In addition, the CA explained that Mendoza was

[9] *Id.* at 179-180.

under no obligation to present certifications or affidavits to support his claim that he attended a religious activity in his church. The CA expounded that it was enough for Mendoza to deny participation and need not prove his negative averment especially that complainant was unable to prove anything. Thus, it ruled:

> WHEREFORE, in light of the foregoing premises, the petition is GRANTED and accordingly the assailed Decision dated 21 January 2013 is REVERSED and SET ASIDE.
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> Consequently, the administrative charge against petitioner is DISMISSED for lack of merit.
>
> With respect to the assailed Joint Order dated 18 April 2013 (criminal aspect) issued by the Office of the Ombudsman, this Court has no jurisdiction to review the same.
>
> SO ORDERED.[10]

Aggrieved, the OMB moved for reconsideration but it was denied by the CA in its July 31, 2015 Resolution.

Hence, this present petition, raising:

Issues

I

[WHETHER] THE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED AND SET ASIDE THE JANUARY 21, 2013 DECISION AND APRIL 18, 2013 JOINT ORDER OF THE PETITIONER OFFICE OF THE OMBUDSMAN IN OMB-P-A-10-0879-H CONSIDERING THAT THERE IS SUBSTANTIAL EVIDENCE TO HOLD RESPONDENT LIABLE FOR GRAVE MISCONDUCT; AND

II

[WHETHER] THE COURT OF APPEALS GRAVELY ERRED WHEN IT DENIED THE MOTION FOR RECONSIDERATION OF THE PETITIONER OFFICE OF THE OMBDUSMAN AND

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[10] *Id*. at 24.

HELD THAT EXECUTIVE ORDER [E.O.] NO. 226 DATED FEBRUARY 17, 1995 IS INAPPLICABLE TO RESPONDENT'S CASE.[11]

The OMB argues that the CA erred in reversing its decision finding Mendoza guilty of Grave Misconduct. It reiterates that there is substantial evidence to establish that Mendoza took part in the extortion of Muhad. The OMB laments that its findings of fact are conclusive when supported by substantial evidence. It notes that the two affidavits of Diamungan and Rasul were not inconsistent with one another and that the latter affidavit merely supplemented the first one. The OMB points out that the Second Affidavit specifically identified the police officers who took part in the extortion and narrated how Naguera handed ₱100,000.00 to Mendoza. It assails that the CA should have disregarded Mendoza's unsubstantiated alibi that he attended a religious activity at the time the extortion took place.

Further, the OMB posits that the CA erred in ruling that E.O. No. 226[12] did not apply to Mendoza. It explains that E.O. No. 226 institutionalized the doctrine of Command Responsibility holding superior officers administratively liable for neglect of duty for failure to take appropriate action to discipline their subordinates. The OMB expounds that neglect of duty includes gross neglect of duty, the latter being necessarily included in the definition of grave misconduct.

In his Comment[13] dated March 17, 2016, Mendoza assails that the OMB's petition for review on *certiorari* should be dismissed outright for failing to append a Verification and Certification against Non-Forum Shopping. As to the merits

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[11] *Id*. at 45.

[12] INSTITUTIONALIZATION OF THE DOCTRINE OF "COMMAND RESPONSIBILITY" IN ALL GOVERNMENT OFFICES, PARTICULARLY AT ALL LEVELS OF COMMAND IN THE PHILIPPINE NATIONAL POLICE AND OTHER LAW ENFORCEMENT AGENCIES. Approved on February 17, 1995.

[13] *Id*. at 238-251.

of the case, he argues that there is no substantial evidence to hold him guilty of grave misconduct. Mendoza avers that the OMB merely relied on the affidavits of Muhad and his witnesses, as well as that of Ampaso's. He explains that affidavits, even in administrative proceedings, are not accorded great weight.

Mendoza expounds that the accusation of extortion against him is akin to bribery, which the Court described in *Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing* held on September 26, 2013, against Associate Justice Gregory S. Ong, Sandiganbayan *(In Re: Ong)*[14] as easy to concoct and difficult to disprove. In addition, he posits that the OMB has an inconsistent treatment of Ampaso's affidavit because while it agreed that extortion took place, it did not believe Ampaso's affidavit that Naguera did not receive the extortion money.

On the other hand, Mendoza agrees with the CA that E.O. No. 226 is inapplicable to the present case. He postulates that E.O. No. 226 only applies when a crime has been committed or is being committed by a subordinate. He believes that since the criminal cases against him had been dismissed, the presumption of knowledge under Section 2 of E.O. No. 226 would not arise. Further, Mendoza bewails that to apply E.O. No. 226 would violate due process as he is charged with grave misconduct and not neglect of duty.

In its Reply[15] dated October 24, 2016, the OMB counters that its petition for review on *certiorari* has the necessary Verification and Certification against Forum Shopping. It further explains that it did not merely rely on Ampaso's affidavit, but also on the narrations of Muhad and his witnesses.

The Court's Ruling

The petition is meritorious.

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[14] 743 Phil. 622, 669 (2014).

[15] *Rollo*, pp. 274-282.

At the onset, Mendoza's allegation that the OMB's petition for review on *certiorari* should be dismissed for lack of Verification and Certification against Forum Shopping should be swept aside. The records indubitably show that the present petition has the required Verification and Certification.[16]

E. O. No. 226 applies only when the superior had no direct participation in the act complained of

E.O. No. 226 seeks to institutionalize command responsibility in the Philippine National Police and other law enforcement agencies in recognition of the duty of superiors to closely monitor and supervise the overall activities and actions of their subordinates within their jurisdiction or command. Section 1 thereof, holds superiors administratively liable for failing to discipline their erring personnel, to wit:

> **SEC. 1. Neglect of Duty Under the Doctrine of "Command Responsibility."** — Any government official or supervisor, or officer of the Philippine National Police or that of any other law enforcement agency shall be held accountable for "Neglect of Duty" under the doctrine of "command responsibility" if he has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge, he **did not take preventive or corrective action either before, during, or immediately after its commission**. (Emphasis supplied)

On the other hand, E.O. No. 226 presumes that superiors have knowledge of any irregularities or crimes committed by their subordinates under any of the following circumstances:

a. When the irregularities or illegal acts are widespread within his area of jurisdiction;

b. When the irregularities or illegal acts have been repeatedly or regularly committed within his area of responsibility; or

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

c. When members of his immediate staff or office personnel are involved.

The provisions of E.O. No. 226 clearly indicate that the law seeks to penalize the failure of superiors to take any disciplinary actions against their subordinates who have committed a crime or irregularity. It presupposes that the superior has no involvement in the actions of the subordinates, otherwise, the superior should be penalized in accordance with his or her direct participation in the questionable conduct his or her subordinates may have committed. Thus, it is readily apparent that E.O. No. 226 is inapplicable in the present case because Mendoza is accused of taking part in Muhad's extortion, and not merely for failing to discipline his police officers involved therein.

Nevertheless, the Court finds that the OMB is correct in finding Mendoza guilty of grave misconduct.

Substantial evidence exists to hold Mendoza guilty of grave misconduct

In *Ombudsman-Mindanao v. Ibrahim*,[17] the Court had recognized that findings of fact of the OMB are afforded great weight and even finality due to its expertise over matters within its jurisdiction, to wit:

> The general rule is that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence. The factual findings of the Office of the Ombudsman are generally accorded with great weight and respect, if not finality by the courts, due to its special knowledge and expertise on matters within its jurisdiction. However, the Court of Appeals may resolve factual issues, review and re-evaluate the evidence on record, and reverse the findings of the administrative agency if not supported by substantial evidence.[18] (Citations omitted)

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[17] 786 Phil. 221 (2016).

[18] *Id.* at 234.

Stated in the reverse, appellate courts should affirm the findings of the OMB if the same are supported by substantial evidence. Only arbitrariness would warrant judicial intervention of the OMB's findings supported by substantial evidence.[19] Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion — it is satisfied when there is reasonable ground to believe that the respondent is guilty of the act complained of even if the evidence is not overwhelming.[20]

In the present case, the Court finds that the decision of the OMB in the administrative case against Mendoza should be respected as it is supported by substantial evidence.

Muhad narrated that Naguera and the other police officers accosted him while he was merely tending his store and was brought to Police Station 6. There, Naguera demanded ₱200,000.00 in exchange for his liberty and was eventually released when the money was delivered. This was corroborated by Diamungan and Rasul, who both saw Muhad being arrested by the police. They later learned that the police officers were asking money for Muhad's freedom. As a result, they asked for help from Ampaso, who accompanied them to the police station and was the one who gave money to the police. Then, Rasul was brought inside Mendoza's office where he saw the latter received a portion of the extortion money.

It is true that mere uncorroborated hearsay or rumor does not constitute substantial evidence.[21] However, Muhad, Diamungan and Rasul's affidavits were based on personal knowledge regarding the circumstances behind Muhad's arrest and subsequent release. As such the statements of Muhad, Diamungan and Rasul were not hearsay as they were based on their personal knowledge and not merely rumors or information they learned from another. In addition, their credibility is further

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[19] *Office of the Ombudsman v. Delos Reyes, Jr.*, 745 Phil. 366, 380 (2014).

[20] *Tolentino v. Atty. Loyola*, 670 Phil. 50, 61 (2011).

[21] *Miro v. Vda. De Erederos*, 721 Phil. 772, 790 (2013).

bolstered by the fact that their narrations corroborated each other. Thus, even without Ampaso's affidavit, there is substantial evidence to prove that Muhad was extorted money and that Mendoza received a part of it.

The CA did not lend credence to the statement of Rasul that he saw Naguera hand ₱100,000.00 to Mendoza. The CA explained that such detail was not contained in his first affidavit and such omission tarnished his credibility because such act was too important for him to forget in his first statement.

The Court, however, agrees that Rasul's second affidavit did not negate his first affidavit but merely supplemented it. The narrations in both documents are identical except that Rasul clarified that before he and Diamungan went home, Naguera brought him inside Mendoza's office where he saw the transaction took place. Rasul's first and second sworn statements did not contradict, but actually supported each other. The execution of two sworn statements does not necessarily impair their probative value as it is only when the two sworn statements of the witnesses incur the gravest contradictions that courts must not accept both statements as proof.[22]

Mendoza notes that in *Carlos A. Gothong Lines, Inc. v. National Labor Relations Commission (Gothong Lines)*,[23] the Court ruled that affidavits are not afforded great weight even in administrative proceedings. In addition, Mendoza points out that in *In Re: Ong,* the Court held that accusations of bribery and corruption are easy to concoct and difficult to disprove.[24]

In *In Re: Ong,* the Court found the affidavits of the purported witnesses insufficient to sustain bribery and corruption charges against therein respondent because they did not actually witness the transaction. In short, the witnesses have no personal

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[22] *Philam Insurance Company, Inc. v. Court of Appeals*, 682 Phil. 411, 420 (2012).

[23] 362 Phil. 502, 512 (1999).

[24] *Supra* note 14, at 669.

knowledge of the alleged bribery and corruption.[25] On the other hand, the Court in *Gothong Lines*, sustained the findings of the Labor Arbiter that the credibility of the affidavits of the witnesses of the employer was doubtful as they were made after therein private respondent had filed a complaint for illegal dismissal. It was observed that the affidavits were made to rectify the employer's failure to comply with the due process requirement.[26]

Unlike the cases cited by Mendoza, there is no reason to discredit the affidavits of Muhad and his witnesses. *First*, there was no showing that they were coerced into making the statements against the police officers. *Second*, the affidavits were executed shortly after the extortion incident making it unlikely that they were merely concocted to frame the police officers. *Third*, their statements were not hearsay in that they were based on personal knowledge of the facts. As such, the OMB was correct in giving probative value to the narrations given by Muhad and his witnesses.

Meanwhile, Mendoza's defense of denial and alibi has no leg to stand on. As above-mentioned, Rasul positively identified Mendoza as the one who received a portion of the extortion money from Naguera. In turn, Mendoza denied the same claiming that he attended a religious activity with his sect. However, Mendoza's allegations are unsubstantiated and uncorroborated by statements of other participants of the said religious activity.

WHEREFORE, the October 10, 2014 Decision and July 31, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 131931 are **REVERSED** and **SET ASIDE**. The January 21, 2013 Decision and the April 18, 2013 Joint Order of the Office of the Ombudsman are **REINSTATED**.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

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[25] *Id.* at 670.

[26] *Supra* note 23, at 511.

SECOND DIVISION

[G.R. No. 223624. July 17, 2019]

HEIRS OF LEONARDA NADELA TOMAKIN, namely: LUCAS NADELA, OCTAVIO N. TOMAKIN, ROMEO N. TOMAKIN, MA. CRISTETA[*] T. PANOPIO, and CRESCENCIO[**] TOMAKIN, JR. (deceased), represented by his heirs, BARBARA JEAN R. TOMAKIN RAFOLS[***] and CRISTINA JEAN R. TOMAKIN, *petitioners, vs.* **HEIRS OF CELESTINO NAVARES, namely: ERMINA N. JACA, NORMITA NAVARES, FELINDA N. BALLENA, RHODORA N. SINGSON, CRISTINA N. CAL ORTIZ, ROCELYN N. SENCIO, JAIME B. NAVARES, CONCHITA N. BAYOT, PROCULO NAVARES, LIDUVINA N. VALLE, MA. DIVINA N. ABIS, VENUSTO B. NAVARES and RACHELA N. TAHIR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION; MAY BE GRANTED ONLY UPON SPECIAL AND IMPORTANT REASONS.— Review by the Supreme Court via a Rule 45 *certiorari* petition is not a matter of right, but involves sound judicial discretion because it will be granted only when there are special and important reasons therefor. Petitioners Tomakin have failed to convince the Court that their Petition is justified by special and important reasons to warrant the granting thereof. The grounds relied upon by petitioners Tomakin in the Petition are the very same arguments that they raised in their Motion for Reconsideration before the CA, which the latter found to be without merit in its Resolution dated March 23, 2016.

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[*] Also spelled as "Cristita" in some parts of the *rollo.*

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

[***] Also appears as "Barbara Jean Tomakin-Rafols" in some parts of the *rollo.*

2. ID.; ID.; ID.; ISSUES NOT RAISED BEFORE THE TRIAL COURT MAY NOT BE RAISED FOR THE FIRST TIME ON APPEAL.— Firstly, it is well-settled that a party may not change his theory of the case on appeal and this is expressly adopted in Section 15, Rule 44 of the Rules[.] x x x The Pre-Trial Brief of petitioners Tomakin raised only the following issues: (1) whether respondents Navares are the owners of Lot No. 8467-B; (2) whether the present action is barred by prescription; and (3) whether petitioners Tomakin are entitled to their counterclaims. The RTC Decision dated May 6, 2010 framed the issues to be resolved as follows: (1) whether the present action is barred by prescription; (2) whether respondents Navares are the owners of Lot No. 8467 by right of succession; and (3) whether petitioners Tomakin are entitled to their counterclaims. Clearly, the third issue was not raised by petitioners Tomakin before the RTC. As such, this may no longer be raised nor ruled upon on appeal. Secondly, defenses not pleaded in the answer may not be raised for the first time on appeal. x x x Thirdly, it is also well-settled that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel.

3. CIVIL LAW; LAND REGISTRATION; RECONVEYANCE; RESPONDENT CORRECTLY AVAILED OF THE REMEDY OF RECONVEYANCE.— Contrary to petitioners Tomakin's postulation, respondents Navares availed themselves of the correct remedy of reconveyance. The Court in *The Director of Lands v. The Register of Deeds for the Province of Rizal* stated that: "[t]he sole remedy of the land owner whose property has been wrongfully or erroneously registered in another's name is, after one year from the date of the decree, not to set aside the decree x x x, but, respecting the decree as incontrovertible and no longer open to review, to bring an ordinary action in the ordinary court of justice for reconveyance or, if the property has passed into the hands of an innocent purchaser for value, for damages."

4. ID.; LACHES, NOT A CASE OF; HAVING BEEN IN POSSESSION OF AND EXERCISING ACTS OF DOMINION OVER THE SUBJECT PROPERTY, RESPONDENTS CANNOT BE HELD GUILTY OF LACHES.— [R]espondents Navares, having been in possession of and exercising acts of dominion over the subject property as

found by the CA, cannot be deemed to be guilty of laches because they cannot be said to have omitted or neglected to assert and exercise their rights as owner thereof. Pursuant to *Sps. Alfredo v. Sps. Borras* cited by the CA in its Resolution dated March 23, 2016, the undisturbed possession of respondents Navares give them the continuing right to seek the aid of a court of equity to determine the nature of the adverse claim of petitioners Tomakin and its effect on their ownership of LotNo. 8467-B.

APPEARANCES OF COUNSEL

Zosimo Bedrijo Argawanon for petitioners.
Ordiniza & Cusap Law Offices for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court (Rules) assailing the Decision[2] dated October 28, 2014 (CA Decision) and the Resolution[3] dated March 23, 2016 of the Court of Appeals[4] (CA) in CA-G.R. CEB CV No. 03806. The CA Decision granted the appeal of respondents Heirs of Celestino Navares (respondents Navares) as well as reversed and set aside the Decision[5] dated May 6, 2010 rendered by the Regional Trial Court, Branch 23, 7th Judicial Region, Cebu City (RTC) in Civil

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[1] *Rollo,* pp. 3-22, excluding Annexes.

[2] *Id*. at 25-37. Penned by Associate Justice Renato C. Francisco, with Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino concurring.

[3] *Id.* at 55-58. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pamela Ann Abella Maxino and Geraldine C. Fiel-Macaraig concurring.

[4] Eighteenth (18th) Division and Special Former Eighteenth (18th) Division, respectively.

[5] *Rollo,* pp. 128-131. Penned by Presiding Judge Generosa G. Labra.

Case No. CEB-30246, which was in favor of petitioners Heirs of Leonarda Nadela Tomakin (petitioners Tomakin). The CA Resolution dated March 23, 2016 denied the Motion for Reconsideration[6] filed by petitioners Tomakin.

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

> The property in dispute is Lot No. 8467[7] originally owned by the late Jose Badana who died without issue. He was survived by his two sisters Quirina Badana and Severina Badana. The property was then covered by Original Certificate of Title No. RO-2230 (O-7281) in the name of Jose Badana.
>
> On 18 May 2004, [Heirs of Celestino Navares (respondents Navares)] filed a Complaint for *Reconveyance and Damages* against [Heirs of Leonarda Nadela Tomakin (petitioners Tomakin)] before the RTC x x x.
>
> In their complaint, [respondents Navares] alleged (a) that on 23 February 1955, Quirina Badana, as heir of her brother Jose Badana, sold one-half (½) of Lot No. 8467 to the late spouses Remigio Navares and Cesaria Gaviola, which portion, as claimed, is known as Lot No. 8467-B as evidenced by Sale with Condition;[8] (b) that as successors-in-interest of the late spouses [Navares], [respondents Navares] inherited Lot No. 8467-B; (c) that they and their predecessors had been religiously paying realty taxes on Lot No. 8467-B since 1955; (d) that most of them had been occupying and residing on the property adversely and openly in the concept of an owner; (e) that on 6 December 1957, Severina Badana sold the other half of Lot No. 8467 known as

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[6] *Id*. at 38-52. Denominated as "Motion for Reconsideration of the Decision dated 28 October 2014 and Formal Entry of Appearance."

[7] Located at Inayawan, Cebu City. *Id*. at 101.

[8] "That the VENDOR, in executing this conveyance hereby RESERVES her right to the fruits or products of the land herein conveyed during her lifetime, and the VENDEES, in accepting the same hereby OBLIGATES themselves to acknowledge the said right, provided, however, that upon the termination of the said lifetime of the VENDOR, then this document shall become absolute without the necessity of drawing a new deed of absolute sale." *Id*. at 102.

Lot No. 8467-A to spouses Aaron Nadela and Felipa Jaca, the predecessors-in-interest of [petitioners Tomakin].[9]

On 30 October 1991, [petitioner] Lucas Nadela, together with Leonarda N. Tomakin, sold a portion of Lot No. 8467 with an area of 1,860 square meters out of what they inherited from [s]pouses Aaron Nadela and Felipa Jaca to spouses Alfredo Dacua, Jr. and Clarita Bacalso. The sale was evidenced by a Deed of Absolute Sale.[10] [Respondents Navares] alleged that on the basis of this Absolute Sale, x x x Alfredo Dacua, Jr.[11] caused Lot No. 8467-A to be titled in his name. [Respondents Navares] further alleged that on 10 January 1994, [petitioners Tomakin] made it x x x appear that one Mauricia[12] Bacus (a complete stranger to the property) executed a document denominated as *Extra Judicial Settlement of the Estate of Jose Badana with Confirmation of Sale;* and that on the basis of this document, x x x Alfredo Dacua, Jr. maliciously caused Lot No. 8467-B to be titled in the name of Leonarda Nadela Tomakin and Lucas J. Nadela under Transfer Certificate of Title No. 131499.[13] Oral demands were made by [respondents Navares] upon [petitioners Tomakin] to reconvey the title of Lot No. 8467-B which remained unheeded.

In their Answer, [petitioners Tomakin] claimed that they are the heirs of the late Leonarda Tomakin; that Lot No. 8467 was purchased by [s]pouses Aaron Nadela and Felipa Jaca from Severina Badana, sister-heir of the late Jose Badana, as evidenced by a Deed of Absolute

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[9] *Rollo,* p. 111.

[10] *Id*. at 104.

[11] Impleaded as one of the defendants in the RTC but is not impleaded as petitioner in the instant Petition.

[12] Spelled as "Maurecia" in the *Extra Judicial Settlement of Estate of Deceased Jose Badana with Confirmation of Sale.* In the said document, it is stated that Jose Badana, the registered owner of the parcel of land covered by OCT No. RO-2230 (O-7281), died single and was survived by his two sisters, Severina Badana and Quirina Badana; Severina Badana sold the said property to spouses Aaron Nadela and Felipa Jaca pursuant to a Deed of Absolute Sale on December 5, 1957; Severina Badana and Quirina Badana died without any issue except Mauricia Badana who is their only cousin; and Mauricia Badana, as "the sole and only living and direct heir of Jose Badana," had adjudicated unto herself the said estate of Jose Badana. *Rollo,* pp. 88-89.

[13] *Rollo,* p. 90.

Sale dated 6 December 1957;[14] that the heirs of [spouses] Aaron Nadela and Felipa Jaca, namely Leonarda N. Tomakin and her brother Lucas J. Nadela executed a Deed of Partition conveying x x x Lot No. 8467 in favor of Leonarda N. Tomakin; that before Leonarda Tomakin died, she and her brother Lucas Nadela sold the one-half (½) portion of Lot No. 8467 in favor of [s]pouses Alfredo Dacua, Jr. and Clarita Bacalso evidenced by a Deed of Absolute Sale;[15] that [s]pouses Aaron Nadela and Felipa Jaca, their heirs Leonard[a] N. Tomakin and Lucas Nadela and, thereafter, [petitioners Tomakin] have been exercising acts of ownership over Lot No. 8467 and Lot No. 8467-B. Lastly, [petitioners Tomakin] averred that [respondents Navares] are barred by prescription and laches – 49 years having elapsed since the alleged sale of the ½ portion of the property in 1955.

On 6 May 2010, the RTC rendered the assailed Decision in favor of [petitioners Tomakin] and against [respondents Navares]. It ruled that [respondents Navares] failed to prove that they are the rightful owners of Lot No. 8467-B. x x x[16]

> [The dispositive portion of the RTC Decision reads as follows:]
>
> WHEREFORE, foregoing premises considered, judgment is hereby rendered directing [respondents Navares]:
>
> 1) to return the owner's copy of TCT No. 131499 to [petitioners Tomakin];
>
> 2) to pay [petitioners Tomakin] [a]ttorney's fees in the amount of ₱30,000.00;
>
> 3) to pay [petitioners Tomakin] litigation expenses in the amount of ₱10,000.00.
>
> SO ORDERED.[17]

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[14] The sale appears to be inscribed on OCT No. RO-2230 (O-7281) on January 3, 1995. *Id*. at 27.

[15] The sale appears to be inscribed on OCT No. RO-2230 (O-7281) on January 3, 1995. *Id.*

[16] *Rollo,* pp. 26-28.

[17] *Id*. at 131.

Aggrieved, respondents Navares appealed to the CA.[18]

Ruling of the CA

The CA in its Decision dated October 28, 2014 granted the appeal.

The CA held that the defense of prescription could not be sustained. Respondents Navares' complaint for reconveyance was not barred by prescription because of their actual possession of Lot No. 8467-B based on petitioners Tomakin's admission that most of respondents Navares are living in the said Lot and leasing portions thereof to tenants.[19]

The CA disagreed with the RTC's negation of the transfer of ½ of Lot No. 8467 in favor of respondents Navares based on their alleged failure to adduce evidence that the condition contained in the 1955 Deed of Absolute Sale with Condition (1955 Deed of Sale) in their favor was complied with. Contrary to the ruling of the RTC, the CA did not construe the proviso on the reservation of the right to the fruits or products of the property conveyed by Quirina Badana to respondents Navares' predecessors during her lifetime as a condition on the ground that the 1955 Deed of Sale did not in express terms provide that the non-fulfillment of the obligation to deliver the fruits would prevent the transfer of ownership of the property in question.[20] Even if petitioners Tomakin's argument that the proviso partook of the nature of a condition were to be sustained, the CA stated that they lacked personality to assail the same because they were not privies to the 1955 Deed of Sale.[21] According to the CA, only Quirina Badana, as the vendor, had a cause of action to assail the non-fulfillment of the condition, and her failure to institute any action regarding the alleged

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[18] *Id*. at 132.

[19] *Id.* at 30-31.

[20] *Id*. at 32.

[21] *Id*.

condition during her lifetime constituted a waiver of whatever cause of action she might have had thereon.[22]

The CA upheld the validity of the February 23, 1955 sale covering the ½ portion of Lot No. 8647 (known as Lot No. 8647-B and covered by Transfer Certificate of Title No. 131499) executed by Quirina Badana in favor of respondents Navares' predecessors and the December 6, 1957 sale executed by Severina Badana in favor of petitioners Tomakin's predecessors but only to the extent of her ½ share of Lot No. 8647.[23]

The dispositive portion of the CA Decision states:

> **WHEREFORE,** premises considered, the Appeal is **GRANTED.** The Decision, dated 6 May 2010, rendered by the Regional Trial Court, Branch 23, 7th Judicial Region, Cebu City in CIVIL CASE NO. CEB – 30246 for *Reconveyance and Damages* is hereby **REVERSED AND SET ASIDE,** to wit:
>
> (a) *DECLARING* the Deed of Sale dated 6 December 1957, insofar as Lot No. 8647-B [now covered by TCT No. 131499] is concerned, as null and void; and
>
> (b) *DECLARING* TCT No. 131499 in the name of Leonarda Nadela Tomakin and Lucas J. Nadela as null and void and *ORDERING* the Register of Deeds of Cebu City to cancel said title and to issue, in lieu thereof, new title in the name of the Heirs of Celestino Navares.
>
> **SO ORDERED.**[24]

Petitioners Tomakin filed a Motion for Reconsideration, which was denied by the CA in its Resolution[25] dated March 23, 2016.

Hence, the instant Rule 45 Petition. The Court in its July 4, 2016 Resolution[26] required respondents Navares to comment

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[22] *Id*.

[23] *Id*. at 36.

[24] *Id*. at 36-37.

[25] *Id*. at 55-58.

[26] *Id*. at 159.

on the Petition within 10 days from notice thereof. To date, they have not filed any Comment. As such, respondents Navares are deemed to have waived the opportunity to file any Comment on the Petition.

The Issues

The Petition raises the following issues:

1. whether the CA failed to appreciate that respondents Navares' possession was not in the concept of an owner;

2. whether the CA failed to appreciate the indefeasibility of the Torrens title;

3. whether the CA failed to appreciate that respondents Navares in not previously filing a case for declaration of heirship as heirs of spouses Remegio Navares and Cesaria Gaviola have no cause of action against petitioners Tomakin; and

4. whether the CA failed to appreciate that respondents Navares are guilty of laches.[27]

The Court's Ruling

The Petition is bereft of merit.

Review by the Supreme Court via a Rule 45 *certiorari* petition is not a matter of right, but involves sound judicial discretion because it will be granted only when there are special and important reasons therefor.[28] Petitioners Tomakin have failed to convince the Court that their Petition is justified by special and important reasons to warrant the granting thereof.

The grounds relied upon by petitioners Tomakin in the Petition are the very same arguments that they raised in their Motion for Reconsideration[29] before the CA, which the latter found to be without merit in its Resolution[30] dated March 23, 2016.

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

[28] RULES OF COURT, Rule 45, Sec. 6.

[29] *Rollo,* p. 39.

[30] *Id*. at 55-58.

Anent the first issue, the Court quotes with approbation the CA's explanation why it was not persuaded by petitioners Tomakin's argument that respondents Navares' possession of the subject property is not in the concept of an owner, *viz.*:

> [Petitioners Tomakin] assert, [respondents Navares'] possession of the property is not in the concept of an owner.
>
> We are not persuaded.
>
> In *[Sps.] Alfredo v. [Sps.] Borras,*[31] the Court ruled that prescription does not run against the plaintiff in actual possession of the disputed land because such plaintiff has a right to wait until his possession is disturbed or his title is questioned before initiating an action to vindicate his right. His undisturbed possession gives him the continuing right to seek the aid of a court of equity to determine the nature of the adverse claim of a third party and its effect on his title. The Court held that where the plaintiff in an action for reconveyance remains in possession of the subject land, the action for reconveyance becomes in effect an action to quiet title to property, which is not subject to prescription.
>
> The action for reconveyance was filed by [respondents Navares] precisely because they deemed themselves owner of the litigated property prior to the claim of [petitioners Tomakin]. The filing of such action was an assertion of their title to the property. Thus, the question of whether or not [respondents Navares] are in possession of the subject property in the concept of an owner is a question of fact; and such question of fact has already been resolved by this Court in Our Decision.[32]

Regarding the second issue, petitioners Tomakin argue that the complaint for reconveyance filed by respondents Navares involves a collateral attack on the subject certificate of title covering Lot No. 8647-B. They invoke Section 48 of Presidential Decree No. 1529 or the Property Registration Decree, which provides:

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[31] 452 Phil. 178, 206 (2003).

[32] *Rollo,* p. 57.

SEC. 48. *Certificate not subject to collateral attack.* – A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

Contrary to petitioners Tomakin's postulation, respondents Navares availed themselves of the correct remedy of reconveyance. The Court in *The Director of Lands v. The Register of Deeds for the Province of Rizal*[33] stated that: "[t]he sole remedy of the land owner whose property has been wrongfully or erroneously registered in another's name is, after one year from the date of the decree, not to set aside the decree x x x, but, respecting the decree as incontrovertible and no longer open to review, to bring an ordinary action in the ordinary court of justice for reconveyance or, if the property has passed into the hands of an innocent purchaser for value, for damages."[34]

Proceeding to the third issue, petitioners Tomakin belatedly raised the same in their Motion for Reconsideration before the CA.[35] They never raised in their Answer[36] the ground that respondents Navares have no cause of action against them because the former had not previously filed a petition for declaration of heirship as heirs of spouses Remigio Navares and Cesaria Gaviola.

The third issue may no longer be raised by petitioners Tomakin on appeal.

Firstly, it is well-settled that a party may not change his theory of the case on appeal and this is expressly adopted in Section 15, Rule 44 of the Rules, which provides:

"SEC. 15. *Questions that may be raised on appeal.* – Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or

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[33] 92 Phil. 826 (1953).

[34] *Id.* at 831.

[35] See *rollo,* pp. 44-47.

[36] *Id.* at 64-71.

fact that has been raised in the court below and which is within the issues framed by the parties."[37]

The Pre-Trial Brief[38] of petitioners Tomakin raised only the following issues: (1) whether respondents Navares are the owners of Lot No. 8467-B; (2) whether the present action is barred by prescription; and (3) whether petitioners Tomakin are entitled to their counterclaims.[39] The RTC Decision[40] dated May 6, 2010 framed the issues to be resolved as follows: (1) whether the present action is barred by prescription; (2) whether respondents Navares are the owners of Lot No. 8467 by right of succession; and (3) whether petitioners Tomakin are entitled to their counterclaims.[41]

Clearly, the third issue was not raised by petitioners Tomakin before the RTC. As such, this may no longer be raised nor ruled upon on appeal.

Secondly, defenses not pleaded in the answer may not be raised for the first time on appeal. Citing *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,[42] Remedial Law Author and Reviewer Willard B. Riano explains:

> x x x A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party. Accordingly, "courts of justice have no jurisdiction or power to decide a question not in issue." Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid. The rule rests

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[37] Willard B. Riano, *CIVIL PROCEDURE, VOLUME I, THE BAR LECTURES SERIES* (2011 Bantam Edition), p. 579.

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

[39] *Id*. at 79.

[40] *Id*. at 128-131.

[41] *Id*. at 129.

[42] 535 Phil. 481 (2006).

on the fundamental tenets of fair play[, justice and due process[43]].[44]

Thirdly, it is also well-settled that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel.[45]

Given the foregoing, the Court cannot pass upon the third issue.

On the fourth issue, respondents Navares, having been in possession of and exercising acts of dominion over the subject property as found by the CA, cannot be deemed to be guilty of laches because they cannot be said to have omitted or neglected to assert and exercise their rights as owner thereof. Pursuant to *Sps. Alfredo v. Sps. Borras*[46] cited by the CA in its Resolution dated March 23, 2016, the undisturbed possession of respondents Navares give them the continuing right to seek the aid of a court of equity to determine the nature of the adverse claim of petitioners Tomakin and its effect on their ownership of Lot No. 8467-B.[47]

WHEREFORE, the Petition is hereby **DENIED.** The Decision dated October 28, 2014 and the Resolution dated March 23, 2016 of the Court of Appeals in CA-G.R. CEB CV No. 03806 are **AFFIRMED.**

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

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[43] *Id*. at 490, citing *Canada v. All Commodities Marketing Corporation,* 590 Phil. 342, 348 (2008).

[44] Willard B. Riano, *supra* note 37, at 579-581.

[45] *Id*. at 581, citing *Imani v. Metropolitan Bank & Trust Company,* 649 Phil. 647, 661-662 (2010).

[46] *Supra* note 31.

[47] *Rollo,* p. 57.

SECOND DIVISION

[G.R. No. 226369. July 17, 2019]

ISABELA-I ELECTRIC COOP., INC., represented by its General Manager, ENGR. VIRGILIO L. MONTANO, *petitioner, vs.* **VICENTE B. DEL ROSARIO, JR.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; MANAGEMENT PREROGATIVE TO TRANSFER EMPLOYEES.** — In ***Philippine Industrial Security Agency Corporation vs. Percival Aguinaldo***, We held that the "Court is fully aware of the right of management to transfer its employees as part of management prerogative. But like all rights, the same cannot be exercised with unbridled discretion. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic element of justice and fair play."

2. **ID.; ID.; ID.; DEMOTION; A SITUATION IN WHICH AN EMPLOYEE IS RELEGATED TO A SUBORDINATE OR LESS IMPORTANT POSITION CONSTITUTING A REDUCTION TO A LOWER GRADE OR RANK, WITH A CORRESPONDING DECREASE IN DUTIES AND RESPONSIBILITIES, AND USUALLY ACCOMPANIED BY A DECREASE IN SALARY; CASE AT BAR.** — Demotion involves a situation in which an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary. x x x [Here,] although respondent's present position bears the appellation "manager," the responsibilities he used to discharge as manager in his former position had been significantly reduced. x x x As thoroughly discussed by the NLRC and the Court of Appeals, respondent's new position entailed less responsibilities and less qualifications than those pertaining to his former position. In essence, the totality of the circumstances actually obtaining here leads to no other conclusion than that respondent was in fact demoted.

3. ID.; ID.; ID.; ILLEGAL DISMISSAL; MONETARY AWARDS; INCLUDES APPLICABLE SALARY DIFFERENTIAL. — Records show that Management Internal Auditor carries Salary Rank 20, while the position of Area Operations Head, Salary Rank 19. On this score, petitioner asserts that respondent is basically receiving the same amount of salary at ₱30,963.95, and therefore, there is no diminution in salary to speak of. The evidence, however, would suggest that after the reorganization, there was restructuring of the salary ranks. Salary Rank 20 is paid ₱33,038.53 while the compensation for Salary Rank 19 is fixed at ₱30,963.95. Hence, had petitioner been retained as Management Internal Auditor, he would already have received ₱33,038.53, and not just ₱30,963.95. x x x [Hence,] as for respondent's monetary awards, We deem it proper to grant salary differential. As correctly held by the NLRC, Article 279 of the Labor Code provides that an employee who is unjustly dismissed from employment shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to his actual reinstatement. Considering that respondent ought to be reinstated to his former position, he must also enjoy the salary that comes with it. Undeniably, when petitioner moved or appointed respondent to a lower position without any justifiable cause, petitioner was deemed to have acted in bad faith. Consequently, the award of moral and exemplary damages to respondent is in order.

APPEARANCES OF COUNSEL

Nicasio B. Bautista III for petitioner.
Luvimindo E. Balinang for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

Prefatory

We have always recognized and respected certain rights and privileges of employers and would not, when law and judgment

dictate, interfere with its business decisions. Management rights and prerogatives, however, are not absolute. On numerous occasions, We have come forward to temper the unbridled exercise of these rights and prerogatives.

The Case

This petition for review on *certiorari*[1] assails the following dispositions, of the Court of Appeals in CA-G.R. SP No. 134712 entitled *Isabela-I Electric Coop., Inc. represented by its General Manager, Engr. Virgilio L. Montano v. National Labor Relations Commission and Vicente B. Del Rosario, Jr.*:

1. Decision dated December 21, 2015,[2] affirming the finding of the National Labor Relation Commission (NLRC) that respondent Vicente B. Del Rosario, Jr. was constructively dismissed; and
2. Resolution dated July 7, 2016,[3] denying the motion for reconsideration[4] of petitioner Isabela-I Electric Coop., Inc.

The Undisputed Facts

On January 29, 1996, petitioner Isabela-I Electric Cooperative, Inc. hired respondent Vicente B. Del Rosario, Jr. as Financial Assistant. The latter quickly rose from the ranks. After just three (3) months, on April 26, 1996, he got promoted as Acting Management Internal Auditor and on October 26, 1996, as Management Internal Auditor at petitioner's main office.[5]

As Management Internal Auditor, respondent was receiving a basic monthly salary of ₱30,979.00 exclusive of representation

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[1] *Rollo*, pp. 11-32.

[2] Penned by then Associate Justice, now CA Presiding Justice Romeo F. Barza, and concurred in by then CA Presiding Justice, now SC Associate Justice Andres B. Reyes, Jr., and Associate Justice Agnes Reyes-Carpio; *rollo*, pp. 34-41.

[3] *Rollo*, pp. 42-43.

[4] *Id.* at 80-89.

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

allowance and other emoluments and benefits.[6] Petitioner never raised any issue regarding his performance and capacity to lead his department.[7]

In January 2011, petitioner approved a reorganization plan declaring all positions in the company vacant. Respondent, along with other employees signed a Manifesto to oppose the reorganization. Despite this opposition, petitioner proceeded to implement the reorganization in June 2011.[8] Additionally, petitioner informed its employees in writing, that they were on a "hold-over capacity."[9]

Together with other employees, respondent was made to fill out a prescribed application form. There, respondent listed "Internal Auditor Manager A," his current position, as his first preference, and "Finance Services Department Manager A" as his second.[10]

While on vacation leave in October 2012, respondent received two (2) letters from petitioner. The first referred to his appointment as probationary Area Operations Manager. The second contained four (4) office memoranda which (a) indicated his area of assignment; (b) ordered him to cease acting as petitioner's management internal auditor; (c) directed him to turn over his current post and pertinent documents to his successor; and (d) appointed his subordinate Arlene B. Boy as officer-in-charge of the Auditing Department.[11] Although respondent had issues about this new appointment, including the fact that his successor was not even a Certified Public Accountant (CPA) as he was the only CPA among petitioner's employees, he begrudgingly accepted his appointment.[12]

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[6] *Id.* at 58.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.* at 58-59.

[12] *Id.* at 59.

Three (3) months later, in January 2013, respondent sent a letter to petitioner's general manager Virgilio L. Montano, voicing out his concern that the new position given him was a demotion. In the same letter he requested to be reinstated to his former position, especially since he was the only CPA among petitioner's employees. Petitioner, however, did not act on his letter.[13]

The Complaint

On January 30, 2013, respondent filed the complaint below for illegal dismissal and damages. He claimed he was unlawfully demoted and was therefore constructively dismissed. He essentially averred:

(a) His former position as Management Internal Auditor had Salary Rank 20 (Php33,038.05), while his new position as Area Operations Management Department Manager came with Salary Rank 19 (Php30,963.95).[14]

(b) The job description contained in his undated appointment entailed lesser responsibilities than those pertaining to his former position. What he held before covered the entire province of Isabela while his new position was limited to Isabela South Sector.[15]

(c) Although his former position was not abolished, an incumbent of lesser qualifications than him was appointed thereto. Among all petitioner's employees, he is the only full-fledged CPA with a Master's Degree in Business Administration. He is the most qualified candidate for his former position.[16]

Respondent likewise accused petitioner of violating its own guidelines on the reorganization allegedly because:

(a) Petitioner's implementing guidelines on reorganization required two (2) postings on the results of the placement.

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[13] *Id.*

[14] *Id.* at 97.

[15] *Id.*

[16] *Id.*

Petitioner did not comply with the second posting and opted to release all new appointments instead.[17]

(b) Petitioner appointed him to a position with a salary rank lower than that attached to his former position. The guidelines specifically stated that employees who had been assigned lower ranks would not suffer diminution in salary.[18]

In its position paper,[19] petitioner explained that under Republic Act No. 9136 (RA 9136) or the Electric Power Industry Reform Act of 2001, (EPIRA) distribution utilities like itself were required to reengineer their existing organization to suit the demands of time. National Electrification Administration (NEA) Memorandum No. 2004-024 provided for the model organizational structure to be adopted by all electric cooperatives. Thus, it structured a reorganizational plan which the NEA approved.[20]

The Court sums up petitioner's submissions, *viz*:

Pursuant to the reorganization plan, it declared all positions vacant and subjected all employees to evaluation. The reorganization went smoothly although there was hesitation from some of its employees. Its accredited union did not consider any aspect of the reorganization as a violation of the Collective Bargaining Agreement (CBA).[21]

Respondent was appointed in October 2012 as South Area Operation Management Department Manager, a position different from the one he held before the reorganization. Although respondent was appointed to another position, he suffered no diminution in compensation. In fact, respondent immediately assumed his new position as South Area Operations Manager.[22]

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

[18] *Id.* at 99.

[19] As stated by Labor Arbiter Ma. Lourdes R. Baricaua in her Decision dated August 29, 2013; *rollo*, pp. 59-61.

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

[21] *Id.* at 60.

[22] *Id.*

It was true respondent requested to be reappointed to his former position. But it was also equally true that respondent was given a fresh appointment since all positions in the company were declared vacant as a result of the reorganization.[23]

Respondent's new appointment was based on a valid reorganization. The position given him was the result of the company's assessment of his qualifications, aptitude, and competence. He was appointed Area Operations Management Department Manager because the company had ascertained that his assignment would produce maximum benefit to the operations of the company.[24]

An employee did not have a vested right in his or her position, otherwise, the employer would be deprived of its prerogative to move an employee to another assignment where he would be most useful.[25] If the purpose of reorganization were to be achieved, changes in the positions and rankings of the employees should be expected. To insist on one's old position and ranking after the reorganization would render such endeavor ineffectual.[26]

Respondent failed to appeal his new appointment as Area Operations Management Department Manager. The truth is he had no reason to complain because he continued to enjoy the same salary, rank, benefits, and privileges he had prior to the reorganization.[27]

The Labor Arbiter's Ruling

By Decision dated August 29, 2013,[28] Labor Arbiter Ma. Lourdes R. Baricaua dismissed the complaint. She found no concrete evidence on record showing that petitioner undertook

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[23] *Id.*

[24] *Id.* at 22.

[25] *Id.*

[26] *Id.* at 27.

[27] *Id.*

[28] *Id.* at 57-61.

the process of reorganization for purposes other than its declared objective: to save cost and maximize productivity and in compliance with the NEA policy as mandated by RA 9136.[29]

The NLRC Ruling

On appeal, the NLRC reversed through its Decision dated November 20, 2013.[30] It held that petitioner did not present any justifiable reason for not reappointing respondent to his former position, nor did it deny that respondent was the only licensed CPA among its employees. Too, the NLRC noted that respondent's new position carried a lower salary grade than that attached to his former position. The NLRC thus ruled:

> **WHEREFORE**, the Appeal is **GRANTED** and the Labor Arbiter's Decision dated 29 August 2013 is SET ASIDE and a new one is issued declaring Complainant-Vicente B. Del Rosario, Jr. to have been illegally transferred and/or demoted resulting to his unlawful constructive dismissal and hereby ordering Respondent-Isabela-1 Electric Cooperative to immediately reinstate and/or restore the Complainant to his former position as Management Internal Auditor and to pay the Complainant the following:
>
> 1. Salary differential at the rate of Two Thousand Seventy Four Pesos and Ten Centavos [Php2,074.10] per month starting on October 2012, which to date amounted to Twenty Six Thousand Nine Hundred Sixty Three and Thirty Centavos [Php26,963.30];
>
> 2. Moral and exemplary damages of Twenty Five Thousand Pesos [Php25,000.00] each or a total amount of Fifty Thousand Pesos [Php50,000.00];
>
> 3. Attorney's fees of ten percent [10%] of the total award. Other claims are dismissed for lack of merit.
>
> **SO ORDERED**.[31]

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[29] *Id.* at 61.

[30] *Id.* at 62-72.

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

Under Resolution dated January 21, 2014,[32] the NLRC denied petitioner's motion for reconsideration.

The Court of Appeals' Ruling

Petitioner brought the case to the Court of Appeals which, by Decision dated December 21, 2015, affirmed but deleted the award of salary differential, *viz*:

> **WHEREFORE**, in view of the foregoing premises, the instant petition is hereby **DISMISSED** for lack of merit. The assailed Decision and Resolution of the NLRC are hereby **AFFIRMED with MODIFICATION** in that the award representing the salary differential rate amounting to Twenty Six Thousand Nine Hundred Sixty Three Pesos and Thirty Centavos (Php26,963.30) is hereby **DELETED**.
>
> **SO ORDERED.**[33]

The Court of Appeals further denied petitioner's motion for reconsideration[34] under its Resolution dated July 7, 2016.[35]

The Present Petition

Petitioner now seeks this Court's discretionary appellate jurisdiction to review and reverse the assailed dispositions of the Court of Appeals. In support hereof, petitioner basically repeats the arguments presented and passed upon by the three (3) tribunals below.

In his Comment dated December 11, 2016, respondent similarly repleads his submissions below against petitioner's plea for affirmative relief.

Issue

Was respondent constructively dismissed when he got appointed to the new position of Area Operations Management

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

[33] *Id.* at 40.

[34] *Id.* at 80-89.

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

Department Manager in lieu of his former position as Management Internal Auditor?

Ruling

The Court has been faced with charges of constructive dismissal. In several occasions, We have recognized management prerogative to effect the transfer of its employees. At other times, though, We have succored the worker's rights against arbitrary transfers which amount to constructive dismissal.

In ***Philippine Industrial Security Agency Corporation vs. Percival Aguinaldo***,[36] We held that the "Court is fully aware of the right of management to transfer its employees as part of management prerogative. But like all rights, the same cannot be exercised with unbridled discretion. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic element of justice and fair play."[37] The Court then emphasized:

While it is true that an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, layoff of workers and the discipline, dismissal and recall of workers (San Miguel Brewery Sales vs. Ople, G.R. No. 53515, February 8, 1989), **and this right to transfer employees forms part of management prerogatives, the employee's transfer should not be unreasonable, nor inconvenient, nor prejudicial to him. It should not involve a demotion in rank or diminution of his salaries, benefits and other privileges, as to constitute constructive dismissal**.[38] (Emphasis supplied)

Here, the NLRC and Court of Appeals correctly ruled that respondent was demoted without sufficient cause.

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[36] 499 Phil. 215 (2005).

[37] *Id.* at 223.

[38] *Id.* citing *PT&T v. Laplana*, 276 Phil. 527, 533-534 (1991).

Demotion involves a situation in which an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary.[39] This was exactly what happened to respondent.

Petitioner, nonetheless, argues that respondent was not demoted, but was appointed to a new position as a result of the company's reorganization. There was allegedly no diminution in respondent's rank because: (a) he is still a manager; (b) his functions were not diminished; (c) as the Court of Appeals held, there was no diminution in his salary; (d) there was no change in his place of work; and (e) there was no change in the benefits and privileges given to him.

We do not agree.

Diminution in rank

Contrary to petitioner's claim, although respondent's present position bears the appellation "manager," the responsibilities he used to discharge as manager in his former position had been significantly reduced. We cite with concurrence the Court of Appeals' relevant findings, *viz*:

> x x x x Indeed, as correctly pointed out by the NLRC, the position of Management Auditor encompasses a more vast expanse in the Cooperative than the position of Area Manager/Head. Thus, the former position entails more responsibilities and requires a certain qualification that must be complied with as compared to the latter position. Based on the position description attached as "Annex C-1" to private respondent's position paper with the Labor Arbiter, an Internal Audit Manager must be a **Certified Public Accountant (CPA) with at least 5 years experience in auditing procedures and a holder of a master's degree in Management or Business Administration.** On the other hand, **such requirements are not mentioned in the position of Area Manager** as seen in private respondent's appointment. Thus, a non-CPA or a non-holder of a master's degree can hold the

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[39] *Norkis Trading Co., Inc., et al. v. Melvin Gnilo*, 568 Phil. 256, 267 (2008).

position of Area Manager. Moreover, t**he Management Auditor covers the different financial aspects of the Cooperative while the Area Manager position given to private respondent is limited to collection and operation**. There is a palpable diminution of responsibilities.[40] (Emphasis supplied)

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Too, the NLRC correctly observed:

x x x Without question, as an Area Head his responsibilities are limited to a specific area, in contrast to his previous position where the coverage of his responsibilities involves the entire financial transaction of the Cooperative. Interestingly also, the position of Area Head, where he was appointed, does not match his qualification(s) as a licensed CPA since the responsibilities attached to it consist of supervision and implementation of activities on house connection, collection, disconnection, apprehension, maintenance and operations and consumer services in his area. Visibly, the Complainant was not only demoted but placed in a position where he cannot advance and exercise his full potential and qualification.[41]

x x x x x x x x x

So, what is in a name? Although respondent retained the appellation "manager," his new rank was in fact a demotion from his former position.

More, petitioner has consistently admitted that respondent is the only-licensed CPA among its employees. In addition, respondent holds a Master's Degree in Business Administration. Petitioner also concedes that respondent has been working for the company as auditor continuously for fifteen (15) years before the reorganization. Respondent has all the qualifications to continue holding the position of Management Internal Auditor, which after the reorganization, was not abolished. For no apparent reason, petitioner opted to appoint, even in an acting capacity, a non-CPA as Management Internal Auditor. In fine, petitioner arbitrarily, sans any rhyme or reason peremptorily removed

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[40] *Rollo*, p. 39.

[41] *Rollo*, p. 67.

respondent from his post as Management Internal Auditor in the guise of a supposed reorganization and exercise of management prerogative.

Petitioner next claims that the "totality of circumstances rule" as enunciated in ***Tinio v. Court of Appeals***[42] shows that respondent did not actually suffer diminution.

Petitioner's argument fails. In *Tinio*, the Court sustained the management's decision to transfer Tinio to another position and area of assignment because the transfer could actually be considered a promotion. For Tinio's transfer from the Cebu office to the Makati office entailed greater responsibilities because it would involve corporate accounts of top establishments in Makati which are significantly greater in value than the individual accounts in Visayas and Mindanao. The Court held that the transfer was even beneficial and advantageous since Tinio was being assigned the corporate accounts of the choice clients of SMART. More, the position was of the same level as Senior Manager since the skills and competencies required involved handling the accounts of top corporate clients being among the largest corporations in the country.[43]

The situation in *Tinio* is not the case here. As thoroughly discussed by the NLRC and the Court of Appeals, respondent's new position entailed less responsibilities and less qualifications than those pertaining to his former position. In essence, the totality of the circumstances actually obtaining here leads to no other conclusion than that respondent was in fact demoted.

Diminution in salary

We disagree with the Court of Appeals' finding that respondent did not suffer diminution in salary.

Records show that Management Internal Auditor carries Salary Rank 20, while the position of Area Operations Head, Salary Rank 19.

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[42] 551 Phil. 972 (2007).

[43] *Id.* at 983.

On this score, petitioner asserts that respondent is basically receiving the same amount of salary at ₱30,963.95, and therefore, there is no diminution in salary to speak of.

The evidence, however, would suggest that after the reorganization, there was restructuring of the salary ranks. Salary Rank 20 is paid ₱33,038.53,[44] while the compensation for Salary Rank 19 is fixed at ₱30,963.95. Hence, had petitioner been retained as Management Internal Auditor, he would already have received ₱33,038.53, and not just ₱30,963.95.

In any case, even if there was no diminution in salary, there has still been a demotion in terms of respondent's rank, responsibilities, and status. There is demotion when an employee is appointed to a position resulting to a diminution in duties, responsibilities, status or rank *which may or may not involve a reduction in salary*.[45]

As for respondent's monetary awards, We deem it proper to grant salary differential. As correctly held by the NLRC, Article 279 of the Labor Code provides that an employee who is unjustly dismissed from employment shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to his actual reinstatement. Considering that respondent ought to be reinstated to his former position, he must also enjoy the salary that comes with it.

Undeniably, when petitioner moved or appointed respondent to a lower position without any justifiable cause, petitioner was deemed to have acted in bad faith. Consequently, the award of moral and exemplary damages to respondent is in order.

All told, the Court of Appeals did not err when it affirmed the NLRC's finding that respondent was demoted, hence, was

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[44] *Rollo*, p. 114.

[45] *Virginia D. Bautista v. Civil Service Commission, et al.*, 639 Phil. 265, 268 (2010).

considered to have been constructively dismissed. But for the reasons heretofore stated, We restore the award of salary differential to respondent.

ACCORDINGLY, the petition is **DENIED**. The Decision dated December 21, 2015 and Resolution dated July 7, 2016 of the Court of Appeals in CA-G.R. SP No. 134712 are **AFFIRMED with MODIFICATION**.

Vicente B. Del Rosario, Jr. is declared to have been illegally transferred and/or demoted. Isabela-1 Electric Coop., Inc. is ordered to immediately **reinstate and/or restore** the Vicente B. Del Rosario, Jr. to his former position as Management Internal Auditor and to pay the him the following amounts:

1. Salary differential at the rate of Two Thousand Seventy-Four Pesos and Ten Centavos [Php2,074.10] per month starting on October 2012 until actual reinstatement to his former position:

2. Twenty-Five Thousand Pesos (Php25,000.00) as moral damages;

3. Twenty-Five Thousand Pesos (Php25,000.00) as exemplary damages;

4. Attorney's fees often percent [10%] of the total award; and

5. Legal Interest of twelve percent (12%) per annum of the total monetary awards, computed from October 2012 up to June 30, 2013, and thereafter, six percent (6%) per annum from July 1, 2013 until fully paid.[46]

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

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[46] *ICT Marketing Services, Inc. v. Mariphil L. Sales*, 769 Phil. 498, 525 (2015).

SECOND DIVISION

[G.R. No. 228739. July 17, 2019]

ROSEMARIE ERIBAL BOWDEN, represented by FLORENCIO C. ERIBAL, SR., *petitioner, vs.* **DONALD WILLIAM ALFRED BOWDEN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; TWO WAYS BY WHICH A CRIMINAL CASE MAY BE DISMISSED ON THE GROUND OF INSUFFICIENCY OF EVIDENCE; EFFECTS OF FILING A DEMURRER TO EVIDENCE, EXPLAINED.— Under Section 23, paragraph 1, Rule 119 of the Rules of Court, a criminal action may be dismissed on the ground of insufficiency of evidence in two ways: (1) on the court's initiative, after an opportunity to be heard is accorded the prosecution; and (2) upon demurrer to evidence filed by the accused with or without leave of court. In both instances, the dismissal may be made only after the prosecution rests its case. When the accused files a motion to dismiss by way of demurrer to evidence, it is incumbent upon the trial court to review and examine the evidence presented by the prosecution and determine its sufficiency to sustain a judgment of conviction beyond reasonable doubt. If competent evidence exists, the court shall deny the demurrer and the accused may still adduce evidence on his behalf if the demurrer was filed with leave of court. If filed without leave, the accused submits the case for judgment on the basis of the evidence of the prosecution. On the other hand, if the court finds the evidence insufficient to support a verdict of guilt, the court shall grant the demurrer and the criminal case shall be dismissed. Such dismissal is a resolution on the merits and tantamount to an acquittal. Any further prosecution of the accused after an acquittal is a violation of his constitutional right against double jeopardy. Accordingly, an order granting the demurrer to evidence and acquitting the accused on the ground of insufficiency of evidence cannot be the subject of an appeal.

2. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* UNDER RULE 65; PROPER REMEDY FROM AN ORDER OF DISMISSAL UPON DEMURRER

TO EVIDENCE.— [T]he remedy from an order of dismissal upon demurrer to evidence is a petition for *certiorari* under Rule 65 grounded on grave abuse of discretion amounting to lack or excess of jurisdiction or denial of due process which renders the consequent order of acquittal null and void. It being a nullity, the dismissal order does not result in jeopardy. Petitioner files the instant petition for review on *certiorari* under Rule 45 of the Civil Procedure, instead of a petition for *certiorari* under Rule 65, hence, an erroneous remedy. On this point alone, the petition must be dismissed.

3. CRIMINAL LAW; REVISED PENAL CODE (RPC); TWO ACTS PUNISHABLE UNDER ARTICLE 172 OF THE RPC; ELEMENTS OF USE OF FALSIFIED DOCUMENTS IN ANY TRANSACTION; THIS CRIME PRESUPPOSES THAT THE PERSON WHO USED THE FALSIFIED DOCUMENTS IS NOT THE ONE WHO FALSIFIED IT.— The last paragraph of Article 172 of the Revised Penal Code penalizes two acts: *first,* the introduction of a falsified document as evidence in any judicial proceeding; and *second*, the use of a falsified document in any other transaction. The second punishable act presupposes that the person who used the falsified document is not the one who falsified such document. Thus, the elements of the crime of use of falsified document in any transaction (other than as evidence in a judicial proceeding) are: (1) the offender knew that a document was falsified by another person; (2) the false document is embraced in Article 171 or in any of subdivisions Nos. 1 and 2 of Article 172; (3) he used such document (not in judicial proceedings); and (4) the use of the false document caused damage to another or at least it was used with intent to cause such damage. A person who falsified a document and used such falsified document shall be punished for the crime of falsification.

4. ID.; ID.; ID.; FALSIFICATION OF A PUBLIC DOCUMENT AND USE OF FALSE DOCUMENT BY THE SAME PERSON WHO FALSIFIED IT CONSTITUTE BUT A SINGLE CRIME OF FALSIFICATION; WITH THE DISMISSAL OF THE CASE FOR FALSIFICATION OF PUBLIC DOCUMENTS, THE CASE OF USE OF FALSIFIED DOCUMENTS HAS NO LEG TO STAND ON.— The information in Criminal Case No. C-06-15995-10 alleges that respondent prepared and executed an affidavit of

loss of OR-CR by "imitating the signature of Rosemarie Bowden *y* Eribal therein making it appear that she signed the same" and submits it to the LTO which resulted in the issuance of a second OR-CR in the name of petitioner. The information in Criminal Case No. C-06-15996-10 meanwhile states that respondent executed a deed of sale in his favor imitating petitioner's signature and thereafter, submits said deed to the LTO. Consequently, the LTO issued a new CR, this time, in the name of respondent as the owner of the subject vehicle. Obviously, the averments in the informations implicate respondent as the person who falsified the affidavit of loss and the deed of sale and used said falsified documents to the damage of petitioner. But it is striking to note that in the crime of use of falsified document, the person who used the falsified document is different from the one who falsified it such that "[i]f the one who used the falsified document is the same person who falsified it, the crime is only falsification and the use of the same is not a separate crime." Falsification of a public document and use of false document by the same person who falsified it constitute but a single crime of falsification. It follows, therefore, that with the dismissal of the case for falsification of public documents, the case for use of falsified documents has no leg to stand on.

APPEARANCES OF COUNSEL

Berjamin & Berjamin Law Office for petitioner.
Bellones and Herrera-Bellones for respondent.

D E C I S I O N

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

Before us is a Petition for Review on *Certiorari* under Rule 45 assailing the Decision[1] dated March 31, 2016 and the Resolution[2] dated October 26, 2016 of the Court of Appeals-

[1] Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Pablito A. Perez and Gabriel T. Robeniol, concurring; *rollo,* pp. 24-38.

[2] *Id.* at 40-43.

Cebu City (CA-Cebu) in CA-G.R. SP No. 09291 entitled *Donald William Alfred Bowden v. Hon. Kristine B. Tiangco-Vinculado, in [her] capacity as Presiding Judge, MTCC, Branch 1, Roxas City, Prosecutor Ferald Jornales, and Rosemarie Eribal Bowden.*

The Factual Antecedents

Rosemarie Eribal Bowden (petitioner) was the registered owner of a 2004 Mitsubishi Pajero (subject vehicle) with Plate No. FFD 228.[3] The subject vehicle was sold to Virgilio S. Ramos (Ramos) without petitioner's consent by her then husband Donald William Alfred Bowden (respondent), a British national residing in Iloilo City. The marriage of petitioner and respondent was dissolved by virtue of a Decree of Divorce dated June 12, 2006.

Petitioner claimed that while she was in London, she entrusted the Original Receipt-Certificate of Registration (OR-CR) of the subject vehicle to her niece Juvelyn Enate.[4] However, during petitioner's marriage with respondent, the latter executed an affidavit of loss[5] of the OR-CR and submitted it to the Roxas City District, Office of the Land Transportation Office (LTO). This paved the way for the issuance of a new OR-CR to respondent which he used to execute a deed of sale[6] of the subject vehicle in his favor. Respondent submitted the deed of sale to the LTO and a new CR was issued in his name. Both affidavit of loss and deed of sale bore forged signatures of petitioner, prompting her to file criminal complaints against respondent.

On August 28, 2006, Assistant City Prosecutor Alma N. Banias-Delfin filed two separate Informations before the Municipal Trial Court in Cities (MTCC), Branch 1, Roxas City charging respondent of the crimes of falsification of public document by a private individual and use of falsified documents, which read:

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[3] *Id*. at 49.

[4] Ma. Jovelyn E. Enate in some parts of the *rollo*.

[5] *Id*. at 51.

[6] *Id*. at 53.

CRIMINAL CASE NO. C-06-15995-10

The undersigned Assistant City Prosecutor accuses DONALD WILLIAM ALFRED BOWDEN, a British national presently residing in Phase II, Land Heights Subd., Villa, Iloilo City, of the crime of FALSIFICATION OF PUBLIC DOCUMENT BY A PRIVATE INDIVIDUAL AND USE OF FALSIFIED DOCUMENTS, as defined and penalized under Article 172, in relation to Article 171, paragraph (1) of the Revised Penal Code, as amended, committed as follows:

That on or about the 18th day of January 2005, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, said accused did then and there willfully, unlawfully and feloniously, prepare and execute [an] Affidavit of Loss of the Certificate of Registration and Official Receipt of a Mitsubishi Pajero Wagon notarized by Atty. Marcelo Augusto Cosgayon imitating the signature of Rosemarie Bowden y Eribal therein making it appear that she signed the same, knowing fully well that Rosemarie Bowden did not lose said documents and was not in the Philippines at that time, and thereafter presented said Affidavit of Loss at the Land Transportation Office, Roxas City District Office, which, relying thereon, issued a new Certificate of Registration and Official Receipt over the same vehicle. The accused acted with the wrongful intent of injuring a third person, specifically Rosemarie Bowden y Eribal, in violation of the public faith as to the truth of what is contained in a public document.

CONTRARY TO LAW.[7]

CRIMINAL CASE NO. C-06-15996-10

The undersigned Assistant City Prosecutor accuses DONALD WILLIAM ALFRED BOWDEN, a British national presently residing in Phase II, Land Heights Subd., Villa, Iloilo City, of the crime of FALSIFICATION OF PUBLIC DOCUMENT BY A PRIVATE INDIVIDUAL AND USE OF FALSIFIED DOCUMENTS, as defined and penalized under Article 172, in relation to Article 171, paragraph (1) of the Revised Penal Code, as amended, committed as follows:

That on or about the 20th day of June 2005, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, said accused did then and there willfully, unlawfully and feloniously, prepare and execute a Deed of Sale of Motor Vehicle notarized by Atty. Marcelo

[7] *Id.* at 54.

Augusto Cosgayon imitating the signature of Rosemarie Bowden y Eribal therein making it appear that she signed the same, knowing fully well that Rosemarie did not execute said document and was not in the Philippines at that time, and thereafter presented said Deed of Sale of Motor Vehicle at the Land Transportation Office, Roxas City District Office, which, relying thereon, transferred the ownership over the same vehicle from Rosemarie Bowden y Eribal to Donald William Alfred Bowden. The accused acted with the wrongful intent of injuring a third person, specifically Rosemarie Bowden y Eribal, in violation of the public faith as to the truth of what is contained in a public document.

CONTRARY TO LAW.[8]

On December 1, 2013, the petitioner submitted her formal offer of documentary exhibits.[9]

On February 26, 2014, the MTCC issued an Order[10] admitting only the following documentary evidence of the petitioner:

EXHIBIT	DESCRIPTION	PURPOSE
G	Official Receipt No. 98432291 dated September 29, 2004 issued by Avescor Motors, Inc. in favor of Rosemarie E. Bowden	To prove that the subject vehicle was registered in the name of Rosemarie E. Bowden
I	Affidavit of Loss of the Official Receipt and Certificate of Registration dated January 18, 2005 purportedly executed by Rosemarie E. Bowden	To prove that the signature of Rosemarie E. Bowden was falsified in the affidavit of loss of the original certificate of registration of the subject vehicle

[8] *Id*. at 56.

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

[10] *Id*. at 65.

J	Second certificate of registration in the name of Rosemarie E. Bowden	To prove that the signature of Rosemarie E. Bowden was falsified in the affidavit of loss of the original certificate of registration of the subject vehicle
K	Deed of sale of the subject vehicle executed in favor of Donald Alfred William Bowden	To prove that the signature of Rosemarie E. Bowden was falsified in the deed of sale
O and series	Official Receipt no. 24667790-0 in the name of Virgilio S. Ramos	1. To prove that after the subject vehicle was registered in the name of Donald Alfred Bowden, the latter sold the subject vehicle to Ramos; and 2. To prove that the sale of the subject vehicle to Ramos is void because Donald Alfred William Bowden is not the owner of the subject vehicle
Q and series	Amended judicial affidavit of Juvelyn Enate	
T	Amended judicial affidavit of Florencio S. Eribal, Sr.	To prove the truthfulness of all the allegations in the judicial affidavit of Florencio S. Eribal, Sr.
U and series	Judicial affidavit of Rosemarie E. Bowden	To prove the truthfulness in her judicial affidavit
V	Divorce Decree dated June 12, 2006 issued by Trowbridge County, Court of London	To prove that as of June 12, 2006, the marriage of Donald Alfred William Bowden and Rosemarie Bowden has been dissolved with finality.

On April 4, 2014, respondent filed a demurrer to evidence[11] with leave of court claiming insufficiency of evidence. He argued that the petitioner failed to prove that he falsified the affidavit of loss and deed of sale and used them as alleged in the informations. In the judicial affidavits of petitioner's witnesses, Juvelyn Enate and Florencio S. Eribal, Sr. did not testify as to the identity of the person who affixed the forged signature of petitioner in the affidavit of loss and submitted the falsified document to the LTO. Even petitioner admitted in her judicial affidavit that she did not see respondent sign the affidavit of loss and deed of sale bearing her forged signature, more so present them to the LTO. Respondent likewise questioned petitioner's failure to present the original copy of the purported affidavit of loss and deed of sale.

On May 6, 2014, the MTCC issued an Order[12] denying the demurrer to evidence. While it agreed with respondent's assertion that the petitioner failed to prove that he forged her signature in the affidavit of loss and deed of sale and submitted them to the LTO, the MTCC stated that respondent must still explain in good faith how the subject vehicle was transferred to him, registered in his name, and subsequently sold to Ramos.

Respondent moved for the reconsideration of the May 6, 2014 Order.

On July 7, 2014, the MTCC modified the May 6, 2014 Order by granting the demurrer to evidence and acquitting respondent as to the charge of falsification. It held that petitioner failed to prove that respondent was the one who actually forged the questioned documents. It also noted that the informations are duplicitous, charging respondent with the commission of two crimes in each information. However, considering that respondent had been arraigned and had entered his plea of not guilty without a motion to quash having been filed, respondent was deemed to have waived the defects in the informations.[13]

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[11] *Id*. at 76-86.

[12] *Id*. at 87-89.

[13] *Id*. at 90-95.

On September 16, 2014, respondent filed a petition for *certiorari*[14] before the Regional Trial Court (RTC) of Roxas City, alleging grave abuse of discretion on the part of the MTCC in denying the demurrer on the charge of use of falsified documents. Respondent averred that he cannot be tried for the crime of use of falsified documents as it was already included in the crime of falsification for which he was acquitted. Assuming that he can be prosecuted for the use of falsified documents, he pointed out that the petitioner failed to prove that he used the falsified affidavit of loss and deed of sale given that the purported CRs of the subject vehicle in his name and in the name of Ramos were not admitted as evidence for the petitioner. He also contended that the element of damage or intent to cause damage was wanting since at the time that he allegedly used the falsified documents, he was still married to petitioner and the subject vehicle remained a property of the marriage.

In its Decision[15] dated December 10, 2014, the RTC dismissed the petition. It cited Section 23(5), Rule 119 of the Rules of Court stating that the order denying the demurrer shall not be reviewable by appeal or *certiorari* before judgment.

Respondent moved for reconsideration but the same was denied in an Order dated March 2, 2015.

The trial for the charge of use of falsified documents continued before the MTCC Branch 3. Respondent testified and denied the charges against him. On rebuttal, petitioner presented car dealer Erwin Lou Calungcagin who testified that it was respondent who sold the subject vehicle to him in Iloilo City and received the proceeds of the sale.

On appeal before the CA, respondent invoked the ruling of the Court in *Choa v. Choa*[16] that *certiorari* is available to challenge the denial of a demurrer when such denial is attended with grave abuse of discretion.

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[14] *Id*. at 96-108.

[15] *Id*. at 110-113.

[16] 441 Phil. 175, 182-183 (2002).

On March 31, 2016, the CA rendered a Decision in favor of respondent, the dispositive portion of which states:

> WHEREFORE, the instant appeal is GRANTED. The Decision dated December 10, 2014, of the Regional Trial Court, Branch 18, Roxas City, in a *certiorari* case docketed as Special Civil Action Case No. SCA-05-14, is REVERSED and SET ASIDE.
>
> Donald Bowden's demurrer to evidence to the charge of use of falsified documents is GRANTED. Criminal Case No. C-06-15995-10 for the use of a falsified affidavit of loss, and Criminal Case No. C-06-15996-10 for the use of a falsified deed of sale, are DISMISSED, and petitioner Donald William Alfred Bowden is ACQUITTED of the crimes charged.
>
> SO ORDERED.[17]

The CA ruled that the remedy of *certiorari* is available in exceptional circumstances when the denial of the demurrer to evidence is attended with grave abuse of discretion as in this case. It declared that with the MTCC's denial of the admission of the certificates of registration in the names of respondent and Ramos, petitioner failed to put up a *prima facie* case of use of falsified documents.

Aggrieved, petitioner filed a motion for reconsideration but the same was denied in a Resolution dated October 26, 2016.

Hence, this petition raising the sole error:

> THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GRANTING THE APPEAL INTERPOSED BY RESPONDENT CONSIDERING THAT THE ORDER DENYING DEMURRER TO EVIDENCE IS MERELY A PERCEIVED ERROR OF JUDGMENT AND NOT CORRECTIBLE BY CERTIORARI.[18]

Petitioner faults the CA for granting respondent's appeal and demurrer to evidence. She laments that the alleged grave abuse of discretion of the MTCC in denying the demurrer is wanting; thus, the RTC did not err in dismissing respondent's

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[17] *Rollo,* p. 37.

[18] *Id*. at 11.

petition for *certiorari*.[19] She stresses that the arguments and errors presented by the respondent in his demurrer are merely "[perceived] errors of judgment" not correctible by the extraordinary remedy *of certiorari*.[20] Petitioner further asseverates that the existence of the CR in the name of Ramos and the pieces of evidence admitted by the MTCC constitute "circumstantial evidence that, if unrebutted, can sustain conviction of [the] respondent." Finally, she emphasizes that the CA did not elaborate how the MTCC and the RTC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying the demurrer to evidence insofar as the charge of use of falsified documents considering that the RTC merely applied Section 23, paragraph 5 of Rule 119[21] of the Rules of Court.[22]

Respondent, on the other hand, contends that petitioner resorted to a wrong remedy by filing a petition for review on *certiorari* under Rule 45 instead of a petition for *certiorari* under Rule 65. Citing *People v. Hon. Asis,*[23] respondent avers that *certiorari* under Rule 65 is the proper remedy to assail a judgment of acquittal whether at the trial court or at the appellate level pursuant to the finality-of-acquittal doctrine.[24] He takes interest on petitioner's belated submission of the judicial affidavit of Erwin Lou Calungcagin before the CA and acknowledges the same as an attempt to supplement the petitioner's evidence.[25]

Our Ruling

The petition is barren of merit.

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[19] *Id*. at 12.

[20] *Id*. at 13.

[21] 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.

[22] *Rollo,* p. 15.

[23] 643 Phil. 462, 469 (2010).

[24] *Rollo,* pp. 143-145.

[25] *Id*. at 149.

Under Section 23, paragraph 1, Rule 119 of the Rules of Court, a criminal action may be dismissed on the ground of insufficiency of evidence in two ways: (1) on the court's initiative, after an opportunity to be heard is accorded the prosecution; and (2) upon demurrer to evidence filed by the accused with or without leave of court. In both instances, the dismissal may be made only after the prosecution rests its case.

When the accused files a motion to dismiss by way of demurrer to evidence, it is incumbent upon the trial court to review and examine the evidence presented by the prosecution and determine its sufficiency to sustain a judgment of conviction beyond reasonable doubt. If competent evidence exists, the court shall deny the demurrer and the accused may still adduce evidence on his behalf if the demurrer was filed with leave of court. If filed without leave, the accused submits the case for judgment on the basis of the evidence of the prosecution. On the other hand, if the court finds the evidence insufficient to support a verdict of guilt, the court shall grant the demurrer and the criminal case shall be dismissed. Such dismissal is a resolution on the merits and tantamount to an acquittal. Any further prosecution of the accused after an acquittal is a violation of his constitutional right against double jeopardy.[26] Accordingly, an order granting the demurrer to evidence and acquitting the accused on the ground of insufficiency of evidence cannot be the subject of an appeal.

It bears stressing, however, that the Court is not at all precluded from reviewing an order of denial if it is shown that grave abuse of discretion attended its issuance. The case of *People v. Sandiganbayan*[27] (1st Division), is instructive:

> The rule barring an appeal from a judgment of acquittal is, however, not absolute. The following are the recognized exceptions thereto: (i) when the prosecution is denied due process of law; and (ii) when the trial court commits grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing a criminal case by granting the accused'[s] demurrer to evidence.

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[26] *People v. Judge Laguio, Jr.*, 547 Phil. 296, 313 (2007).

[27] 637 Phil. 147 (2010).

Such issues are brought to the attention of a reviewing court through the special civil action of *certiorari* under Rule 65 on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. In assailing the resolution of the Sandiganbayan, the petitioner resorted to this petition for review on *certiorari* under Rule 45, purportedly raising pure questions of law. This is erroneous for which reason this petition is dismissible outright. In *People v. Laguio,* the same procedural misstep was addressed by the Court in this wise:

By this time, it is settled that the appellate court may review dismissal orders of trial courts granting an accused'[s] demurrer to evidence. This may be done *via* the special civil action of *certiorari* under Rule 65 based on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. Such dismissal order, being considered void judgment, does not result in jeopardy. Thus, when the order of dismissal is annulled or set aside by an appellate court in an original special civil action via *certiorari,* the right of the accused against double jeopardy is not violated.

Unfortunately, what petitioner People of the Philippines, x x x filed with the Court in the present case is an appeal by way of a petition for review on *certiorari* under Rule 45 raising a pure question of law, which is different from a petition for *certiorari* under Rule 65.

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Also, in *Madrigal,* we stressed that the special civil action of *certiorari* and appeal are two different remedies mutually exclusive; they are neither alternative nor successive. Where appeal is available, *certiorari* will not prosper. In the dismissal of a criminal case upon demurrer to evidence, appeal is not available as such an appeal will put the accused in double jeopardy. *Certiorari,* however, is allowed.

For being the wrong remedy taken by petitioner People of the Philippines in this case, this petition is **outrightly dismissible.** The Court cannot reverse the assailed dismissal order of the trial court by appeal without violating private, respondent's right against double jeopardy. (Emphasis and underscoring in the original)

Stated differently, although the dismissal order consequent to a demurrer to evidence is not subject to appeal, it is still reviewable but only by *certiorari* under Rule 65 of the Rules of Court. In such

a case, the factual findings of the trial court are conclusive upon the reviewing court, and the only legal basis to reverse and set aside the order of dismissal upon demurrer to evidence is by a clear showing that the trial court, in acquitting the accused, committed grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus, rendering the assailed judgment void.

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The demurrer to evidence in criminal cases, such as the one at bench, is "filed after the prosecution had rested its case." As such, it calls "for an *appreciation of the evidence* adduced by the prosecution *and its sufficiency* to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits, tantamount to an acquittal of the accused." Judicial action on a motion to dismiss or demurrer to evidence is best left to the exercise of sound judicial discretion. Accordingly, unless the Sandiganbayan acted without jurisdiction or with grave abuse of discretion, its decision to grant or deny the demurrer may not be disturbed.[28] (Citations omitted)

In a nutshell, the remedy from an order of dismissal upon demurrer to evidence is a petition for *certiorari* under Rule 65 grounded on grave abuse of discretion amounting to lack or excess of jurisdiction or denial of due process which renders the consequent order of acquittal null and void. It being a nullity, the dismissal order does not result in jeopardy.[29]

Petitioner files the instant petition for review on *certiorari* under Rule 45 of the Civil Procedure, instead of a petition for *certiorari* under Rule 65, hence, an erroneous remedy. On this point alone, the petition must be dismissed.

But even if a Rule 65 petition is filed, the same will not prosper since the CA did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the cases for use of falsified affidavit of loss and use of falsified deed of sale. The Court agrees with the CA that the petitioner

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[28] *Id*. at 158-161.

[29] *Judge Mupas v. People,* 675 Phil. 67, 80 (2011), citing *People v. Judge Laguio, Jr., supra* note 25, at 315-316.

fails to put up a *prima facie* case of use of falsified documents which justifies the grant of the demurrer but for a different reason.

The last paragraph of Article 172 of the Revised Penal Code penalizes two acts: *first,* the introduction of a falsified document as evidence in any judicial proceeding; and *second,* the use of a falsified document in any other transaction. The second punishable act presupposes that the person who used the falsified document is not the one who falsified such document. Thus, the elements of the crime of use of falsified document in any transaction (other than as evidence in a judicial proceeding) are: (1) the offender knew that a document was falsified by another person; (2) the false document is embraced in Article 171 or in any of subdivisions Nos. 1 and 2 of Article 172; (3) he used such document (not in judicial proceedings); and (4) the use of the false document caused damage to another or at least it was used with intent to cause such damage.[30] A person who falsified a document and used such falsified document shall be punished for the crime of falsification.

The information in Criminal Case No. C-06-15995-10 alleges that respondent prepared and executed an affidavit of loss of OR-CR by "imitating the signature of Rosemarie Bowden *y* Eribal therein making it appear that she signed the same" and submits it to the LTO which resulted in the issuance of a second OR-CR in the name of petitioner. The information in Criminal Case No. C-06-15996-10 meanwhile states that respondent executed a deed of sale in his favor imitating petitioner's signature and thereafter, submits said deed to the LTO. Consequently, the LTO issued a new CR, this time, in the name of respondent as the owner of the subject vehicle. Obviously, the averments in the informations implicate respondent as the person who falsified the affidavit of loss and the deed of sale and used said falsified documents to the damage of petitioner. But it is striking to note that in the crime of use of falsified document, the person who used the falsified document is different

[30] *Lumancas v. Intas,* 400 Phil. 785, 796-797 (2000).

from the one who falsified it such that "[i]f the one who used the falsified document is the same person who falsified it, the crime is only falsification and the use of the same is not a separate crime."[31] Falsification of a public document and use of false document by the same person who falsified it constitute but a single crime of falsification. It follows, therefore, that with the dismissal of the case for falsification of public documents, the case for use of falsified documents has no leg to stand on.

A final note. The petitioner was given an opportunity to present her case. She has formally offered her evidence and actively participated in the trial. Petitioner was afforded her right to move for the reconsideration of the MTCC decision denying the demurrer to the charge of use of falsified documents. When the trial proceeded before the MTCC, the court allowed the petitioner to present Erwin Lou Calungcagin to whom respondent purportedly sold the subject vehicle. Indubitably, there is no denial of due process that warrants the filing of a Rule 65 petition.

WHEREFORE, the petition is **DENIED.** The March 31, 2016 Decision and the October 26, 2016 Resolution of the Court of Appeals-Cebu City in CA-G.R. SP No. 09291 are **AFFIRMED.**

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

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[31] *THE REVISED PENAL CODE, CRIMINAL LAW*, Luis B. Reyes, Book II, 247 (2008 ed.)

SECOND DIVISION

[G.R. No. 228951. July 17, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAY GODOY MANCAO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS; CONVICTION FOR ROBBERY WITH HOMICIDE REQUIRES CERTITUDE THAT THE ROBBERY IS THE MAIN PURPOSE AND THE KILLING IS MERELY INCIDENTAL.— Robbery with homicide x x x requires the following elements: (1) taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is with *animo lucrandi;* and (4) by reason of the robbery, or on the occasion thereof, homicide is committed. A conviction for robbery with homicide requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.

2. ID.; ID.; THE FIRST TWO ELEMENTS OF ROBBERY WITH HOMICIDE WERE ESTABLISHED THROUGH CIRCUMSTANTIAL EVIDENCE; APPELLANT'S FAILURE TO JUSTIFY HIS POSSESSION OF THE VICTIM'S NECKLACE CALLS FOR THE APPLICATION OF THE PRESUMPTION THAT HE STOLE THE SAME FROM THE VICTIM AND THAT HE IS THE PERPETRATOR OF THE CRIME; *ANIMUS LUCRANDI* WAS SIMILARLY ESTABLISHED BY THE SAME PRESUMPTION.—[T]he first two elements of robbery with homicide were established through circumstantial evidence. SPO2 Magno testified that the object of the crime was found in appellant's possession at the time of his arrest[.] x x x Pedro Enriquez testified that the necklace appellant was wearing at the time of his arrest was the same silver necklace he gifted the

victim with[.] x x x Under Section 3(j), Rule 131 of the Rules of Court, a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act. In the case at bar, appellant failed to justify his possession of the victim's necklace. Thus the presumption that he stole the same from the victim and that he is the perpetrator of the crime, stands. The third element *i.e. animus lucrandi* was similarly established by the same presumption. For intent to gain is an internal act which is presumed from the unlawful taking by appellant of the thing subject of asportation. And since the object of the crime *i.e.* victim's necklace was recovered from appellant, his intent to gain is presumed.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE COURT DEFERS AND ACCORDS FINALITY TO THE FACTUAL FINDINGS OF THE LOWER COURT.—**Both the trial court and the Court of Appeals found the testimonies of the prosecution witnesses to be clear, straightforward and consistent. They gave full credence to Bernido, Jr.'s eyewitness account of the victim's killing and SPO2 Magno and Pedro Enriquez's identification of the object of the crime *i.e.* the victim's necklace found in appellant's possession. In any event, the courts below ruled that there is no showing that the witnesses were impelled by any improper motive to falsely testify against appellant. Suffice it to state that, in this jurisdiction, the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination. Hence, the Court defers and accords finality to the factual findings of trial courts especially when such findings are undisturbed by the appellate court, as in the case at bar.

4. **CRIMINAL LAW; ROBBERY WITH HOMICIDE; COMMITTED; CIRCUMSTANCES IN CASE AT BAR LEAD TO NO OTHER CONCLUSION THAN THAT APPELLANT'S PRIMARY PURPOSE WAS TO ROB THE VICTIM AND KILLING HIM WAS MERELY RESORTED TO GAIN ACCESS TO THE VICTIM'S PERSONAL BELONGINGS.—**These circumstances, taken together, created an unbroken chain of events leading to no other conclusion than

that appellant's primary purpose was to rob the victim and the killing was merely resorted to in order to gain easy access to the victim's personal belongings. There was no showing, as none was shown, that the victim and appellant had known each other before the incident happened or that they had previous conflicts which would have served as sufficient motive for appellant to end the victim's life. The only logical conclusion is the killing was committed on the occasion only or by reason of the robbery.

5. ID.; ID.; PENALTY AND CIVIL LIABILITY.— [T]he Court of Appeals did not err in affirming the trial court's verdict of conviction. Absent any mitigating or aggravating circumstances, the penalty of *reclusion perpetua* was correctly imposed on appellant. As for the monetary awards, the Court sustains the grant of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages. In accordance with prevailing jurisprudence, the Court further awards ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages. These amounts shall earn interest of six (6) percent *per annum* from finality of judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the ***Decision***[1] dated September 27, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 01258-MIN affirming with modification the trial court's verdict of conviction against appellant for robbery with homicide.

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[1] *Rollo,* pp. 3-21, penned by Associate Justice Perpetua T. Atal-Paño and concurred in by Associate Justice Romulo V. Borja and Associate Justice Ruben Reynaldo G. Roxas.

The Proceedings Before the Trial Court

The Charge

Appellant Jay Godoy Mancao was charged with robbery with homicide under the following Information, *viz*:

> That on or about September 2, 2007, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, with intent to gain and to kill, armed with bladed weapons, with force and violence, willfully, unlawfully and feloniously grabbed the neck and dragged Peter Ray Garcia Enriquez who was then seventeen (17) years old, and then took away the latter's Nokia 6630 cellular phone, silver bracelet, necklace, wallet containing cash of undetermined amount. Without the said victim's consent and on occasion of the said robbery stabbed the aforementioned victim, thereby inflicting upon him fatal wounds which caused his death, to the damage and prejudice of the said victim's legal heirs.
>
> CONTRARY TO LAW.

The case was raffled to the Regional Trial Court-Branch 8, Davao City.

On arraignment, appellant pleaded "not guilty".[2] Trial followed. Manuel Bernido, Jr., Pedro Enriquez and SPO2 Kelvin Magno testified for the prosecution. On the other hand, appellant was the lone witness for the defense.

Evidence for the Prosecution

Manuel Bernido, Jr. testified that on September 2, 2007, around 3:30 in the morning, he was in front of Toto's Eatery along Quirino Avenue, Davao City. About ten meters away, he saw Peter Enriquez texting while waiting for a jeepney ride. Appellant suddenly approached Enriquez from behind and stabbed the latter in the neck.[3] Appellant then dragged the victim toward an alley in Barangay 9. Shocked by what he saw, he ran home.[4]

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[2] CA *rollo,* p. 38.

[3] *Rollo* p. 4.

[4] *Id.*

Later, he saw appellant pass his house, running. Then, appellant passed his house again, this time carrying a dipper with water. He used the water to wash away blood stains off the crime scene and the alley where he dragged the lifeless body of his victim.[5]

He called appellant and asked why he was not wearing slippers and why he was covered with blood.[6] Appellant responded he came from the Bankerohan Public Market.[7] Few hours later, he saw appellant's brother Wangyu Mancao flag down a taxicab and board the same together with appellant.[8]

SPO2 Kelvin Magno testified that on September 3, 2007, around 6 o'clock in the morning, the San Pedro Police Station received a report that a dead body was found in Barangay 9. He and SPO2 Nelson Galban proceeded to the area to investigate. There, they found the lifeless body of Enriquez. His cellphone, silver necklace, silver bracelet, and wallet containing cash were missing.[9]

They followed a trail of blood near the body which led to the boarding house of the Mancao brothers. After asking around, they went to the eatery where Wangyu worked.[10] Wangyu was there. Upon seeing the police officers, he cried and confessed that appellant was involved in the robbery and that he assisted his brother in fleeing to Maco, Davao del Norte.[11]

The next day, SPO2 Magno and other police officers proceeded to Maco in search for appellant.[12] When they finally

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[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 5.

[10] *Id.*

[11] *Id.*

[12] *Id.*

found him, he tried to escape but they were able to capture and arrest him.[13] They found in his possession a silver necklace and a pair of blood-stained pants.[14]

Pedro Enriquez, the victim's father, identified the necklace in open court. He recognized it because it was his gift to his son. He remembered the pendant bearing the letter "T".[15]

Evidence for the Defense

Appellant denied the charge. He averred that he had been in Barangay Libay-libay, Compostela Valley since September 1, 2007 to tend the land of his mother. On September 4, 2007, more than ten people arrested him without a warrant. He was brought to the police station where he was forced to wear a silver necklace. He discovered later on that he was already being charged with murder for the death of victim Peter Enriquez.

The Trial Court's Ruling

By ***Decision*** dated September 19, 2013,[16] the trial court rendered a verdict of conviction, thus:

> FOR THE FOREGOING, finding accused Jay Godoy Mancao GUILTY beyond reasonable doubt of the crime of Robbery with Homicide, he is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA.** He is, likewise, directed to pay moral damages in the amount of ₱50,000.00; civil indemnity, likewise in the amount of ₱50,000.00 and actual damages in the amount of ₱22,800.00.[17]
>
> SO ORDERED.

It found that even in the absence of eyewitnesses to the actual taking of victim's personal belongings, the crime of robbery with homicide was nonetheless established by circumstantial evidence. The testimonies of the prosecution witnesses

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[13] *Id.*

[14] *Id.*

[15] *Id.* at 6.

[16] CA *rollo,* pp. 52-58.

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

constituted an unbroken chain which proved that appellant, with intent to gain, took the victim's personal property and by reason of the robbery, killed such hapless victim.

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty of robbery with homicide despite the alleged incredible and inconsistent testimonies of the prosecution witnesses; the purported fact that he was not positively identified as the perpetrator of the crime; and the supposed insufficiency of the circumstantial evidence to support a verdict of conviction.[18]

On the other hand, the Office of the Solicitor General (OSG) through Solicitor General Jose C. Calida, Assistant Solicitor Renan E. Ramos, Senior State Solicitor James Lee Cundangan and State Solicitor Ma. Teresa Ana V. Bermejo riposted that the elements of the crime were all proven through the direct and straightforward account of the prosecution witnesses; prosecution witness Bernido, Jr. positively identified appellant; there was no showing of ill-motive on the part of the prosecution witnesses to falsely testify against him; and appellant's defense of alibi was inherently weak.[19]

The Court of Appeals' Ruling

In its assailed *Decision*[20] dated September 27, 2016, the Court of Appeals affirmed with modification as to the amount of damages, *viz*:

WHEREFORE, the instant appeal is DENIED. The Decision of Branch 8, Regional Trial Court, Davao City, is AFFIRMED but modified with respect to the award of Moral Damages and Civil Indemnity which are hereby increased to P75,000.00 each. The damages awarded shall earn an interest of 6% per annum from finality of judgment until fully paid.

SO ORDERED.

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[18] *Id. at* 37-51.

[19] *Id.* at 79-90.

[20] *Rollo,* pp. 3-21.

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with *Resolution*[21] dated February 27, 2017, both the OSG and appellant manifested[22] that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

Issue

Did the Court of Appeals err in affirming appellant's conviction for robbery with homicide?

Ruling

The appeal utterly lacks merit.

Robbery with homicide is defined and penalized under Article 294(1) of the Revised Penal Code, *viz*:

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 *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.

x x x x x x x x x

It requires the following elements: (1) taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is with *animo lucrandi;* and (4) by reason of the robbery, or on the occasion thereof, homicide is committed.[23] A conviction for robbery with homicide requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery. The intent to rob

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[21] *Id.* at 27-28.

[22] *Id.* at 29-30; pp. 35-38.

[23] *People v. Beunamer,* 794 Phil. 214, 223 (2016).

must precede the taking of human life but the killing may occur before, during or after the robbery.[24]

Taking of personal property established through circumstantial evidence

Here, there was no eyewitnesses to the actual taking of the victim's personal property. Prosecution, nevertheless, proved appellant's guilt through circumstantial evidence.

Normally, the Court bases its findings of guilt on direct evidence of the commission of a crime.[25] But the lack or absence of direct evidence does not necessarily mean that the guilt of the accused can no longer be proved because circumstantial evidence, if sufficient, can supplant the absence of direct evidence.[26]

Thus, in ***People v. Beriber,*** the Court convicted the accused even though no direct testimony was presented by the prosecution to prove that the accused is guilty of robbery with homicide since the incriminating circumstances, when taken together, constitute an unbroken chain of events enough to arrive at the conclusion that appellant was responsible for the killing and robbing the victim. [27]

For circumstantial evidence to be sufficient for conviction, there must be more than one circumstance; the facts from which the inferences are derived are proven and the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[28]

Here, the first two elements of robbery with homicide were established through circumstantial evidence. SPO2 Magno

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[24] *People v. Sugan, et al.,* 661 Phil. 749, 754 (2011).

[25] *People v. Casitas, Jr.,* 445 Phil. 407, 417 (2003).

[26] *Zabala v. People,* 752 Phil. 59, 67 (2015).

[27] 693 Phil. 629, 641 (2012).

[28] Section 4, Rule 133, Rules of Court.

testified that the object of the crime was found in appellant's possession at the time of his arrest, thus:

Pros. Sencio: In paragraph 8 of your affidavit, you said that you and the Maco Police immediately went to the said place and upon reaching there, it was positive that the suspect stayed at the house and recovered from him was a silver necklace owned by the victim as well as xxx. I am showing to you this necklace already marked as Exhibit "C", please go over this and tell us what relation has this necklace to that necklace which you mentioned in your affidavit?

SPO2 Magno: The same necklace that the accused was wearing.

x x x x x x x x x

SPO2 Magno: The necklace that was presented to me now is the same necklace that I noticed that he was wearing at the time we arrested him. xxx

x x x x x x x x x

Q: By the way, this person you said that you arrested, is he present in Court.
A: Yes. He is here.

Q: Please point him out.

The witness pointed to the accused.

Pedro Enriquez testified that the necklace appellant was wearing at the time of his arrest was the same silver necklace he gifted the victim with, *viz*:

Prosecutor Sencio: And what happened to the items?
A: What was only recovered is the silver necklace with the initial of my son with letter "T" pendant.

Q: Where is that pendant?
A: The pendant is in the possession or custody of the police.

Q: Why do you know that it belongs to your son?
A: because I gave that necklace to him.

Q: If you will be shown the pendant, will you be able to identify that pendant?
A: Yes.[29]

[29] *Rollo,* p. 10.

x x x x x x x x x

Q: I am showing to you this necklace. What relation does this necklace have to that necklace which you said belongs to your son.

A: This is the same necklace that I gave to my son.

x x x x x x x x x

Atty. Alonzo: You said that this necklace is with stones. Will you please show to us where are these stones that you were referring to?

Pros. Sencio: For the record, the witness points to the pendant and there were three stones on it.

Q: You agree with me Mr. Enriquez, that there are also similar pendants with stones that are sold in the same store?
A: The necklaces that had a letter "P" (sic) in the place where I bought this for my son did not have stones in it except for the one I bought.

Q: You want to tell this Honorable Court that there is only one necklace that was sold in that place the same with that you have purchased?
A: Yes.[30] (emphasis added)

Under Section 3(j), Rule 131 of the Rules of Court, a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act.[31] In the case at bar, appellant failed to justify his possession of the victim's necklace. Thus the presumption that he stole the same from the victim and that he is the perpetrator of the crime, stands.

The third element *i.e. animus lucrandi* was similarly established by the same presumption. For intent to gain is an internal act which is presumed from the unlawful taking by appellant of the thing subject of asportation.[32] And since the object of the crime *i.e.* victim's necklace was recovered from appellant, his intent to gain is presumed.

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[30] *Id.* at 11.

[31] Rules of Court.

[32] *Medina v. People,* 760 Phil. 729, 735 (2015).

Homicide committed by reason of robbery

For the fourth element, eyewitness Manuel Bernido, Jr. testified how appellant slayed his victim, thus:

Pros. Sencio: What happened next?
A: He stabbed the man.

x x x x x x x x x

Q: Where was he hit?
A: He was hit at his neck.

Q: What happened next?
A: He dragged the man inside Barangay 9.[33]

x x x x x x x x x

Q: By the way, is the man who stabbed the person, is he in Court?
A: Yes.
Q: Please point him out to the Honorable Court.

Interpreter: the witness pointed to a man inside the Courtroom wearing an orange t-shirt and faded maong pants who when asked answered by the name Jay Godoy Mancao.[34]

x x x x x x x x x

On cross-examination, Bernido, Jr. further testified:

Atty. Alonzo: You want to tell us that the person who crossed that Barangay 9 towards the person standing immediately approached him and stabbed him, is that what you mean?

A: Yes, sir.

Q: Are you sure of that?

A: Yes, sir. I'm very sure.[35]

x x x x x x x x x

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[33] *Rollo, p.* 12.

[34] *Id.* at 13.

[35] *Id.* at 13.

Q: What more or less did you report to the police?
A: What I reported to the police that sometime at 3:30 in the morning, I was waiting for my wife. I saw somebody in Barangay 9 who was stabbed xxx.[36]

x x x x x x x x x

Pros. Sencio: In your cross-examination, you stated that morning after or hours after the time you saw the stabbing, a dead person was found, that person and the person you saw stabbed hours before, what is their relation?

A: The same person, the person that I saw being stabbed is the same person that was found dead after the stabbing.[37]

x x x x x x x x x

Q: After that, what happened next?
A: He came back bringing with him a small dipper with water in it and he washed the blood stained (sic) in the alley.

x x x x x x x x x

Q: What happened next?
A: The accused went back to the place of the incident and he continued to wash the blood stains in the alley.

To bolster Bernido, Jr.'s testimony, SPO2 Magno testified:

Pros. Sencio: Then, what else did you do?
A: We asked bystanders, witnesses, who committed the crime, if anybody witnessed.

Q: So, when you asked those questions, what did you find out?
A: Blood drips from the scene of the crime crossing the street.

x x x x x x x x x

A: We followed the blood stains which were already dry.

Q: Where did the blood stains lead you?
A: It led to a boarding house near the crime scene.

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[36] *Id.*

[37] *Id.* at 14.

Q: When you arrived at the boarding house, what happened?
A: We knocked at the door but first we sought assistance from the brgy. official who accompanied us in entering the house, but we found out that nobody was there.

Q: Then what did you do?
A: We asked around the people living near the boarding house and we were informed that the persons living there are the Mancaos.[38]

Both the trial court and the Court of Appeals found the testimonies of the prosecution witnesses to be clear, straightforward and consistent. They gave full credence to Bernido, Jr.'s eyewitness account of the victim's killing and SPO2 Magno and Pedro Enriquez's identification of the object of the crime *i.e.* the victim's necklace found in appellant's possession. In any event, the courts below ruled that there is no showing that the witnesses were impelled by any improper motive to falsely testify against appellant.

Suffice it to state that, in this jurisdiction, the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination.[39] Hence, the Court defers and accords finality to the factual findings of trial courts especially when such findings are undisturbed by the appellate court, as in the case at bar.[40]

The fact that the incident happened around 3:30 o'clock in the morning did not preclude Bernido, Jr. from clearly recognizing appellant as the assailant. Bernido, Jr. was only about ten meters away when he saw the appellant approach the victim from behind and stab the latter in the neck.[41] Appellant

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[38] *Id.* at 15.

[39] *Heirs of Villanueva v. Heirs of Mendoza,* G.R. No. 209132, June 5, 2017, 825 SCRA 513, 527.

[40] *Heirs of Spouses Liwagon, et al. v. Heirs of Spouses Liwagon,* 748 Phil. 675, 689 (2014).

[41] *Rollo,* p. 4.

then dragged the victim toward an alley in Barangay 9. After the incident, appellant passed his house not once but twice. He even had a short conversation with appellant, asking him why his shirt was stained with blood. These numerous encounters gave Bernido, Jr. an opportunity to ascertain appellant's identity. Thus, when he pointed at appellant during trial, there can be no doubt that he was positively identifying him as the perpetrator of the crime.

In this light, appellant's denial and alibi must fail. We are replete of cases pronouncing that denial and alibi are inherently weak defenses because they can easily be fabricated.[42] These defenses cannot prevail over the categorical testimonies of the prosecution witnesses.[43] So must it be.

In sum, the inculpatory circumstances on record are: ***first,*** eyewitness Manuel Bernido, Jr. testified that on September 2, 2007, around 3:30 in the morning, he saw the victim texting on his cellphone while waiting for a jeepney ride. He also saw appellant stealthily moving from behind toward the victim, appellant then stabbed the victim in the neck. Thereafter, appellant dragged the victim's body toward an alley. ***Second,*** SPO2 Kelvin Magno testified that on September 4, 2007, when he and his team arrested appellant, they were able to recover from appellant's possession the victim's silver necklace. ***Lastly,*** the victim's father Pedro Enriquez confirmed that the silver necklace that was recovered from appellant was the necklace he gave his son.

These circumstances, taken together, created an unbroken chain of events leading to no other conclusion than that appellant's primary purpose was to rob the victim and the killing was merely resorted to in order to gain easy access to the victim's personal belongings. There was no showing, as none was shown, that the victim and appellant had known each other before the incident happened or that they had previous conflicts which

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[42] *People v. Ambatang,* G.R. No. 205855, March 2, 2017, 822 SCRA 118, 125-126.

[43] *People v. Corpuz,* 714 Phil. 337, 345-346 (2013).

would have served as sufficient motive for appellant to end the victim's life. The only logical conclusion is the killing was committed on the occasion only or by reason of the robbery.

Penalty

All told, the Court of Appeals did not err in affirming the trial court's verdict of conviction. Absent any mitigating or aggravating circumstances, the penalty of *reclusion perpetua* was correctly imposed on appellant.

As for the monetary awards, the Court sustains the grant of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages. In accordance with prevailing jurisprudence, the Court further awards ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages.[44] These amounts shall earn interest of six (6) percent *per annum* from finality of judgment until fully paid.

WHEREFORE, the appeal is **DENIED.** The Decision dated September 27, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 01258-MIN, is **AFFIRMED** with **MODIFICATION.**

Appellant Jay Godoy Mancao is found guilty of robbery with homicide and sentenced to *reclusion perpetua.* He is ordered to pay ₱75,000.00 civil indemnity; ₱75,000.00 moral damages; ₱75,000.00 as exemplary damages; and ₱50,000.00 as temperate damages. These amounts shall earn six (6) percent interest *per annum* from finality of this decision until fully paid.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

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[44] *People v. Jugueta,* 783 Phil. 806, 839 (2016).

THIRD DIVISION

[G.R. No. 229053. July 17, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JORDAN CASACLANG DELA CRUZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT IS REQUIRED TO SECURE A CONVICTION IN A CRIMINAL CASE; FINDS BASIS NOT ONLY IN THE DUE PROCESS CLAUSE OF THE CONSTITUTION BUT ALSO IN THE ACCUSED'S PRESUMPTION OF INNOCENCE UNDER THE BILL OF RIGHTS.— In a criminal case, the prosecution must discharge the burden of proving the accused's guilt beyond reasonable doubt to secure a conviction for the crime charged. Proof beyond reasonable doubt does not require absolute certainty that excludes error. Rather, this standard requires moral certainty, "or that degree of proof which produces conviction in an unprejudiced mind." Beyond being fleshed out by procedural rules, the requirement of proof beyond reasonable doubt occupies a constitutional stature, as it finds basis not only in the due process clause of the Constitution, but also in the accused's presumption of innocence under the Bill of Rights. The right to be presumed innocent puts the burden on the prosecution to prove guilt above the reasonable doubt standard.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); REQUISITES TO SUSTAIN CONVICTIONS FOR ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS, REITERATED.— Settled are the requisites to sustain convictions for Section 5, the illegal sale of dangerous drugs, and Section 11, the illegal possession of dangerous drugs, of the Comprehensive Dangerous Drugs Act: In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or

the illicit drug as evidence. On the other hand, in prosecutions for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.

3. ID.; ID.; ID.; COMPLIANCE WITH THE REQUIREMENTS OF THE CHAIN OF CUSTODY IS CRITICAL TO ENSURE THE INTEGRITY OF THE *CORPUS DELICTI*; NONCOMPLIANCE WITH THE REQUIREMENTS EQUATES TO A FAILURE TO ESTABLISH CRITICAL ELEMENTS OF THE OFFENSE JUSTIFYING ACCUSED'S ACQUITTAL.— Compliance with the chain of custody requirements is critical to ensure that the seized items were the same ones brought to court. It protects the integrity of the *corpus delicti* in four (4) aspects: [F]irst, the nature of the substances or items seized; second, the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Nonetheless, this Court recognizes that narcotic substances are not readily identifiable and, thus, require further examination for their composition and nature to be determined. *Mallillin v. People* explained that "[t]he likelihood of tampering, loss[,] or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives." The items presented in court during trial are relevant not only because they are available, but because of their relation to the transaction and the parties. Hence, the chain of custody requirements provide safeguards from the greater possibility of abuse in anti-narcotic operations. Noncompliance with these requirements tarnishes the credibility of the *corpus delicti*, along with the claim that an offense violating the Comprehensive Dangerous Drugs Act was committed. In cases involving the illegal sale and illegal possession of dangerous drugs, noncompliance with the chain of custody requirements equates to a failure to establish critical elements of these offenses, justifying an accused's acquittal[.]

4. ID.; ID.; ID.; WHERE THE PROSECUTION FAILED TO ALLEGE AND TO PROVE THAT EARNEST EFFORTS WERE EXERTED TO SECURE THE ATTENDANCE OF THE REQUIRED WITNESSES, THE PROSECUTION CANNOT INVOKE SUBSTANTIAL COMPLIANCE AND THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; HENCE, ACCUSED IS ACQUITTED.— The prosecution failed to allege, let alone prove, that earnest efforts were exerted to secure the attendance of third-party witnesses, as required by Section 21(1). Consequently, the prosecution cannot claim that the deviation from the strict requirements of the law was justified. x x x Similarly, the prosecution cannot seek refuge in the presumption of regularity in the performance of official duties. Noncompliance with the procedure laid down in Section 21 of the Comprehensive Dangerous Drugs Act "negates the presumption of regularity accorded to acts undertaken by police officers in the pursuit of their official duties." x x x The prosecution cannot conveniently seek sanctuary in the presumption of regularity and the substantial compliance umbrella to disregard the law enforcers' glaring lapses. These are not incantations that may swiftly overturn the constitutionally-guaranteed presumption of innocence. The presumption of regularity should not be a license to forgo prudence, or worse, to further violate the rights of an accused. x x x Accused-appellant Jordan Casaclang Dela Cruz is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

Whenever there is an unjustified noncompliance with the chain of custody requirements, the prosecution cannot invoke the presumption of regularity in the performance of official

duty to conveniently disregard such lapse. Noncompliance obliterates proof of guilt beyond reasonable doubt, warranting an accused's acquittal. Thus, the constitutional right to presumption of innocence prevails.

This resolves an Appeal[1] assailing the Court of Appeals' October 5, 2016 Decision[2] in CA-G.R. CR-H.C. No. 07660. The Court of Appeals upheld the Regional Trial Court's July 20, 2015 Decision[3] in Criminal Case Nos. L-9497 and L-9498, finding Jordan Casaclang Dela Cruz (Dela Cruz) guilty beyond reasonable doubt for violating Article II, Sections 5 and 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

On July 23, 2012, two (2) Informations were filed before the Regional Trial Court, charging Dela Cruz for violation of Republic Act No. 9165, Article II, Sections 5 and 11, for the illegal sale and illegal possession of dangerous drugs, respectively.[4] The Informations read:

Criminal Case No. L-9497
For Violation of Article II, Section 11

"That on or about July 10, 2012 in the afternoon at Artacho St., Poblacion, Lingayen, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully and unlawfully have in his possession, control and custody two (2) plastic sachets of dried Marijuana leaves, a dangerous drug, with a total weight of 2.8 grams, without any necessary permit/license or authority to possess the same.

CONTRARY TO LAW."

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

[2] *Id*. at 2-23. The Decision was penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Danton Q. Bueser and Renato C. Francisco of the Fourteenth Division, Court of Appeals, Manila.

[3] CA *rollo*, pp. 56-64. The Decision was penned by Presiding Judge Teodoro C. Fernandez of Branch 38, Regional Trial Court, Lingayen, Pangasinan.

[4] *Rollo*, pp. 3-4.

Criminal Case No. L-9498
For Violation of Article II, Section 5

"That on or about July 10, 2012 at Artacho St., Poblacion, Lingayen, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully and unlawfully, sell two (2) plastic sachets of dried Marijuana leaves with a total weight of 2.8 grams, to PO1 Denver Y. Santillan, an undercover policeman who acted as a poseur-buyer in a buy bust operation conducted against him, which were tested and yielded positive to be that of marijuana, a dangerous drug, without any authority to sell the same.

CONTRARY TO LAW."[5] (Citations omitted)

On arraignment, Dela Cruz pleaded not guilty to the crimes charged.[6] The parties stipulated on Dela Cruz's identity, and that there is a pending theft case against him. Trial then ensued.[7]

The prosecution presented five (5) witnesses: (1) Police Officer 1 Denver Santillan (PO1 Santillan); (2) Police Senior Inspector Myrna C. Malojo-Todeño (Senior Inspector Malojo-Todeño); (3) Senior Police Officer 1 Edgar Verceles (SPO1 Verceles); (4) PO2 Elmer Manuel (PO2 Manuel); and (5) PO3 Pedro M. Vinluan (PO3 Vinluan).[8]

According to the prosecution, at around 2:25 p.m. on July 10, 2012, PO1 Jethiel F. Vidal (PO1 Vidal) phoned the Philippine Drug Enforcement Agency Regional Office in San Fernando City, La Union. They discussed the buy-bust operation that the Municipal Anti-Illegal Drugs Special Operations Task Group of the Lingayen Police Station in Pangasinan had planned to carry out to entrap Dela Cruz, a 20-year-old high school student suspected of selling marijuana.[9]

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[5] *Id*. at 4.

[6] *Id*.

[7] *Id.* at 5.

[8] *Id*. at 5.

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

That same day, a team of four (4) led by Police Senior Inspector Elpidio Cruz, with PO1 Vidal, PO1 Valerio, and PO1 Santillan—the designated poseur-buyer—conducted the buy-bust operation. PO1 Santillan marked three (3) ₱50.00 bills with serial numbers ZY089061, AF260002, and RP990356, respectively, with the initials, "DYS1", "DYS2", and "DYS3".[10]

Later, at around 3:05 p.m., the team proceeded to the Memorial Colleges along Artacho Street in Lingayen. PO1 Santillan waited for Dela Cruz on the western side of Alviar Street, while his companions positioned themselves on the eastern side.[11]

At around 3:20 p.m., PO1 Santillan saw Dela Cruz come out of the Pangasinan National High School and walk toward him. He recognized him from the week-long surveillance he had earlier conducted. Dela Cruz, who supposedly knew PO1 Santillan from the confidential informant's description, approached him and asked, "*Sika man?* (Are you the one?)" to which the police officer answered, "*On siak may ibabaga to may katungtung mo* (Yes, I am the one referred to by your contact.)" After telling Dela Cruz that he had the money, PO1 Santillan handed the marked bills. In exchange, Dela Cruz took out and gave him two (2) plastic sachets of suspected marijuana.[12]

PO1 Santillan placed the sachets in the right front pocket of his pants. He then removed his ball cap, the pre-arranged signal that the sale had been consummated, after which PO1 Valerio and PO1 Vidal rushed to the scene. PO1 Santillan then grabbed Dela Cruz, introduced himself as a police officer, and arrested him. As he retrieved the marked money from Dela Cruz's left pocket, PO1 Santillan also found two (2) other heat-sealed, transparent, plastic sachets containing suspected marijuana.[13]

PO1 Santillan wrote "DYS4" and "DYS4-A" on each of the two (2) plastic sachets that Dela Cruz had sold him, and "DYS5"

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[10] *Id.*

[11] *Id.* at 6.

[12] *Id.* and CA *rollo*, p. 58.

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

and "DYS5-A" on each of the two (2) other plastic sachets recovered from the body search.[14]

The police officers then brought Dela Cruz to the police station. PO3 Vinluan prepared the Request for Forensic Laboratory Examination, Request for Drug Test, and the Confiscation Receipt of the seized items.[15]

PO1 Santillan testified that he possessed the confiscated items from the time he took them from Dela Cruz until he eventually turned them over to the Philippine National Police Crime Laboratory for testing.[16]

After conducting a laboratory examination, Senior Inspector Malojo-Todeño confirmed in her July 10, 2012 Chemistry Report No. D-073-12 that the confiscated items were indeed marijuana. The four (4) specimens, which she marked "A1", "A2", "A3", and "A4", respectively weighed 1.3 grams, 1.5 grams, 1.4 grams, and 1.4 grams. She testified that she turned them over to the evidence custodian, PO2 Manuel, who corroborated this on trial.[17]

In his defense, Dela Cruz disclaimed any knowledge of the illegal sale and possession of drugs. He testified that on July 10, 2012, he attended his 7:30 a.m. to 11:45 a.m. classes at the Pangasinan National High School. By lunch break, he went with his friends to a nearby canteen, where three (3) unidentified men in civilian clothes approached and invited him to the municipal hall. When he said he did not do anything wrong, they assured him that they would only talk to him, and eventually asked about the pending theft case against him. When he again told them that he did nothing wrong, one (1) of the men pointed a gun at him and coerced him into boarding an STX motorcycle.[18]

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[14] *Id*. at 7.

[15] *Id*.

[16] *Id*. at 8.

[17] *Id*. at 9.

[18] *Id*. at 10.

Dela Cruz further alleged that they brought him to the police station, where he was interrogated and accused of stealing "spaghetti," a slang for cutting wires. On cross-examination, he revealed that the men who accosted him were not the police officers who testified against him.[19]

In its July 20, 2015 Decision,[20] the Regional Trial Court found Dela Cruz guilty of illegal possession and illegal sale of dangerous drugs:

> **WHEREFORE**, premises considered, and the prosecution having established to a moral certainty the guilt of accused JORDAN CASACLANG DELA CRUZ, alias "Pepoy", this Court finds him "GUILTY" of the charges and hereby renders judgment as follows:
>
> 1. In Criminal Case No. L-9497 for Violation of Section 11, Art II of the same Act, this Court in the absence of any aggravating circumstance hereby sentences said accused to an indeterminate sentence of twelve (12) years, eight (8) months and one (1) day to seventeen (17) years and eight (8) months and to pay the fine of Three Hundred Thousand Pesos (₱300,000.00), with subsidiary imprisonment in case of insolvency; and
>
> 2. In Criminal Case No. L-9498 for Violation of Section 5, Art. II of RA 9165, this Court in the absence of any aggravating circumstance hereby sentences said accused to LIFE IMPRISONMENT, and to pay the fine of Five Hundred Thousand Pesos (₱500,000.00) with subsidiary imprisonment in case of insolvency.
>
> Subject drug in both cases are declared confiscated and forfeited in favor of the government to be dealt with in accordance with law.
>
> The accused shall pay the costs of suit.
>
> SO ORDERED.[21] (Emphasis in the original)

The Regional Trial Court held that PO1 Santillan's testimony had sufficiently established all the elements of the crimes charged. It gave credence to his detailed and categorical

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[19] *Id.*

[20] CA *rollo*, pp. 56-64.

[21] *Id.* at 64.

testimony, as well as his positive identification of Dela Cruz. It further noted that the two (2) sachets Dela Cruz had sold the police officer, along with the two (2) other plastic sachets in his possession, were found to have contained marijuana and later properly identified in court.[22]

The Regional Trial Court also held that the prosecution had demonstrated an unbroken chain of custody, preserving the seized items' integrity and evidentiary value. It did not give credence to Dela Cruz's defense of denial, holding that the presumption of regularity in the performance of official duty prevails over bare denials.[23]

On appeal, the Court of Appeals, in its October 5, 2016 Decision,[24] affirmed the trial court Decision. It, however, modified the penalty:

> **WHEREFORE**, the appeal is **DENIED**. Consequently, the assailed *Decision* is **AFFIRMED** with the **MODIFICATION** that the accused-appellant, in Criminal Case No. L-9497 for illegal possession of dangerous drugs, shall serve instead the indeterminate sentence of *twelve (12) years and one (1) day, as minimum to fourteen (14) years and eight (8) months, as maximum*.
>
> The separate orders of subsidiary imprisonment in case of insolvency in both Criminal Case Nos. L-9497 and L-9498 are **DELETED**.
>
> **IT IS SO ORDERED.**[25] (Emphasis in the original)

Noting that the proviso in Section 21 of the amended Comprehensive Dangerous Drugs Act suggested flexibility in its compliance, the Court of Appeals affirmed that the integrity and evidentiary value of the seized marijuana were properly preserved.[26]

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[22] *Id*. at 62.

[23] *Id*. at 63.

[24] *Rollo*, pp. 2-23.

[25] *Id*. at 22.

[26] *Id*. at 15-19.

For the Court of Appeals, the arresting officers' alleged lapses—that the Confiscation Receipt could not be a proper inventory as it did not have Dela Cruz's signature and there were no proper witnesses in the inventory—did not render the arrest illegal or make the seized items inadmissible. It stated that the lack of signature was due to Dela Cruz's own refusal to sign it and receive his copy. As to the third-party witnesses' absence, it gave credence to PO1 Santillan's testimony that time constraints and the uncertainty that Dela Cruz would be in the meeting place prevented the buy-bust team from securing their presence.[27]

Thus, Dela Cruz filed a Notice of Appeal,[28] which the Court of Appeals gave due course to on November 9, 2016.[29]

On March 15, 2017, this Court required the parties to simultaneously file their respective supplemental briefs.[30]

Both accused-appellant[31] and the Office of the Solicitor General, on behalf of plaintiff-appellee People of the Philippines,[32] manifested that they would no longer file supplemental briefs. These were noted by this Court in its July 3, 2017 Resolution.[33]

In his Brief,[34] accused-appellant argues that the Regional Trial Court gravely erred in finding him guilty despite the police officers' failure to comply with Section 21 of the Comprehensive Dangerous Drugs Act.[35] He alleges that the Confiscation Receipt was improper as he did not sign it, and no elected official,

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

[28] *Id*. at 24-26.

[29] *Id*. at 27.

[30] *Id*. at 29-30.

[31] *Id*. at 31-35.

[32] *Id*. at 36-40.

[33] *Id*. at 41-42.

[34] CA *rollo*, pp. 41-55.

[35] *Id*. at 48.

Department of Justice representative, or media representative was present during the inventory. He further claims that no valid justification was offered to explain their absence.[36]

Accused-appellant also points out that the Regional Trial Court failed to conduct an ocular inspection of the seized evidence within 72 hours after the criminal case was filed, as mandated by law. Since there is persistent doubt on the seized drug's identity, accused-appellant maintains that his conviction cannot be sustained.[37]

On the other hand, the Office of the Solicitor General contends in its Brief[38] that the prosecution has substantially complied with the provisions of the Comprehensive Dangerous Drugs Act. It noted that: (1) the buy-bust team photographed and marked the *corpus delicti* at the crime scene after accused-appellant's apprehension; and (2) the chain of custody of the confiscated items was established through the prosecution witnesses' testimonies.[39] It adds that there is a presumption of regularity in the performance of the police officer's duties, absent contrary proof.[40]

For this Court's resolution is the lone issue of whether or not the absence of an elective official, a representative from the media, and a representative from the Department of Justice during the buy-bust operation warrants accused-appellant Jordan Casaclang Dela Cruz's acquittal.

This Court grants the Petition and acquits accused-appellant of the charges.

I

In a criminal case, the prosecution must discharge the burden of proving the accused's guilt beyond reasonable doubt to secure

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[36] *Id*. at 49.

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

[38] *Id*. at 82-107.

[39] *Id*. at 93.

[40] *Id*. at 102.

a conviction for the crime charged. Proof beyond reasonable doubt does not require absolute certainty that excludes error. Rather, this standard requires moral certainty, "or that degree of proof which produces conviction in an unprejudiced mind."[41]

Beyond being fleshed out by procedural rules, the requirement of proof beyond reasonable doubt occupies a constitutional stature,[42] as it finds basis not only in the due process clause[43] of the Constitution, but also in the accused's presumption of innocence under the Bill of Rights.[44] The right to be presumed innocent puts the burden on the prosecution to prove guilt above the reasonable doubt standard.[45]

People v. Limpangog[46] discussed the significance of the presumption of innocence in our legal system:

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[41] RULES OF COURT, Rule 133, Sec. 2.

[42] *Macayan, Jr. v. People*, 756 Phil. 202, 213-214 (2015) [Per *J.* Leonen, Second Division].

[43] CONST., Art. III, Sec. 1 provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

See *People v. Morales*, 630 Phil. 215, 219 (2010) [Per *J.* Del Castillo, Second Division].

[44] CONST., Art. III, Sec. 14(2) provides:

SECTION 14. . . .

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[45] *Macayan, Jr. v. People*, 756 Phil. 202, 213-214 (2015) [Per *J.* Leonen, Second Division] citing *People v. Solayao*, 330 Phil. 811, 819 (1996) [Per *J.* Romero, Second Division].

[46] 444 Phil. 691 (2003) [Per *J.* Panganiban, Third Division].

The rationale behind the constitutional presumption of innocence has been explained by the Court in *People v. Godoy* as follows:

> "The presumption of innocence . . . is founded upon the first principles of justice, and is not a mere form but a substantial part of the law. It is not overcome by mere suspicion or conjecture; a probability that the defendant committed the crime; nor by the fact that he had the opportunity to do so. Its purpose is to balance the scales in what would otherwise be an uneven contest between the lone individual pitted against the People and all the resources at their command. Its inexorable mandate is that, for all the authority and influence of the prosecution, the accused must be acquitted and set free if his guilt cannot be proved beyond the whisper of a doubt. This is in consonance with the rule that conflicts in evidence must be resolved upon the theory of innocence rather than upon a theory of guilt when it is possible to do so."

Indeed, the State, aside from showing the existence of a crime, has the burden of correctly identifying the author of the crime. Both requisites must be "proved by the State beyond reasonable doubt on the strength of its evidence and without solace from the weakness of the defense. Thus, even if the defense of the accused may be weak, the same is inconsequential if, in the first place, the prosecution failed to discharge the onus on his identity and culpability. The presumption of innocence dictates that it is for the people to demonstrate guilt and not for the accused to establish innocence."[47] (Citations omitted)

Consequently, the rule that the conviction of the accused "must rest on the strength of the prosecution's evidence and not on the weakness of the defense"[48] is well-entrenched in our jurisprudence.[49]

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[47] *Id*. at 709-710.

[48] *People v. Lorenzo*, 633 Phil. 393, 401 (2010) [Per *J*. Perez, Second Division].

[49] *Id*.; *Macayan, Jr. v. People*, 756 Phil. 202, 213-214 (2015) [Per *J*. Leonen, Second Division]; *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 499 [Per *J*. Leonen, Third Division]; *People v. Lim*, G.R. No. 231989, September 4, 2018, < http://elibrary.judiciarygov.ph/thebookshelf/showdocs/1/64400> [Per *J*. Peralta, *En banc*]; and *People v. Royol*, G.R. No. 224297, February 13, 2019, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65005 > [Per *J*. Leonen, Third Division].

II

Settled are the requisites to sustain convictions for Section 5, the illegal sale of dangerous drugs, and Section 11, the illegal possession of dangerous drugs, of the Comprehensive Dangerous Drugs Act:

> In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.
>
> On the other hand, in prosecutions for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.[50]

As to the element of *corpus delicti*, Republic Act No. 9165, Section 21, as amended by Republic Act No. 10640, lays down the requirements for the custody and disposition of the dangerous drugs confiscated, seized, and/or surrendered:

> 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

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[50] *People v. Morales*, 630 Phil. 215, 228 (2010) [Per *J.* Del Castillo, Second Division] citing *People v. Darisan*, 597 Phil. 479, 485 (2009) [Per *J.* Corona, First Division] and *People v. Partoza*, 605 Phil. 883, 890 (2009) [Per *J.* Tinga, Second Division].

equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally,* That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia

> and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of the same, in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provider, further*, That a representative sample, duly weighed and recorded is retained[.]

People v. Nandi[51] specified the four (4) links in the chain of custody of the confiscated item:

> [T]he following links should be established in the chain of custody of the confiscated item: *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.[52]

Compliance with the chain of custody requirements is critical to ensure that the seized items were the same ones brought to court.[53] It protects the integrity of the *corpus delicti* in four (4) aspects:

> [F]irst, the nature of the substances or items seized; second, the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their

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[51] 639 Phil. 134 (2010) [Per *J.* Mendoza, Second Division].

[52] *Id.* at 144-145 citing *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per *J.* Brion, Second Division].

[53] *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 503 [Per *J.* Leonen, Third Division].

seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them.[54]

Nonetheless, this Court recognizes that narcotic substances are not readily identifiable and, thus, require further examination for their composition and nature to be determined.[55]

Mallillin v. People[56] explained that "[t]he likelihood of tampering, loss[,] or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives."[57] The items presented in court during trial are relevant not only because they are available, but because of their relation to the transaction and the parties.[58]

Hence, the chain of custody requirements provide safeguards from the greater possibility of abuse in anti-narcotic operations.[59]

Noncompliance with these requirements tarnishes the credibility of the *corpus delicti*, along with the claim that an offense violating the Comprehensive Dangerous Drugs Act was committed.[60] In cases involving the illegal sale and illegal possession of dangerous drugs, noncompliance with the chain of custody requirements equates to a failure to establish critical elements of these offenses, justifying an accused's acquittal:

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[54] *People v. Holgado*, 741 Phil. 78, 93 (2014) [Per J. Leonen, Third Division].

[55] *Id*. citing *Mallillin v. People*, 576 Phil. 576, 588-589 (2008) [Per J. Tinga, Second Division].

[56] 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

[57] *Id*. at 588.

[58] *People v. Belocura*, 693 Phil. 476, 496 (2012) [Per J. Bersamin, First Division].

[59] *People v. Tan*, 401 Phil. 259, 273 (2000) [Per J. Melo, Third Division].

[60] *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 503 [Per J. Leonen, Third Division].

In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.[61]

III

Lescano v. People[62] explained the specific requirements under Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended:

As regards the items seized and subjected to marking, Section 21 (1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21 (1) is specific as to when and where these actions must be done. As to when, it must be "immediately after seizure and confiscation." As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable."

Moreover, Section 21 (1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.[63]

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[61] *People v. Lorenzo*, 633 Phil. 393, 403 (2010) [Per *J.* Perez, Second Division].

[62] 778 Phil. 460 (2016) [Per *J.* Leonen, Second Division].

[63] *Id.* at 475.

People v. Que[64] demonstrated how the requirements under Section 21(1) were relaxed by Republic Act No. 10640:

> It was relaxed with respect to the persons required to be present during the physical inventory and photographing of the seized items. Originally under Republic Act No. 9165, the use of the conjunctive "and" indicated that Section 21 required the presence of all of the following, in addition to "the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel":
>
> *First*, a representative from the media;
>
> *Second*, a representative from the Department of Justice; and
>
> *Third*, any elected public official.
>
> As amended by Republic Act No. 10640, Section 21 (1) uses the disjunctive "or," *i.e.*, "with an elected public official and a representative of the National Prosecution Service *or* the media." Thus, a representative from the media and a representative from the National Prosecution Service are now alternatives to each other.[65] (Emphasis in the original, citations omitted)

Here, however, none of the three (3) people required by Section 21(1), as originally worded,[66] was present during the physical inventory of the seized items.

The Office of the Solicitor General argued that there was substantial compliance with Section 21, considering that the buy-bust team photographed the seized items and marked the *corpus delicti* at the crime scene after accused-appellant's apprehension.

However, as this Court has repeatedly emphasized, the mere marking of the seized paraphernalia is insufficient to comply with the specific requirements laid down in the Comprehensive

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[64] G.R. No. 212994, January 31, 2018, 853 SCRA 487 [Per *J.* Leonen, Third Division].

[65] *Id.* at 514.

[66] The buy-bust operation was conducted in 2012, prior to the amendment.

Dangerous Drugs Act.[67] *Que* explained the significance of strict compliance on the conduct of inventory, marking, and photographing in the presence of third-party witnesses:

> What is critical in drug cases is not the bare conduct of inventory, marking, and photographing. Instead, it is the certainty that the items allegedly taken from the accused retain their integrity, even as they make their way from the accused to an officer effecting the seizure, to an investigating officer, to a forensic chemist, and ultimately, to courts where they are introduced as evidence. . . . What is prone to danger is not any of these end points but the intervening transitions or transfers from one point to another.
>
> . . . . . .

People v. Garcia emphasized that ***the mere marking of seized items, unsupported by a proper physical inventory and taking of photographs, and in the absence of the persons whose presence is required by Section 21 will not justify a conviction***:

> Thus, other than the markings made by PO1 Garcia and the police investigator (whose identity was not disclosed), no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules. We observe that while there was testimony with respect to the marking of the seized items at the police station, no mention whatsoever was made on whether the marking had been done in the presence of Ruiz or his representatives. There was likewise no mention that any representative from the media and the Department of Justice, or any elected official had been present during this inventory, or that any of these people had been required to sign the copies of the inventory.

The presence of third-party witnesses is imperative, not only during the physical inventory and taking of pictures, but also during the actual seizure of items. The requirement of conducting the inventory

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[67] See *People v. Magat*, 588 Phil. 395, 405 (2008) [Per J. Tinga, Second Division]; *People v. Garcia*, 599 Phil. 416 (2009) [Per J. Brion, Second Division]; *Lescano v. People*, 778 Phil. 460, 476 (2016) [Per J. Leonen, Second Division]; *People v. Holgado*, 741 Phil. 78, 94 (2014) [Per J. Leonen, Third Division]; *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 520 [Per J. Leonen, Third Division]; *People v. Royol*, G.R. No. 224297, February 13, 2019, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65005 > [Per J. Leonen, Third Division].

and taking of photographs "immediately after seizure and confiscation" necessarily means that the required witnesses must also be present during the seizure or confiscation. This is confirmed in *People v. Mendoza*, where the presence of these witnesses was characterized as an "insulating presence [against] the evils of switching, 'planting' or contamination[."][68] (Emphasis supplied, citations omitted)

It would be absurd to subscribe to the Office of the Solicitor General's sweeping claim of substantial compliance when crucial aspects of the procedure laid down in Section 21(1) were clearly disobeyed.

Republic Act No. 10640 did introduce amendments that permit deviations from the law's express requirements when there are justifiable grounds:

> *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.

Que laid down two (2) requisites that must be met to successfully invoke this proviso:

> In order that there may be conscionable non-compliance, two (2) requisites must be satisfied: first, the prosecution must specifically allege, identify, and prove "justifiable grounds"; second, it must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved. Satisfying the second requisite demands a showing of positive steps taken to ensure such preservation. Broad justifications and sweeping guarantees will not suffice.[69]

Justification for the absence of third-party witnesses must be alleged, identified, and proved.[70] Further, there must be an earnest effort to secure their presence during the inventory:

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[68] *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 518-521 [Per *J.* Leonen, Third Division].

[69] *Id.* at 523 [Per *J.* Leonen, Third Division].

[70] *People v. Lim*, G.R. No. 231989, September 4, 2018, < http://elibrary.judiciarygov.ph/thebookshelf/showdocs/1/64400 > [Per *J.* Peralta, *En Banc*].

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.[71] (Citations omitted)

Prosecution witness PO1 Santillan attempted to justify the absence of the third-party witnesses, testifying that time constraints and the uncertainty of accused-appellant's appearance at the meeting place had prevented the team from securing their presence.

However, his own testimony belies this claim. He narrated that he recognized accused-appellant from the *week-long* surveillance he had conducted prior to the buy-bust operation. Certainly, this ample amount of time had given him several

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[71] *Id.*

opportunities to coordinate with any person qualified to be a witness. Yet, it appears that he opted not to, as did the rest of the buy-bust team.

The prosecution failed to allege, let alone prove, that earnest efforts were exerted to secure the attendance of third-party witnesses, as required by Section 21(1). Consequently, the prosecution cannot claim that the deviation from the strict requirements of the law was justified.

IV

Similarly, the prosecution cannot seek refuge in the presumption of regularity in the performance of official duties.

Noncompliance with the procedure laid down in Section 21 of the Comprehensive Dangerous Drugs Act "negates the presumption of regularity accorded to acts undertaken by police officers in the pursuit of their official duties."[72] More to the point, *Que* elaborated the limitations of the presumption of regularity *vis-a-vis* the constitutional presumption of innocence:

> Even the customary presumption of regularity in the performance of official duties cannot suffice. *People v. Kamad* explained that the presumption of regularity applies only when officers have shown compliance with "the standard conduct of official duty required by law." It is not a justification for dispensing with such compliance:
>
> > Given the flagrant procedural lapses the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. *A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.* In light of the flagrant lapses we noted, the lower courts were

[72] *People v. Navarrete*, 655 Phil. 738, 749 (2011) [Per *J.* Carpio Morales, Third Division].

> obviously wrong when they relied on the presumption of regularity in the performance of official duty.
>
> We rule, too, that the discrepancy in the prosecution evidence on the identity of the seized and examined shabu and that formally offered in court cannot but lead to serious doubts regarding the origins of the shabu presented in court. This discrepancy and the gap in the chain of custody immediately affect proof of the *corpus delicti* without which the accused must be acquitted.
>
> From the constitutional law point of view, the prosecution's failure to establish with moral certainty all the elements of the crime and to identify the accused as the perpetrator signify that it failed to overturn the constitutional presumption of innocence that every accused enjoys in a criminal prosecution. When this happens, as in this case, the courts need not even consider the case for the defense in deciding the case; a ruling for acquittal must forthwith issue.[73] (Emphasis in the original, citations omitted)

The prosecution cannot conveniently seek sanctuary in the presumption of regularity and the substantial compliance umbrella to disregard the law enforcers' glaring lapses. These are not incantations that may swiftly overturn the constitutionally-guaranteed presumption of innocence. The presumption of regularity should not be a license to forgo prudence, or worse, to further violate the rights of an accused.

In cases of illegal drugs, there is a procedure under the chain of custody rules that is not difficult for law enforcers to follow, especially since a person's right to liberty is at stake.

WHEREFORE, the Court of Appeals' October 5, 2016 Decision in CA-G.R. CR H.C. No. 07660 is **REVERSED** and **SET ASIDE**. Accused-appellant Jordan Casaclang Dela Cruz is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for some other lawful cause.

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[73] G.R. No. 212994, January 31, 2018, 853 SCRA 487, 507-508 [Per *J.* Leonen, Third Division].

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court the action he has taken within five (5) days from receipt of this Decision. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgement be issued immediately.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 229836. July 17, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* [redacted]**,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE SPONTANEITY AND CONSISTENCY BY WHICH RAPE VICTIM AAA HAD DETAILED OUT THE INCIDENT DISPEL ANY INSINUATION OF A REHEARSED TESTIMONY. –– [T]he spontaneity and consistency by which AAA had detailed out the incident dispel any insinuation of a rehearsed testimony. Her eloquent testimony should be enough to confirm the veracity of the charge. After all, the nature of the crime of rape entails reliance on the lone, yet clear, convincing and consistent testimonies of the victim herself. Notably, AAA was only eight (8) years old when the first and second rape incidents occurred. She took the stand

twelve (12) years later. Surely, she is not expected to recount with exactitude every detail of the incidents which happened twelve (12) years ago. Errorless recollection of a harrowing incident cannot be expected of a witness, especially when she is recounting details of an experience so humiliating and so painful as rape. What is important is that the victim's declarations are consistent on basic matters constituting the elements of rape and her positive identification of the person who did it to her.

2. **ID.; ID.; ID.; TESTIMONIAL INCONSISTENCIES THAT DO NOT HINGE ON ANY ESSENTIAL ELEMENT OF THE CRIME ARE DEEMED INSIGNIFICANT.** — [T]he alleged inconsistency in AAA's testimony pertaining to whether the first rape incident happened in the morning or in the afternoon refers to a trivial matter which does not affect AAA's credibility as a witness. The fact remains that the first rape incident occurred on the day AAA testified it happened. Surely, if the testimonial inconsistencies do not hinge on any essential element of the crime, such inconsistencies are deemed insignificant and will not have any bearing on the essential fact or facts testified to. These inconsistencies, if at all, even indicate that the witness was not rehearsed.

3. **ID.; ID.; ID.; ACCURACY IN ONE'S TESTIMONIAL ACCOUNT IS NOT A STANDARD FOR TESTING THE CREDIBILITY OF A WITNESS. —** As for AAA's supposed improbable statement that appellant's penis was in her vagina for about an hour, we keenly note that she was only eight (8) years old at the time of the incident. A child's perception of time is different from that of an adult. Besides, since human memory is fickle and prone to the stresses of emotions, accuracy in one's testimonial account has never been used as a standard in testing the credibility of a witness. AAA's failure to specify the exact time and date when the first rape occurred does not, standing alone, cast doubt on appellant's guilt. Neither date nor time of the commission of rape is a material element of the crime. The essence of rape is carnal knowledge of a female through force or intimidation against her will. Precision as to the time when the rape is committed has no bearing on its commission.

4. **ID.; ID.; ID.; WHERE THE RAPE VICTIM'S TESTIMONY IS CORROBORATED BY PHYSICAL FINDINGS OF**

PENETRATION, THERE IS SUFFICIENT BASIS FOR CONCLUDING THAT SEXUAL INTERCOURSE DID TAKE PLACE. — AAA was physically examined twice: x x x Medical expert Dr. Naomi Poca of VSMMC testified that a finding of 7 o'clock notch is suggestive of an injury caused by a blunt instrument. Dr. Poca further opined that if the subject had no history of operation or accident, said notch could have been caused by sexual abuse. Verily, therefore, AAA's assertion that she had been sexually ravished at least twice in 1999, solidly conforms with the medical certificate and Dr. Poca's expert testimony. Indeed, where the victim's testimony is corroborated by physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place.

5. **ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER POSITIVE AND CATEGORICAL TESTIMONY OF THE RAPE VICTIM. —** As against AAA's positive and categorical testimony, appellant only interposes denial and alibi. But denial is the weakest of all defenses. It easily crumbles in the face of positive identification by accused as the perpetrator of the crime. Appellant's claim that the complaints against him were orchestrated by Lucia Lawas out of spite, deserves scant consideration. Alleged motive of family feud, resentment, or revenge is not an uncommon defense, the same has never swayed the Court from lending full credence to the testimony of a complainant who remained steadfast throughout her direct and cross-examinations.

6. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; AGE OF THE VICTIM BELOW TWELVE (12) YEARS OF AGE WAS NOT ESTABLISHED; THE VICTIM'S TESTIMONY OF HER BIRTH DATE AND THE UNAUTHENTICATED PHOTOCOPY OF HER BIRTH CERTIFICATE ARE NOT SUFFICIENT PROOF OF HER EXACT AGE DURING THE TWO RAPE INCIDENTS.—** Statutory rape is committed by sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape. For the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act.

Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant. Here, the prosecution offered AAA's testimony that she was born on July 1, 1991 and an unauthenticated photocopy of her certificate of live birth to prove she was below twelve (12) years old when appellant, by asserting his moral ascendancy, succeeded in having carnal knowledge of her against her will in 1999. ***People v. Pruna*** enumerates the guidelines in proving the victim's age x x x [And on] the basis of ***Pruna***, we hold that AAA's testimony on her date of birth and the unauthenticated photocopy of her birth certificate do not constitute sufficient proof of her exact age during the two rape incidents. In ***People v. Lastrollo***, the victim's testimony on her age was considered insufficient since it was not clearly and expressly admitted by the accused, as in this case. Also, in ***People v. Belen***, a photocopy of the victim's birth certificate was not accorded probative weight.

7. ID.; ID.; ARTICLES 266-A AND 266-B ON QUALIFIED RAPE. — [Appellant] is guilty of qualified rape in accordance with Articles 266-A and 266-B of the Revised Penal Code, x x x Under the foregoing provisions, rape is qualified when: a) the victim is under eighteen (18) years of age; and b) committed by the victim's parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity within the third civil degree, or by the common-law spouse of the victim's parent. But, in order for an accused to be convicted of qualified rape, the Information itself must allege that the victim is under eighteen (18) years of age at the time of rape and the accused is the victim's parent, ascendant, step- parent, guardian, or relative by consanguinity or affinity within the third civil degree, or common-law spouse of the victim's parent. These are special qualifying circumstances which alter the nature of the crime of rape and warrant the increase of the imposable penalty.

8. ID.; ID.; ID.; PENALTY AND CIVIL LIABILITY.— In Criminal Case Nos. DNO-3393 and DNO-3394, it was uniformly alleged therein that appellant was AAA's stepfather and AAA was "*a virgin under 12 years of age*." The parties stipulated only on her minority, which means below eighteen (18) years old and not below twelve (12) years old. In any event, in view of the concurrence of the elements of relationship and age (below eighteen [18] years old), appellant indubitably committed qualified rape which warrants the imposition of the death penalty.

Albeit by virtue of RA 9346, the death penalty has been reduced to *reclusion perpetua*. As for appellant's civil liability, the award of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for each count of qualified rape should be granted in conformity with prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

Prefatory

This appeal assails the Decision[1] dated August 11, 2016 of the Court of Appeals in CA-G.R. CR HC No. 01915 entitled "*People of the Philippines v.* [redacted]" affirming appellant's conviction for two (2) counts of statutory rape.

The Proceedings Before the Trial Court

The Charges

Appellant [redacted] was indicted for violation of Section 266-A in relation to 266-B of the Revised Penal Code in forty-two (42) separate Informations docketed Criminal Case Nos. DNO-3393 through DNO-3434. Except for the material dates, the Informations alleged, thus:

That on or about (date of commission) in [redacted], Danao City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being a step-father of AAA, and by means of force and intimidation, as well as his moral ascendancy, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, a virgin under 12 years of age against the latter's will.

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[1] Penned by Associate Justice Gabriel T. Robeniol with the concurrence of Associate Justices Pamela Ann Abella Maxino and Pablito A. Perez, all members of the Twentieth Division, CA *rollo*, pp. 86-101.

CONTRARY TO LAW.[2]

Additionally, in eleven (11) separate Informations docketed Criminal Case Nos. DNO-3435 through DNO-3445, appellant was indicted for simple rape. Again, except for the material dates, the Informations uniformly alleged:

> That sometime in (date of commission) [redacted], Danao City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being a step-father of AAA, and by means of force and intimidation, and as well as his moral ascendancy, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, a virgin over 12 years old but under 18 years of age against the latter's will.
>
> CONTRARY TO LAW.[3]

All fifty-three (53) cases got consolidated before the Regional Trial Court, Branch 25, Danao City, Cebu.

On arraignment, appellant pleaded not guilty to all fifty-three (53) counts of rape.[4]

During the pre-trial, the parties stipulated on the following: 1) AAA was still a minor in January 2000; 2) AAA is the daughter of BBB; and 3) BBB was the live-in partner of appellant.[5] The cases were, thereafter, jointly tried.

Prosecution's Evidence

AAA testified that since 1995, she had been living with her mother BBB and appellant in a rented house in Danao City. From 1999, when she was only eight (8) years old, to 2004 when she was already thirteen (13) years old, appellant had sexually ravished her several times over.[6]

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[2] CA *rollo*, p. 42.

[3] *Id.* at 43.

[4] *Id.*

[5] *Id.* at 88.

[6] *Id.*

As charged in Criminal Case No. DNO-3393,[7] the first rape incident happened in 1999 when her mother had left for work. At noontime, she was taking a nap when she felt appellant had come up to her. He removed her underwear, kissed and touched her, and made her touch his penis. He, thereafter, inserted his penis in her vagina. She got so scared and felt so much pain in her vagina. After it was over, appellant warned her to keep silent about the incident, then, left her alone in the house. When BBB came home, she tried to tell her what happened but BBB did not believe her.[8]

Then, the second rape, as charged in Criminal Case No. DNO-3394,[9] happened three (3) days later. He did the same things to her and, afterwards, inserted his penis into her vagina. She was scared and again felt pain in her vagina. The same sexual abuse happened once or twice a day from 1999 to 2004. When the sexual abuse thereafter became even more frequent than before, she could bear it no longer.[10]

She wanted to report the rape incidents to the police but shame and fear restrained her from doing so. In July 2004, appellant threatened to shave off her hair if she went out with

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[7] RTC Record for Crim. Case No. DNO-3393, p. 1.

"That on or about January 4, 2000 in [redacted], Danao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being a step-father of AAA, and by means of force and intimidation, as well as his moral ascendancy, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, a virgin under 12 years of age against the latter's will."

CONTRARY TO LAW.

[8] CA *rollo*, p. 89.

[9] RTC Record for Crim. Case No. DNO-3394, p. 1.

"That sometime in the month of February, 2000 in [redacted], Danao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being a step-father of AAA, and by means of force and intimidation, as well as his moral ascendancy, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, a virgin under 12 years of age against the latter's will."

CONTRARY TO LAW.

[10] CA *rollo*, p. 89.

her friends. Then one day, she finally mustered the courage to narrate her ordeal to her friend Portia, who in turn, told her aunt Lucia Lawas. She later on recounted her ordeal to Lucia Lawas.[11]

Lucia Lawas took her first to a priest for confession and then to a social worker at the Department of Social Welfare and Development (DSWD). The social worker recommended that she undergo physical examination at the Danao General Hospital, after the doctor in the Danao General Hospital found hymenal lacerations on her vagina, she was advised to go to the "Pink Room" of the Vicente Sotto Memorial Medical Center (VSMMC), Cebu City. There, she was again examined by Dr. Liwayway Reyes who confirmed that she did sustain hymenal lacerations. She stayed with DSWD for ten (10) months.[12]

The Defense's Evidence

Appellant denied the charges. He professed to love AAA very much, she being the daughter of his live-in partner. He was saddened when the DSWD took AAA from his custody. Lucia Lawas orchestrated the whole thing to get back at him when he stopped working for her.[13]

The Trial Court's Ruling

By Decision[14] dated May 28, 2012, the trial court ruled that the prosecution was only able to prove two (2) counts of statutory rape, *i.e*. the first one (Criminal Case No. DNO-3393) which happened sometime in 1999 when AAA was only eight (8) years old; and the second one (Criminal Case No. DNO-3394), which happened three (3) days later. But as for the remaining fifty-one (51) counts, the trial court found that the prosecution utterly failed to prove how each of these supposed rape incidents was committed. Thus, the trial court decreed:

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[11] *Id.*

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

[13] *Id.* at 90.

[14] *Id.* at 42-53.

WHEREFORE, FOR ALL THE FOREGOING CONSIDERATIONS, this Court finds accused [redacted] **GUILTY** of two (2) counts of statutory rape under Criminal Cases (sic) No. DNO-3393 and DNO-3394 and hereby sentences him to suffer the penalty of RECLUSION PERPETUA under paragraph 3, Article 335 of the Revised Penal Code, as amended by R.A. 7659 for each of the two (2) counts of rape committed.

The accused is hereby directed to pay the victim the amount of ₱50,000.00 as civil indemnity *ex delicto* and the amount of ₱50,000.00 as moral damages, conformably to current jurisprudence for each of the two (2) crimes of rape committed.

For lack of proof beyond reasonable doubt, accused [redacted] is hereby ACQUITTED of the charges against him in Criminal Cases (sic) No. DNO-3395 through DNO-3445.

SO ORDERED.[15]

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for giving credence to AAA's testimony despite its alleged inconsistencies and improbabilities: 1) on direct, she testified that in 1999, appellant raped her in the afternoon, but on cross, she claimed it happened in the morning; and 2) her allegation that appellant did not remove his penis from her vagina for about an hour was impossible. Further, the date and time when the two (2) rape incidents supposedly occurred were not proven by the prosecution, thus, creating serious doubt as to their occurrence.[16]

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General Herman Cimafranca and State Solicitor Sharon Millan-Decano riposted that the trial court's assessment of the credibility of AAA's testimony should be given much weight. Too, the exact dates and time of the rape incidents are not essential elements of rape. Besides, a victim of tender age is not expected to recall the exact date and time when her traumatic experience took place. Lastly,

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[15] *Id.* at 53.

[16] *Id.* at 21-41.

AAA gave positive and categorical testimony on how the two (2) rape incidents occurred and who the perpetrator was.[17]

The Court of Appeals' Ruling

By its assailed Decision[18] dated August 11, 2016, the Court of Appeals affirmed with modification, thus:

> **WHEREFORE**, premises considered, the instant appeal is **DENIED**. The assailed 28 May 2012 *Decision* of the Regional Trial Court, Branch 25, of Danao City is **AFFIRMED WITH THE MODIFICATIONS** that:
>
> (1) Accused-appellant is hereby ordered to pay AAA PhP30,000.00 as exemplary damages for each count of *Statutory Rape*; and
>
> (2) All monetary awards for damages shall earn interest at the legal rate of 6% *per annum* from the date of finality of this Decision until fully paid.
>
> **SO ORDERED.**[19]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. For the purpose of this appeal, the OSG[20] and appellant[21] both manifested that in lieu of supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction against appellant for two (2) counts of statutory rape?

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[17] *Id.* at 64-77.

[18] *Id.* at 86-101.

[19] *Id.* at 100.

[20] *Rollo*, pp. 31-35.

[21] *Id.* at 27-29.

Ruling

We affirm appellant's conviction in Criminal Case Nos. DNO-3393 and DNO-3394 but for qualified rape, not for statutory rape.

When she took the witness stand in 2011, AAA recalled the following details on how appellant sexually ravished her way back sometime in 1999 (Criminal Case No. DNO-3393), thus:

Q: Can you describe before this court what are you referring to us he was molesting you while you were still young?
A: I was still in grade one, eight years old.

Q: The question is what did he do when you said he was molesting you?
A: I was sleeping at that time and he removed my panty.

Q: Can you still recall what date wherein you were first molested by your stepfather?
A: What I can remember is that I was still eight years old at that time.

Q: Now you said you were born in the year 1991, will you please add eight years to 1991 and inform this court what is the year?
A: 1999.

x x x x x x x x x

Q: Can you still remember the exact time by which you were molested the first time in the year 1999?

x x x

A: Perhaps it's 2:00 o'clock in the afternoon because at 5:00 o'clock my mother would arrive.

Q: Now, aside from undressing yourself during that time, what else did accused [redacted] do?
A: That's then he kissed me and touched me.

Q: Aside from those things, what else did he do?
A: That's then he raped or molested me.

x x x x x x x x x

Q: Can you tell the court and elaborate what do you mean by he raped you?
A: He caused me to touch his sex organ.

Q: Aside from that what other else did he do?
A: He inserted his penis into my vagina.

Q: What have you felt when his penis was inserted in your vagina?
A: Pain.

Q: For how long in terms of minutes did he insert his penis into your vagina?
A: For a long time.

Q: Can you estimate before this court that long time you are mentioning?
A: Around one hour.

Q: During that one hour period, what have you felt when he was then in the act of inserting his penis in your womanhood?
A: I was afraid.

Q: Aside from fear, what other else have you felt?
A: Pain.

Q: What part of your body have you felt pain?
A: My vagina sir.[22]

AAA recounted that sometime in 1999 appellant woke her up, undressed her, and proceeded to touch and kiss her. He made her touch his penis then inserted it in her vagina. She was so scared when appellant was about to penetrate her vagina. She endured the pain in her vagina because appellant was inside her for a long time. She spoke of appellant's carnal knowledge of her when she was only eight (8) years old.

On the second rape incident (Criminal Case No. DNO-3394), AAA recalled:

Q: Now, going back to those rape instances, now after the first incident in the year 1999, can you still recall how many days had elapsed before the second rape incident happened?
A: Around three days later.

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[22] TSN, June 13, 2011, pp. 8-11.

Q: And what have you felt when that second incident happened?
A: I was then sick.

Q: The question is what have you feel (sic) when the second rape happened?

A: I was also afraid sir.

Q: And again describe before this court of what do you mean you were rape (sic) the second time, what action did he do towards you?
A: The same thing happened sir he inserted his penis (in) my organ.

Q: What have you felt when that organ of him was placed inside to (sic) your organ?
A: I felt also pain sir.[23]

AAA stated that the second rape incident happened three (3) days after the first. She said appellant did the same things to her. As in the first, she was scared and felt pain when appellant entered her. She specifically said appellant "*inserted his penis (in) my organ*."

Indeed, the spontaneity and consistency by which AAA had detailed out the incident dispel any insinuation of a rehearsed testimony. Her eloquent testimony should be enough to confirm the veracity of the charge.[24] After all, the nature of the crime of rape entails reliance on the lone, yet clear, convincing and consistent testimonies[25] of the victim herself.

Notably, AAA was only eight (8) years old when the first and second rape incidents occurred. She took the stand twelve (12) years later. Surely, she is not expected to recount with exactitude every detail of the incidents which happened twelve (12) years ago. Errorless recollection of a harrowing incident cannot be expected of a witness, especially when she is recounting details of an experience so humiliating and so painful as rape. What is important is that the victim's declarations are

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

[24] 666 Phil. 565, 588-589 (2011).

[25] See *People v. Ronquillo*, 840 SCRA 405, 414 (2017).

consistent on basic matters constituting the elements of rape and her positive identification of the person who did it to her.[26]

Also, the alleged inconsistency in AAA's testimony pertaining to whether the first rape incident happened in the morning or in the afternoon refers to a trivial matter which does not affect AAA's credibility as a witness. The fact remains that the first rape incident occurred on the day AAA testified it happened. Surely, if the testimonial inconsistencies do not hinge on any essential element of the crime, such inconsistencies are deemed insignificant and will not have any bearing on the essential fact or facts testified to. These inconsistencies, if at all, even indicate that the witness was not rehearsed.[27]

As for AAA's supposed improbable statement that appellant's penis was in her vagina for about an hour, we keenly note that she was only eight (8) years old at the time of the incident. A child's perception of time is different from that of an adult. Besides, since human memory is fickle and prone to the stresses of emotions, accuracy in one's testimonial account has never been used as a standard in testing the credibility of a witness.[28]

AAA's failure to specify the exact time and date when the first rape occurred does not, standing alone, cast doubt on appellant's guilt. Neither date nor time of the commission of rape is a material element of the crime. The essence of rape is carnal knowledge of a female through force or intimidation against her will. Precision as to the time when the rape is committed has no bearing on its commission.[29]

We also note that the respective Informations in Criminal Case Nos. DNO-3393 and DNO-3394 allege that the dates of commission of the two rape incidents were "*on or about January*

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[26] *People v. Daco*, 589 Phil. 335, 348 (2008).

[27] *People v. Gonzales, Jr.*, 781 Phil. 149, 156 (2016).

[28] *People v. Pareja*, 724 Phil. 759, 774 (2014).

[29] *People v. Nuyok*, 759 Phil. 437, 448 (2015).

4, 2000" and "*sometime in the month of February, 2000*," respectively. Yet, the discrepancy of the dates of commission in the twin Informations and AAA's testimony that both rape incidents happened in 1999, is not fatal. ***People v. Nazareno***[30] teaches:

> The argument is specious. An information is intended to inform an accused of the accusations against him in order that he could adequately prepare his defense. Verily, an accused cannot be convicted of an offense unless it is clearly charged in the complaint or information. Thus, to ensure that the constitutional right of the accused to be informed of the nature and cause of the accusation against him is not violated, the information should state the name of the accused; the designation given to the offense by the statute; a statement of the acts or omissions so complained of as constituting the offense; the name of the offended party; the approximate time and date of the commission of the offense; and the place where the offense has been committed. Further, it must embody the essential elements of the crime charged by setting forth the facts and circumstances that have a bearing on the culpability and liability of the accused, so that he can properly prepare for and undertake his defense.
>
> **However, it is not necessary for the information to allege the date and time of the commission of the crime with exactitude unless time is an essential ingredient of the offense. In People v. Bugayong, the Court held that when the time given in the information is not the essence of the offense, the time need not be proven as alleged; and that the complaint will be sustained if the proof shows that the offense was committed at any time within the period of the statute of limitations and before the commencement of the action.** (Emphasis supplied)

More, AAA was physically examined twice: first by a doctor at Danao General Hospital, and second by Dr. Liwayway Reyes of VSMMC. Dr. Reyes found that AAA sustained deep notches at 3, 7, 10, and 12 o'clock positions. Medical expert Dr. Naomi Poca of VSMMC testified that a finding of 7 o'clock notch is suggestive of an injury caused by a blunt instrument. Dr. Poca

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[30] 574 Phil. 175, 188-189 (2008).

further opined that if the subject had no history of operation or accident, said notch could have been caused by sexual abuse.[31]

Verily, therefore, AAA's assertion that she had been sexually ravished at least twice in 1999, as charged in Criminal Case Nos. DNO-3393 and DNO-3394, solidly conforms with the medical certificate and Dr. Poca's expert testimony. Indeed, where the victim's testimony is corroborated by physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place.[32]

As against AAA's positive and categorical testimony, appellant only interposes denial and alibi. But denial is the weakest of all defenses. It easily crumbles in the face of positive identification by accused as the perpetrator of the crime.[33] Appellant's claim that the complaints against him were orchestrated by Lucia Lawas out of spite, deserves scant consideration. Alleged motive of family feud, resentment, or revenge is not an uncommon defense, the same has never swayed the Court from lending full credence to the testimony of a complainant who remained steadfast throughout her direct and cross-examinations.[34]

We hold, however, that appellant is guilty of two (2) counts of qualified rape, not statutory rape in Criminal Case Nos. DNO-3393 and DNO-3394.

Statutory rape is committed by sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape. For the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act.

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[31] CA *rollo*, p. 90.

[32] *People v. Lumaho*, 744 Phil. 233, 243 (2014).

[33] *People v. Glino*, 564 Phil. 396, 419-420 (2007).

[34] *People v. Amistoso*, 701 Phil. 345, 361 (2013).

Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.[35]

Here, the prosecution offered AAA's testimony that she was born on July 1, 1991[36] and an unauthenticated photocopy of her certificate of live birth[37] to prove she was below twelve (12) years old when appellant, by asserting his moral ascendancy, succeeded in having carnal knowledge of her against her will in 1999. ***People v. Pruna***[38] enumerates the guidelines in proving the victim's age:

> In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.
>
> 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
>
> 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
>
> 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
>
> a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
>
> b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

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[35] *People v. Cadano, Jr.*, 729 Phil. 576, 584-585 (2014).

[36] TSN, June 13, 2011, p. 6.

[37] Folder of Exhibits, p. 5.

[38] 439 Phil. 440, 470-471 (2002).

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.

On the basis of ***Pruna***, we hold that AAA's testimony on her date of birth and the unauthenticated photocopy of her birth certificate do not constitute sufficient proof of her exact age during the two rape incidents. In ***People v. Lastrollo***,[39] the victim's testimony on her age was considered insufficient since it was not clearly and expressly admitted by the accused, as in this case. Also, in ***People v. Belen***,[40] a photocopy of the victim's birth certificate was not accorded probative weight.

To recall, the prosecution and the defense stipulated that AAA was still a minor in January 2000. But was she below twelve (12) years old when the twin counts of rape happened? The evidence on record do not say so. Surely, minority does not mean one is below twelve (12) years old. It only means one has not reached the age of majority (eighteen [18] years old).

In other words, appellant cannot be convicted of statutory rape. But, he is guilty of qualified rape in accordance with Articles 266-A and 266-B of the Revised Penal Code, which ordain:

Article 266-A. Rape: When And How Committed. - Rape is committed:

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[39] 798 Phil. 103, 120 (2016).

[40] 803 Phil. 751, 772 (2017).

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation
b) When the offended party is deprived of reason or otherwise unconscious;
c) By means of fraudulent machination or grave abuse of authority; and
d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Article 266-B. Penalty. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

x x x x x x x x x

Under the foregoing provisions, rape is qualified when: a) the victim is under eighteen (18) years of age; and b) committed by the victim's parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity within the third civil degree, or by the common-law spouse of the victim's parent. But, in order for an accused to be convicted of qualified rape, the Information itself must allege that the victim is under eighteen (18) years of age at the time of rape and the accused is the victim's parent, ascendant, step- parent, guardian, or relative by consanguinity or affinity within the third civil degree, or common-law spouse of the victim's parent. These are special

qualifying circumstances which alter the nature of the crime of rape and warrant the increase of the imposable penalty.[41]

In Criminal Case Nos. DNO-3393 and DNO-3394, it was uniformly alleged therein that appellant was AAA's stepfather and AAA was "*a virgin under 12 years of age*." The parties stipulated only on her minority, which means below eighteen (18) years old and not below twelve (12) years old. In any event, in view of the concurrence of the elements of relationship and age (below eighteen [18] years old), appellant indubitably committed qualified rape which warrants the imposition of the death penalty. Albeit by virtue of RA 9346, the death penalty has been reduced to *reclusion perpetua*.

As for appellant's civil liability, the award of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for each count of qualified rape should be granted in conformity with prevailing jurisprudence.[42]

WHEREFORE, the appeal is **DENIED**. In Criminal Case No. DNO-3393 and Criminal Case No. DNO-3394, appellant [redacted] is found **GUILTY** of **QUALIFIED RAPE** and sentenced to ***RECLUSION PERPETUA*** without eligibility of parole in each case.

He is further required **TO PAY AAA** for each count of **QUALIFIED RAPE** ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. All monetary awards are subject to six percent (6%) interest from finality of this decision until fully paid.

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[41] See *People v. Arcillas*, 692 Phil. 40, 52 (2012).

[42] *People v. Jugueta*, 783 Phil. 806, 848 (2016):

x x x x x x x x x

II. For Simple Rape/Qualified Rape:

1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346:

Civil indemnity - ₱100,000.00
Moral damages - ₱100,000.00
Exemplary damages - ₱100,000.00

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

THIRD DIVISION

[G.R. No. 232675. July 17, 2019]

MUNICIPALITY OF DASMARIÑAS, *petitioner, vs.* **DR. PAULO C. CAMPOS, substituted by his children JOSE PAULO CAMPOS, PAULO CAMPOS, JR., and ENRIQUE CAMPOS,** *respondents.*

[G.R. No. 233078. July 17, 2019]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **DR. PAULO C. CAMPOS, substituted by his children JOSE PAULO CAMPOS, PAULO CAMPOS, JR., and ENRIQUE CAMPOS,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; PRESCRIPTION; SINCE ONEROUS DONATION IS GOVERNED BY THE LAW ON CONTRACTS, ALL ACTIONS PERTAINING TO IT SHALL BE BROUGHT WITHIN TEN (10) YEARS FROM ACCRUAL OF THE RIGHT OF ACTION.— There is no question that Dr. Campos properly filed the action for Revocation of Donation within the allowable time under the law. The first donation between Dr. Campos and the NHA was a donation of an onerous nature, as it contained the stipulation to build the 36-m-wide access road. Jurisprudence, including

the *C-J Yulo & Sons, Inc. v. Roman Catholic Bishop of San Pablo, Inc.* case cited by the petitioners themselves, is clear that donations of an onerous type are governed by the law on contracts, and not by the law on donations. Being as such, under Article 1144 of the New Civil Code, all actions upon a written contract shall be brought within 10 years from accrual of the right of action, and herein, the respondents-heirs' right of action only accrued when the NHA donated the subject property to the Municipality of Dasmariñas, as this transfer effectively removed not only NHA's ability to complete the access road based on the stipulation, but also precluded any move on the part of the NHA to compel the transferee to finish the same.

2. ID.; LACHES; REQUISITES, REITERATED; DELAY IS FACTUALLY AND LEGALLY ABSENT IN CASE AT BAR; THE FACT THAT THIS CASE WAS FILED WITHIN THE 10-YEAR PRESCRIPTIVE PERIOD APTLY REMOVES THE CASE FROM THE CLUTCHES OF POSSIBLE LACHES.— While laches is principally a question of equity, and necessarily, there is no absolute rule as to what constitutes laches or staleness of demand, each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court and since laches is an equitable doctrine, its application is controlled by equitable considerations. Jurisprudence, however, has set established requisites for laches, *viz.*:(1) Conduct on the part of the defendant or one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy; (1) Conduct on the part of the defendant or one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy; (2) Delay in asserting the complainant's right, the complainant having had knowledge or notice of defendant's conduct and having been afforded an opportunity to institute a suit; (3) Lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his claim; and (4) Injury or prejudice to the defendant in the event relief accorded to the complainant, or the suit is not held barred. In this case, it cannot be said that Dr. Campos slept on his rights and is guilty of laches, as the second requisite of delay is factually and legally absent. Dr. Campos had shown patience in allowing the NHA the time to finish its obligation despite the long period that was starting to elapse, and filed the case only when it was

clear that the NHA could no longer fulfill its obligation. In addition, the fact that the case was filed within the prescriptive period of 10 years aptly removes the case from the clutches of possible laches.

3. ID.; OBLIGATIONS AND CONTRACTS; RESCISSION; ONEROUS DONATION; SUBSTANTIAL BREACH, AS A GROUND FOR RESCISSION OF THE DONATION, EXPLAINED AND DISTINGUISHED FROM CASUAL BREACH.— Axiomatically, the general rule is that rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are so substantial and fundamental as to defeat the object of the parties in making the agreement. Substantial breaches, unlike slight or casual breaches of contract, are fundamental breaches that defeat the object of the parties in entering into an agreement, and the question of whether the breach is slight or substantial is largely determined by the attendant circumstances.

4. ID.; ID.; ID.; ID.; SUBSTANTIAL BREACH WAS COMMITTED BY PETITIONER NATIONAL HOUSING AUTHORITY (NHA) WHEN IT FAILED TO CONSTRUCT THE ACCESS ROAD IN THE DEED OF DONATION.— [F]or a myriad of reasons, a substantial breach of contract was committed by the NHA when it only built a 20-m-wide access road, and not a mere casual breach which the petitioners allege would render nugatory the revocation of the donation. As gleaned from the provisions, the object of the agreement is clearly the construction of a 36-m-wide access road from Highway 17 to the Dasmariñas Resettlement Project, which was reiterated no less than three times in the Deed of Donation. There was no allowance for any deviation from that number, as stipulated or in the nature of the undertaking. The failure to construct the access road with the expressly mentioned specifications is unmistakably a breach of the same. The Court does not agree with the contention of the petitioners that the condition pertaining to the construction of the access road was complied with because the unpaved 16-m portion was still reserved to be completed. The stipulation in the Deed of Donation is clear that the entire 36-m property must be used for **actual construction** of the access road, and non-usage of even a portion would constitute contravention of the Deed of Donation, especially in this case when a substantial portion of the property ultimately remained

unused for the stated purpose and object of the donation. Law and jurisprudence consistently hold that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

5. **ID.; ID.; ID.; ID.; ID.; THE TRANSFER OF THE PROPERTY TO PETITIONER MUNICIPALITY DECIMATED ANY OPPORTUNITY FOR THE NHA TO COMPLY WITH THE CONDITION STATED IN THE DEED OF DONATION AS THE CONDITION CAN NO LONGER BE COMPLETED, THE TRIAL COURT'S ACT OF REVOKING THE DONATION WAS PROPER.—** The petitioners cannot also find solace in the provision stating that any delay in the development for the avowed purposes would only allow the respondents-heirs to reserve the right to use the property until such time that the original donee, the NHA, is in a position to use the property. The act of transferring the subject property to the Municipality of Dasmariñas, in effect, decimated any opportunity for the NHA to comply with the condition stated in the Deed of Donation and, as such, the NHA will never be in a position to utilize the property. The Court takes particular notice of the fact that nothing in the subsequent transfer agreement between the petitioners reiterates the condition that the access road be completed according to the specifications laid out in the original Deed of Donation, which means that there is no legal obligation on the part of the Municipality of Dasmariñas to complete the road, nor a way for the NHA to compel the same. As the condition can no longer be completed, the trial court's act of revoking the donation was proper.

6. **ID.; ID.; ID.; ID.; BAD FAITH IS ATTENDANT ON THE PART OF BOTH PETITIONERS; NHA SHOWED BAD FAITH BY DONATING THE PROPERTY WITHOUT COMPLYING WITH THE CONDITION AS WELL AS ITS FAILURE TO REPRODUCE THE CONDITION IN THE SECOND DONATION CONTRACT; THE MUNICIPALITY SHOWED BAD FAITH BY INTRODUCING STRUCTURES AND DEVELOPING THE LAND DESPITE A PENDING APPEAL OF THE DECISION REVOKING THE DONATION.—** Clearly, bad faith is attendant on the part of both the petitioners. The NHA showed bad faith by donating the property without substantially complying with the condition that was the purpose for the donation in the first place, as well

as failing to reproduce the condition in the second donation contract. The Municipality of Dasmariñas showed bad faith in the acquisition and its overall conduct in this case, by introducing structures and developing the land even with the knowledge that there was not only a pending appeal, but with the understanding that both the RTC and the CA ruled in favor of revoking the donation. If this Court were to reward the Municipality of Dasmariñas with the granting of its petition solely because existing structures would be affected, then it would encourage entities to build in bad faith hoping that the impracticality would sway the Court towards ruling in favor of keeping the status *quo*. Suffice it to say, that sort of precedent cannot and will never be set by this Court in the interest of justice, law, and fair play.

7. ID.; ID.; ID.; ID.; ID.; EQUITABLE RECOURSE OF GIVING PETITIONERS THE OPTION TO EXERCISE THE POWERS OF EMINENT DOMAIN TO KEEP THE PROPERTY AND CONTINUE THEIR IMPROVEMENTS, OFFERED.— There is, however, an equitable recourse, which the petitioners themselves recognize. To save the developments already made, the petitioners may choose to exercise the powers of eminent domain to keep the subject property and continue their infrastructure-based improvements. But the Court, in the interest of justice, will not grant the petitioners an easy way out of the hole they are in, when it was they who opened it in the first place.

APPEARANCES OF COUNSEL

Reina M. Villa for Municipality of Dasmariñas.
Kalaw Sy Selva & Campos for respondents in both cases.
Office of the Government Corporate Counsel for NHA.

D E C I S I O N

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

Before this Court are two separate Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court, which were

ordered consolidated in a Resolution[1] dated September 20, 2017. These challenge the Decision[2] dated November 10, 2016 and Resolution[3] dated July 3, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 100259, which affirmed the Decision[4] dated March 16, 2011 of the Regional Trial Court (RTC) of Imus, Cavite, Branch 22, in Civil Case No. 2459-01, the latter dismissing the complaint filed by the Municipality of Dasmariñas (now City of Dasmariñas) and the National Housing Authority (NHA) (collectively, the petitioners) for lack of merit.

Petitioner Municipality of Dasmariñas is a local government unit, while co-petitioner NHA is a government instrumentality created pursuant to Presidential Decree (P.D.) No. 757.[5] Respondent, the late Dr. Paulo C. Campos (Dr. Campos), substituted by his children-heirs Jose Paulo Campos, Paulo Campos, Jr. and Enrique Campos (respondents-heirs), was the former registered owner of the property subject of the case at bar who first filed a Petition for Revocation of Donation.[6]

The Facts

Dr. Campos was the absolute owner of certain parcels of land situated in Dasmariñas, Cavite, covered by Transfer Certificate of Title (TCT) Nos. T-69124, T-69125, T-76195, and [T-17736].[7] On July 28, 1976, Dr. Campos executed a Deed of Donation (First Deed of Donation) in favor of the NHA, involving a parcel of land with an area of 12,798 square meters.[8]

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[1] *Rollo* (G.R. No. 232675), pp. 46-47.

[2] Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Mario V. Lopez and Elihu A. Ybañez concurring; *id*. at 18-29.

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

[4] *Rollo* (G.R. No. 233078), pp. 92-100.

[5] CREATING THE NATIONAL HOUSING AUTHORITY AND DISSOLVING THE EXISTING HOUSING AGENCIES, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES (approved on July 31, 1975).

[6] *Rollo* (G.R. No. 233078), pp. 3-4.

[7] *Id*. at 4.

[8] *Id*.

Under the Deed of Donation, the donee NHA was to construct a 36-meter-wide access road from Highway 17 to the Dasmariñas Resettlement Project.[9] The pertinent provisions of the Deed of Donation state:

> B. WHEREAS, the DONOR has agreed to donate in favor of the DONEE portions of the above listed properties to be traversed by the 36 meter wide access road to be constructed by the National Housing Authority from Highway 17 to the Dasmariñas Resettlement Project which are particularly described in the technical descriptions x x x[.]
>
> x x x x x x x x x
>
> NOW, THEREFORE, for and in consideration of the foregoing premises, the DONOR by these presents hereby convey and transfer by way of donation in favor of the DONEE, the parcels of land described in Annexes "A", "B", "C" and "D" which will be traversed by the [36] meter wide access road to be constructed by the National Housing Authority from Highway 17 to the Dasmariñas Resettlement Project and designated as Lots 2-C-1; 2-D-2; 2-B-1-A and 1-B, all situated in the Municipality of Dasmariñas, Province of Cavite, containing a total area of TWELVE THOUSAND SEVEN HUNDRED NINETY EIGHT (12,798) square meters, more or less[.] x x x
>
> It is hereby stipulated that should the DONEE fail to use the area or part of it for the 36 meter access road, or should its development be delayed, the DONOR reserves the right to use it until such a time that DONEE is in a position to use the said parcel of properties.[10]

In an attempt to comply with the provisions of the Deed of Donation, the NHA constructed a 20-m-wide access road, in lieu of the stipulated 36-m-wide access road.[11] The NHA reasoned that the volume of the traffic at that time did not justify the outright construction of the 36-m-wide access road, and that it had reserved the remaining 16 m for road widening purposes. The NHA also promised that the property had not been diverted or used for any other purpose.[12]

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[9] *Id*. at 44.

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

[11] *Id*. at 4.

[12] *Id*. at 8.

However, on June 13, 1993, without any notice to Dr. Campos, the NHA donated the subject property to the Municipality of Dasmariñas. This was done allegedly pursuant to Section 31 of P.D. No. 957.[13] The pertinent provisions of the Deed of Donation and Acceptance (Second Deed of Donation) executed between the petitioners read, to wit:

> WHEREAS, the DONOR being the registered owner and developer of Dasmariñas Bagong Bayan Resettlement Project has made possible the concreting of road networks containing an aggregate land area of 219,765.60 sq. meters more or less[.]
>
> x x x x x x x x x
>
> WHEREAS, pursuant to Section 31 of [P.D.] No. 957, as amended by Section 2 of [P.D.] No. 1216, the owner or developer of a subdivision shall provide adequate roads, alleys, sidewalks and open spaces for public purposes, the donation of which to the City or Municipality where the same belongs and the acceptance of said donation is mandatory.
>
> WHEREAS, pursuant to Board Resolution No. 2696 dated June 2, 1993, a copy of which is hereto attached as Annex "E", the DONOR has agreed to donate in favor of the DONEE the above-stated road works.
>
> WHEREAS, the DONEE under Resolution No. 65-S-88 dated June 20, 1988 of its Sangguniang Bayan. attached hereto as Annex "F", has agreed to the donation by the DONOR of all roads in the Project.

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[13] REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF (Approved on July 12, 1976).

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

NOW, THEREFORE, for and in consideration of the foregoing premises, the DONOR by these presents does hereby cede, transfer and convey by way of donation in favor of the DONEE the abovementioned roads, containing a total area of 219,765.60 square meters, more or less, all situated at Dasmariñas Bagong Bayan Resettlement Project, the as-built-plan of which are attached as Annexes "A", "B", "C" and "D", subject to the following conditions:

1.) The donated concreted roads shall be used exclusively for public purpose as roads and shall not be converted to other uses;

2.) The expenses to be incurred in the maintenance and repair of such roads shall be shouldered solely by the DONEE;

3.) Appropriate traffic precautionary measures shall be implemented by the DONEE on the subject roads.

The DONOR has reserved sufficient properties in its full possession and enjoyment in accordance with the provisions of its Charter.[14]

Due to the failure of the NHA to fully comply with the provisions in the Deed of Donation despite the long lapse of time, and due to the foregoing transaction between the petitioners, on November 13, 2001, Dr. Campos filed an action for Revocation of Donation against the NHA with the RTC of Dasmariñas, Branch 90.[15] Dr. Campos claimed that the NHA failed to comply with the condition attached to the donation and construct the 36-m-wide access road. He also alleged that the NHA further violated the parties' agreement by subsequently donating the subject property to the Municipality of Dasmariñas.[16]

Proceedings in the Trial Court

In the RTC Branch 90, the Municipality of Dasmariñas and the NHA filed their Answers to Dr. Campos' claim on December 19, 2001 and January 31, 2002, respectively.[17] The case was

[14] *Rollo* (G.R. No. 233078), pp. 51-52.

[15] *Id.* at 141.

[16] *Id.*

[17] *Id.*

re-raffled to the RTC, Branch 22, which directed the parties to submit their respective memoranda.

On June 2, 2007, Dr. Campos passed away. As a result, the respondents-heirs submitted a Notice of Death with Manifestation, as well as a Motion for Substitution, which was granted by the RTC.[18]

On March 16, 2011, the RTC handed its Decision,[19] partially granting the action for Revocation of Donation against the petitioners.[20] The dispositive portion of the RTC decision reads:

> WHEREFORE, the petition is hereby partially granted in that:
>
> (a) The Deed of Donation dated July 28, 1976 involving 12,798 square meters of land covered by [TCT] Nos. T-69124, T-69125, T-76195 and T-17786 is declared partially revoked to the extent of the area of the property not included in the 20-meter wide access road;
>
> (b) The Deed of Donation and Acceptance dated 1993 is declared without legal effect to the extent of the area of the property not included in the 20-meter wide access road referred to in paragraph (a) above;
>
> (c) [Dr. Campos], as represented by his legal heirs, is declared the rightful owner of the area of the property not included in the 20-meter wide access road referred to in paragraphs (a) and (b) above and reconveyance of the said area is hereby ordered in favor of [Dr. Campos] as represented by his legal heirs; and,
>
> (d) [The petitioners] are ordered to immediately turn over the possession and control of the subject property in favor of [Dr. Campos'] legal heirs.
>
> [Dr. Campos'] claims for moral damages, attorney's fees and cost of suit are denied.
>
> SO ORDERED.[21]

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[18] *Id*.

[19] *Id*. at 92-100.

[20] *Id*. at 100.

[21] *Id*.

The Motion for Reconsideration filed by the NHA was denied by the RTC on August 12, 2011.[22] Both the petitioners, thus, filed their Notices of Appeal.[23]

Proceedings in the CA

On November 10, 2016, the CA rendered its Decision, denying the petitioners' Appeal and affirming the RTC Decision dated March 16, 2011.[24]

In affirming the decision of the RTC, the CA agreed with the lower court that the donation is one that is onerous in nature, as it contained a condition imposed upon the NHA.[25] Since the donation was onerous, any action for the revocation of the same should be brought within 10 years from accrual of the right of action. The CA held that this was timely effected by Dr. Campos.

The CA also found that the NHA violated the terms of the Deed of Donation and failed to fulfill its obligation to build a 36-m-wide access road.[26] The CA stated that the evidence on record indisputably showed that the NHA only built a 20-m-wide access road despite the more than 25 years since the donation was perfected. It was held, thus, that the NHA's omission was not merely a casual breach as advocated by the petitioners, but a substantial one.

Likewise, the CA found that the reason behind the subsequent donation of the subject property by the NHA to the Municipality of Dasmariñas was unjustified. It was held that P.D. No. 957 refers to the transfer of a condominium or a subdivision project, and since the Dasmariñas Resettlement Project is not classified as either a condominium or a subdivision project under the law, then the provisions of P.D. No. 957 cannot be used as justifiable reason to donate the same.[27]

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[22] *Id*. at 116-118.

[23] *Id*. at 6.

[24] *Id*. at 40.

[25] *Id*. at 32.

[26] *Id*. at 37-38.

[27] *Id*. at 39.

The dispositive portion of the CA decision, affirming the findings of the lower court, reads, to wit:

> WHEREFORE, the appeal is DENIED. The decision issued by the [RTC] of Imus, Cavite Br. 22 dated March 16, 2011 in Civil Case No 2459-01 is AFFIRMED.[28]

The petitioners' respective Motions for Reconsideration were likewise denied by the CA in a Resolution[29] dated July 3, 2017, prompting the petitioners to file with the Court the instant consolidated Petition.

In the interim, the Municipality of Dasmariñas commenced construction and road widening works along Governor Mangubat Avenue, in the vicinity of the portion adjudged for reconveyance to the respondents-heirs.[30] Accordingly, the respondents-heirs wrote a letter to the Municipality of Dasmariñas on January 18, 2018, seeking clarification as to how the construction and road widening works would affect the property subject of the consolidated case, as well as praying that the parties keep the status *quo* and defer any further works until final resolution of the Court.[31]

In a letter-response[32] dated February 12, 2018, the Municipality of Dasmariñas, through City Engineer Florante Timbang, replied that it intended to proceed with the construction and road widening works on the subject property, notwithstanding the pendency of the petitions. The letter response stated:

> For all intents and purposes, at present, the City of Dasmariñas is still the owner of the 36 meter wide access road which includes the donated lot of [Dr. Campos]. Being the owner of the 36 meter access road, the local government can make the necessary road works including the road widening that the City of Dasmariñas is currently undertaking.

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[28] *Id*. at 40.

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

[30] *Rollo* (G.R. No. 232675), pp. 85-86.

[31] *Id*. at 86.

[32] *Id*. at 86-87.

Moreover, if the City will exclude the portion donated by [Dr. Campos] to the road widening and construction of drainage in Governor Mangubat Avenue, the portion starting from the exit ramp of the DLSU-HIS going towards the 7-Eleven convenience store near the creek the road will be having an uneven width instead of the six (6) lanes as originally planned. There will be no drainage in that area and flooding will occur which shall not only unduly prejudice the occupants of nearby establishments but also those who are passing in the area.

In the event that the Supreme Court shall rule in favor of the revocation of the donation, for the promotion of general welfare and considering that Governor Mangubat is the primary road from Aguinaldo Highway going to Congressional Avenue in Kadiwa linking the town proper to different barangays in the Dasmariñas Bagong Bayan, the City of Dasmariñas shall be constrained and left without any alternative but to exercise its power of eminent domain and expropriate the property.[33]

On August 8, 2018, the respondents-heirs filed a Motion for Early Resolution,[34] praying for the Court to resolve the subject Petitions at the earliest opportunity.

The Municipality of Dasmariñas subsequently filed a Manifestation[35] dated August 24, 2018, likewise stating that, given the supervening events, it would also appreciate the earlier resolution of the instant case.

With the foregoing factual antecedents in mind, the Court will now proceed to rule on this consolidated Petition.

The Issues

The issues in this case are as follows:

First, as to the procedural aspect of the case, whether or not the action to revoke the Deed of Donation has prescribed and/or is barred by laches.

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[33] *Id*.

[34] *Id*. at 85-89.

[35] *Rollo* (G.R. No. 233078), pp. 213-221.

Second, as to the substantial merits, whether or not the CA gravely erred when it affirmed the decision of the RTC that the NHA violated the terms of the Deed of Donation, said violations authorizing the partial revocation of the property donated, specifically the unused 16 m, and whether or not petitioners have proffered any valid justification to show any infirmity in the decision.

The Arguments of the Parties

The petitioners allege that the CA erred when it held that the action to revoke the Deed of Donation had not yet prescribed pursuant to Article 1144 of the Civil Code,[36] the latter provision stating that an action upon a written contract must be brought within 10 years from the time the right of action accrued.[37] In this case, the CA stated that the right of action accrued when the NHA donated the subject property to the Municipality of Dasmariñas.[38] The petitioners allege that the reckoning point should be at the time the late Dr. Campos discovered that the NHA only constructed a 20-m-wide access road instead of the stipulated 36-m-wide access road,[39] which means that the right to file had long prescribed when Dr. Campos filed an action to revoke the donation on November 13, 2001.

Finally, the NHA also alleges that the respondents-heirs, particularly Dr. Campos, are guilty of laches.[40] In particular, Dr. Campos allegedly had known ever since that the NHA constructed a 20-m-wide access road instead of one that was

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[36] *Id*. at 12.

[37] **Art. 1144.** The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

[38] *Rollo* (G.R. No. 233078), p. 12.

[39] *Id*.

[40] *Id.* at 16.

36-m-wide, however, he "slept on his rights and waited for a period of 25 years before filing the action for revocation."[41]

On the substantial aspect, despite the fact that 16 m of the donated property remain unused for the stipulated purpose to this day, the petitioners allege that the NHA actually complied with the condition imposed by Dr. Campos pertaining to the construction of the access road.[42] The petitioners advocate their side that there was full compliance with the condition stipulated in the Deed of Donation, as there was actual construction of the access road, albeit only 20 m wide, and the remaining 16 m was reserved for road widening purposes.[43] While ultimately only a 20-m-wide access road was constructed by the NHA, the petitioners allege that the unpaved portion of the donated property remained to be part of the latter, and was not used for any other purpose. The petitioners state that the reason for this was the high volume of traffic that, at that time, would not allow outright construction and completion of the road.[44]

For the petitioners, the fact that the donated property, up to the present, remains to be part of the access road from Aguinaldo Highway up to the Dasmariñas Resettlement Project, and the fact that the access road is more developed thus neighboring properties of the respondents-heirs, as well as other pedestrians, have benefited,[45] these lend credence to their allegation that there was no breach of the condition.

The petitioners likewise point to paragraph C of the Deed of Donation, which states that any delay in the development for the avowed purposes would only allow the donor (respondents-heirs in the case) to reserve the right to use the property until such time that the donee (NHA) is in a position

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[41] *Id.*

[42] *Rollo* (G.R. No. 232675), p. 5.

[43] *Rollo* (G.R. No. 233078), p. 8.

[44] *Id.* at 7.

[45] *Rollo* (G.R. No. 232675), p. 8.

to use the property, and not allow the revocation of the Deed of Donation.[46] The paragraph is reiterated as follows:

> It is hereby stipulated that should the donee fail to use the area or part of it for the 36[-]meter access road, or should its development be delayed, the donor reserves the right to use it until such time that the donee is in a position to use the property.[47]

The petitioners also state that even assuming that there was a breach of the condition imposed, the same does not warrant the revocation of the donation, as this constituted merely a casual breach of the Deed of Donation, and not a substantial breach that would warrant the rescission of the same.[48]

On the side of the respondents-heirs, they disagree that their right of action had not yet prescribed. The respondents-heirs agree with the CA that Article 1144 of the Civil Code is the applicable legal provision, pursuant to jurisprudence that states that donations with an onerous clause are governed by the rules on contracts and the general rules on prescription apply in the said revocation, and pursuant to the aforecited Article 1144 which states that all actions upon a written contract shall be brought within 10 years from accrual of the right of action.[49] The respondents-heirs argue that since the right of action accrued in 1993 (the year when the NHA donated the subject property to the Municipality of Dasmariñas), the action to revoke the Deed of Donation had not yet prescribed when the Complaint was filed on November 13, 2001.[50]

For the respondents-heirs, it is crystal clear that the NHA clearly failed to comply with the agreement between the parties as clearly stated in the Deed of Donation which can be readily observed in the fact that a 20-m-wide access road was built

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[46] *Rollo* (G.R. No. 233078), pp. 10-11.

[47] *Id.*

[48] *Rollo* (G.R. No. 232675), pp. 6-7.

[49] *Id*. at 51-53.

[50] *Id*.

instead of the agreed upon 36-m-wide one.[51] This, according to the respondents-heirs, is not a mere casual breach as the petitioners would argue, as the 16 m difference is more than substantial and would definitely warrant the revocation of the donation. The respondents-heirs state that the fact that the NHA donated the property means that the missing 16 m will never be devoted for road widening or as an access road.[52] Subsequent donation also contravenes the provision in the initial Deed of Donation that "the donor (Dr. Campos) reserves the right to use it until such time that the done[e] (NHA) is in a position to use the property," such provision now being an impossibility because it was not reproduced in the second deed.[53]

Ruling of the Court

After a perusal of the pleadings and arguments of the parties, the Court finds that the consolidated petition is bereft of merit.

As to the Issues on Prescription and Laches

There is no question that Dr. Campos properly filed the action for Revocation of Donation within the allowable time under the law. The first donation between Dr. Campos and the NHA was a donation of an onerous nature, as it contained the stipulation to build the 36-m-wide access road. Jurisprudence, including the *C-J Yulo & Sons, Inc. v. Roman Catholic Bishop of San Pablo, Inc.*[54] case cited by the petitioners themselves, is clear that donations of an onerous type are governed by the law on contracts, and not by the law on donations.[55] Being as such, under Article 1144 of the New Civil Code, all actions upon a written contract shall be brought within 10 years from

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[51] *Id*. at 49.

[52] *Id*. at 50.

[53] *Id*.

[54] 494 Phil. 282 (2005).

[55] *Republic of the Phils. v. Silim*, 408 Phil. 69, 77 (2001).

accrual of the right of action, and herein, the respondents-heirs' right of action only accrued when the NHA donated the subject property to the Municipality of Dasmariñas, as this transfer effectively removed not only NHA's ability to complete the access road based on the stipulation, but also precluded any move on the part of the NHA to compel the transferee to finish the same.

If the Municipality of Dasmariñas chooses not to honor the previous agreement between the NHA and the respondents-heirs, there would be nothing to compel the Municipality of Dasmariñas from doing so. This is a clear concern for the respondents-heirs, which could have only realistically been raised as a red flag at the onset of the second donation and after a perusal of the contents therein. Thus, the CA correctly ruled that the prescriptive period could only start running from the time of the second donation between the petitioners.

There is likewise no merit to the assertion that the laches doctrine applies as a ground to overturn the CA ruling. While laches is principally a question of equity, and necessarily, there is no absolute rule as to what constitutes laches or staleness of demand, each case is to be determined according to its particular circumstances.[56] The question of laches is addressed to the sound discretion of the court and since laches is an equitable doctrine, its application is controlled by equitable considerations.[57]

Jurisprudence, however, has set established requisites for laches, *viz.*:

(1) Conduct on the part of the defendant or one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy;

(2) Delay in asserting the complainant's right, the complainant having had knowledge or notice of defendant's conduct and having been afforded an opportunity to institute a suit;

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[56] *Agra v. Philippine National Bank*, 368 Phil. 829, 842 (1999).

[57] *Id.*

(3) Lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his claim; and

(4) Injury or prejudice to the defendant in the event relief accorded to the complainant, or the suit is not held barred.[58]

In this case, it cannot be said that Dr. Campos slept on his rights and is guilty of laches, as the second requisite of delay is factually and legally absent. Dr. Campos had shown patience in allowing the NHA the time to finish its obligation despite the long period that was starting to elapse, and filed the case only when it was clear that the NHA could no longer fulfill its obligation.

In addition, the fact that the case was filed within the prescriptive period of 10 years aptly removes the case from the clutches of possible laches.

In *Agra v. Philippine National Bank*,[59] the Court held:

The second element cannot be deemed to exist. Although the collection suit was filed more than seven years after the obligation of the sureties became due, the lapse was within the prescriptive period for filing an action. In this light, we find immaterial petitioners1 insistence that the cause of action accrued on December 31, 1968, when the obligation became due, and not on August 30, 1976, when the judicial demand was made. In either case, both submissions fell within the ten-year prescriptive period. In any event, "the fact of delay, standing alone, is insufficient to constitute laches."

Petitioners insist that the delay of seven years was unreasonable and unexplained, because demand was not necessary. Again we point that, unless reasons of inequitable proportions are adduced, a delay within the prescriptive period is sanctioned by law and is not considered to be a delay that would bar relief. x x x

Thus, where the claim was filed within the three-year statutory period, recovery therefore cannot be barred by laches.[60] (Citations omitted)

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[58] *Id.* at 843.

[59] 368 Phil. 829 (1999).

[60] *Id.* at 843-844.

To note, the petitioners themselves point out that nothing in the Deed of Donation gives an exact timeline for the NHA to complete the building of the access road, saying that "[t]he construction of the exactly [36-m-wide] access road is not time-bound,"[61] which means that, for the time NHA was in control of the property, the respondents-heirs' cause of action could not have arisen. This would explain the relatively long period before which the late Dr. Campos filed a complaint for Revocation of Donation, because before the subsequent donation to the Municipality of Dasmariñas, the respondents-heirs, in their generosity, gave the NHA leeway to hopefully deliver on its pledge to complete the construction. Unfortunately, the second donation completely eradicated any vestiges of hope that would be fulfilled, prompting respondents to take action, well within the time allowed by the statute.

As to the Revocation of the Deed of Donation

Even notwithstanding the procedural aspects of the case, on the substantial merits on whether or not the NHA committed a substantial breach that would justify the partial revocation of the Deed of Donation, as well as the facts of the case, the petitioners' arguments fall flat. At the onset, the Court notes that the factual findings that the NHA failed to comply with the express stipulations contained in the Deed of Donation are consistent and parallel with that of the trial court, as well as the CA. Thus, these findings of fact are binding on the Court of last resort unless there was an oversight or misinterpretation on the part of the lower courts.[62]

As held in *The Secretary of Education v. Heirs of Rufino Dulay, Sr.*:[63]

Under Rule 45 of the 1997 Rules of Civil Procedure, only questions of law may be raised in a petition for review on *certiorari*, for the simple reason that this Court is not a trier of facts. It is not for the

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[61] *Rollo* (G.R. No. 233078), p. 10.

[62] *People v. Tamolon, et al.*, 599 Phil. 542, 551 (2009).

[63] 516 Phil. 244 (2006).

Court to calibrate the evidence on record, as this is the function of the trial court. Although there are well-defined exceptions to the rule, nevertheless, after a review of the records, we find no justification to depart therefrom. **Moreover, the trial courts' findings of facts, as affirmed by the appellate court on appeal, are binding on this Court, unless the trial and appellate courts overlooked, misconstrued or misinterpreted facts and circumstances of substance which, if considered, would change the outcome of the case.**[64] (Emphasis and underscoring Ours)

The Court finds that the petitioners were unable to prove the presence of any possible oversight that would create doubt on the findings of fact of the trial court and the CA. The Court's own review of the evidence on record will show that indeed, a substantial breach, and not just a slight breach, was committed by the NHA that would validate a revocation of the donation and a rescission of the subject contract between the NHA and the respondents-heirs necessitating the immediate return of the unused property back to the respondents-heirs.

Axiomatically, the general rule is that rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are so substantial and fundamental as to defeat the object of the parties in making the agreement.[65] Substantial breaches, unlike slight or casual breaches of contract, are fundamental breaches that defeat the object of the parties in entering into an agreement,[66] and the question of whether the breach is slight or substantial is largely determined by the attendant circumstances.[67]

Based on the foregoing, and for a myriad of reasons, a substantial breach of contract was committed by the NHA when

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[64] *Id.* at 251.

[65] *Song Fo & Co. v. Hawaiian-Philippine Co.*, 47 Phil. 821, 827 (1925).

[66] *Maglasang v. Northwestern University, Inc.*, 707 Phil. 118, 125-126 (2013).

[67] *G.G. Sportswear Mfg. Corp. v. World Class Properties, Inc.*, 627 Phil. 703, 715 (2010).

it only built a 20-m-wide access road, and not a mere casual breach which the petitioners allege would render nugatory the revocation of the donation.

As gleaned from the provisions, the object of the agreement is clearly the construction of a 36-m-wide access road from Highway 17 to the Dasmariñas Resettlement Project, which was reiterated no less than three times in the Deed of Donation. There was no allowance for any deviation from that number, as stipulated or in the nature of the undertaking. The failure to construct the access road with the expressly mentioned specifications is unmistakably a breach of the same.

The Court does not agree with the contention of the petitioners that the condition pertaining to the construction of the access road was complied with because the unpaved 16-m portion was still reserved to be completed.[68] The stipulation in the Deed of Donation is clear that the entire 36-m property must be used for **actual construction** of the access road, and non-usage of even a portion would constitute contravention of the Deed of Donation, especially in this case when a substantial portion of the property ultimately remained unused for the stated purpose and object of the donation. Law[69] and jurisprudence consistently hold that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[70]

In *Century Properties, Inc. v. Babiano, et al.*,[71] citing *Norton Resources and Dev't. Corp. v. All Asia Bank Corp.*,[72] the Court held:

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[68] *Rollo* (G.R. No. 232675), p. 5.

[69] CIVIL CODE OF THE PHILIPPINES, Article 1370.

[70] *The Wellex Group, Inc. v. U-Land Airlines Co., Ltd.*, 750 Phil. 530, 568 (2015).

[71] 789 Phil. 270 (2016).

[72] 620 Phil. 381, 388-389 (2009).

The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. **Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense.** Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not.[73] (Emphasis and underscoring Ours)

Thus, any assertions that there was compliance with the provisions of the Deed of Donation are simply and completely spurious in light of the fact that there was clear failure to build the access road despite the long period of time given for the NHA to do so. The NHA's contention that outside factors, such as the volume of traffic at that time,[74] were to blame for any apparent breach do not offer a semblance of validity. Even assuming that this was true, almost two decades had lapsed from the time the property was donated, to the subsequent donation from the NHA to the Municipality of Dasmariñas. It is simply inconceivable that in that lengthy span of time, the NHA would have not been able to address the problem of traffic and/or found a way to alleviate that specific obstacle in order to complete the construction of the access road. The NHA's failure to do so indicates the lack of prioritizing on its part to comply with the agreement, and it cannot now use extraneous factors as justification for its own lack of diligence.

The contemporaneous and subsequent actions of the NHA and the Municipality of Dasmariñas exacerbate the breach

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[73] *Century Properties, Inc. v. Babiano, et al.*, *supra* note 71, at 280.

[74] *Rollo* (G.R. No. 233078), p. 8.

committed, and take it firmly out of the realm of slightness. The petitioners' invocation of *C-J Yulo & Sons, Inc.*[75] case as analogous to their case in actuality highlights their erroneous actions because the circumstances in the cited case and the case at bar are drastically different.

In the *C-J Yulo & Sons, Inc.* case, a condition for the donation between the parties was the construction of a home for the aged and the infirm, and that, except with prior written consent of the donor or its successor, the donee shall not use the land except for the purpose as provided.[76] The donee, however, leased a portion of the property without the prior written consent of the donor, alleging however that this was to generate funds for the realization of the stated purpose.

The Court, in *C-J Yulo & Sons, Inc.*, looked at the fact that the subsequent donations were to protect the property and fulfill the object of the donation, which was to build a home for the aged, something the donee was able to adequately prove. The Court explained, thus:

> The Court, however, understands that such a condition was written with a specific purpose in mind, which is, to ensure that the primary objective for which the donation was intended is achieved. A reasonable construction of such condition rather than totally striking it would, therefore, be more in accord with the spirit of the donation. Thus, for as long as the contracts of lease do not detract from the purpose for which the donation was made, the complained acts of the donee will not be deemed as substantial breaches of the terms and conditions of the deed of donation to merit a valid revocation thereof by the donor.
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> Finally, anent petitioner's contention that the [CA] failed to consider that respondent had abandoned the idea of constructing a home for the aged and infirm, the explanation in respondent's comment is enlightening. Petitioner relies on Bishop Bantigues letter dated June 21, 1990 as its basis for claiming that the donee had altogether abandoned the idea of constructing a home for the aged and the infirm

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[75] *Supra* note 54.

[76] *Id.* at 287.

on the property donated. Respondent, however, explains that the Bishop, in his letter, written in the vernacular, expressed his concern that the surrounding area was being considered to be re-classified into an industrial zone where factories are expected to be put up. There is no question that this will definitely be disadvantageous to the health of the aged and the infirm. Thus, the Bishop asked permission from the donor for a possible exchange or sale of the donated property to ultimately pursue the purpose for which the donation was intended in another location that is more appropriate.

The Court sees the wisdom, prudence and good judgment of the Bishop on this point, to which it conforms completely. We cannot accede to petitioner's view, which attributed the exact opposite meaning to the Bishop's letter seeking permission to sell or exchange the donated property.[77]

As mentioned, substantial, unlike slight or casual breaches of contract are fundamental breaches that defeat the object of the parties in entering into an agreement.[78] Thus, the object of the parties is a vital indicator in determining whether the breach is substantial, or merely casual and minor. The stark difference in the *C-J Yulo & Sons, Inc.* case with the one advocated by the petitioners is that the subsequent acts of the donee, which would have constituted material breaches of the provisions of the donation contract should they be considered in isolation sans the purpose, were held to be casual breaches as they were actually done in furtherance for the avowed purpose to construct a home for the aged.

In the case herein, the NHA failed to show any concrete proof that it was bent on fulfilling its obligation to complete the construction of the access road. The mere allegation that it "reserved" the remaining portion is inconsistent with its simultaneous and concurrent acts, which include failing to build despite the long period with the opportunity to do so. In fact, the current state of the property, which has now seen

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[77] *Id.* at 295-296.

[78] *Maglasang v. Northwestern Inc. University*, *supra* note 66, at 125-126.

developments started and completed by the Municipality of Dasmariñas, would readily show that the remaining portion has obviously not been reserved, a situation that prompted respondents to file a Motion for Early Resolution in order to preserve the property which had been made the subject of development by the Municipality of Dasmariñas despite the pendency of its appeal. This clearly shows bad faith on the part of the petitioners, and proves that the NHA's contention that the remaining portion meant to be converted into an access road remained to be reserved is a sham.

The NHA's flimsy attempts to show that the non-fulfillment of the condition was out of its hands and that it had every intention of completing the road, are contradicted by its own actions, not the least of it was the subsequent donation to the Municipality of Dasmariñas. The petitioners cannot also find solace in the provision stating that any delay in the development for the avowed purposes would only allow the respondents-heirs to reserve the right to use the property until such time that the original done, the NHA, is in a position to use the property. The act of transferring the subject property to the Municipality of Dasmariñas, in effect, decimated any opportunity for the NHA to comply with the condition stated in the Deed of Donation and, as such, the NHA will never be in a position to utilize the property. The Court takes particular notice of the fact that nothing in the subsequent transfer agreement between the petitioners reiterates the condition that the access road be completed according to the specifications laid out in the original Deed of Donation, which means that there is no legal obligation on the part of the Municipality of Dasmariñas to complete the road, nor a way for the NHA to compel the same. As the condition can no longer be completed, the trial court's act of revoking the donation was proper.

It is likewise untrue, as the petitioners allege, that the subsequent donation of the subject property from the NHA to the Municipality of Dasmariñas was required by law, particularly Section 31 of P.D. No. 957. This reads, to wit:

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

This provision is inapplicable and cannot be used to justify the subsequent transfer for the simple reason that the Dasmariñas Resettlement Project is neither a subdivision project nor a condominium project, either of which would legally mandate a transfer. Under the same P.D. No. 957, a subdivision project, as well as a condominium project, is respectively defined as such:

15(d) Subdivision project. "Subdivision project" shall mean a tract or a parcel of land registered under Act No. 496 which is partitioned primarily for residential purposes into individual lots with or without improvements thereon, and offered to the public for sale, in case or in installment terms. It shall include all residential, commercial, industrial and recreational areas as well as open spaces and other community and public areas in the project.

x x x x x x x x x

Condominium project. "Condominium project" shall mean the entire parcel of real property divided or to be divided primarily for residential purposes into condominium units, including all structures thereon.

In the mind of this Court, and in agreement with the CA, the Dasmariñas Resettlement Project does not constitute a subdivision nor a condominium project that would necessitate the transfer. The onus was on the petitioners to prove that the project was classified as such, but they were not able to produce any evidence aside from their bare assertions. Perforce, this justification cannot stand even as to show a possibility that the transfer was effected in good faith.

As a final note, the Court is well-aware of the long period from the inception of the case up to the present. Since the time

the case was filed back in 2001, more than a decade ago, a myriad of supervening events has taken place, including, as mentioned by both parties, the construction of buildings and the commencement of infrastructure projects directly or indirectly involving the subject property. Indeed, as emphasized by the petitioners in their pleadings, the current structures will be affected by the upholding of the revocation and the return of the affected property to the respondents-heirs.

However, it must be stressed that any dire effects of the revocation of the donation are solely on the account of the petitioners. The petitioners' allegations that the access road is more developed and that the neighboring properties have been benefited cannot hold up against the clear breach of the contract committed by the NHA, and subsequently allowed by both the petitioners. Even if proven, the apparent showings of pedestrian and city benefits are *non sequitur*, and clearly it is an immense leap of the imagination to correlate the petitioners' act with the clear failure to comply with the condition despite the extended period for doing so.

Clearly, bad faith is attendant on the part of both the petitioners. The NHA showed bad faith by donating the property without substantially complying with the condition that was the purpose for the donation in the first place, as well as failing to reproduce the condition in the second donation contract. The Municipality of Dasmariñas showed bad faith in the acquisition and its overall conduct in this case, by introducing structures and developing the land even with the knowledge that there was not only a pending appeal, but with the understanding that both the RTC and the CA ruled in favor of revoking the donation. If this Court were to reward the Municipality of Dasmariñas with the granting of its petition solely because existing structures would be affected, then it would encourage entities to build in bad faith hoping that the impracticality would sway the Court towards ruling in favor of keeping the status quo. Suffice it to say, that sort of precedent

cannot and will never be set by this Court in the interest of justice, law, and fair play.

There is, however, an equitable recourse, which the petitioners themselves recognize. To save the developments already made, the petitioners may choose to exercise the powers of eminent domain to keep the subject property and continue their infrastructure-based improvements. But the Court, in the interest of justice, will not grant the petitioners an easy way out of the hole they are in, when it was they who opened it in the first place.

WHEREFORE, the consolidated petition is **DENIED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 242947. July 17, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARIO MANABAT *y* DUMAGAY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS OF BOTH CRIMES, ENUMERATED; REQUIREMENTS FOR SUCCESSFUL PROSECUTION OF DRUGS CASES.— 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. 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 also requires ***strict compliance*** with procedures laid down by it to ensure that rights are safeguarded.

2. **ID.; ID.; ID.; PROCEDURES THAT POLICE OPERATIVES MUST FOLLOW TO MAINTAIN THE INTEGRITY OF CONFISCATED DRUGS, ENUMERATED.—** Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crimes, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation;** and (2) **the physical inventory and photographing must be done in the presence of** (a) **the accused or his/her representative or counsel,** (b) **an elected public official,** (c) **a representative from the media,** and (d) **a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

3. **ID.; ID.; ID.; ID.; REQUIREMENTS ON HOW TO CONDUCT THE PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED DRUGS, EXPLAINED; CONSIDERING THAT A BUY-BUST OPERATION IS A PLANNED ACTIVITY, THE PRESENCE OF THE REQUIRED WITNESSES CAN EASILY BE COMPLIED WITH.—** 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 can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has enough time to gather and bring with it the said witnesses.

4. ID.; ID.; ID.; THE COURT HOLDS THAT THE BUY-BUST OPERATION WAS NOT CONDUCTED IN ACCORDANCE WITH LAW; CIRCUMSTANCES IN CASE AT BAR SHOW NONCOMPLIANCE WITH THE PROCEDURE STATED IN SECTION 21 OF RA 9165.— [T]he Court holds that the buy-bust operation was *not* conducted in accordance with law. *First,* it is not disputed whatsoever that ***the witnesses were called and eventually arrived at the scene of the crime only after the accused-appellant was already apprehended by PO2 Barral.*** x x x The apprehending team cannot justify its failure to ensure the availability of the witnesses during the apprehension of accused-appellant Manabat, considering that the buy-bust operation was conducted *seven days* after the day it received information about accused-appellant and was instructed to conduct the buy-bust operation. Simply stated, the apprehending team had more than enough time to ensure that all the mandatory procedures for the conduct of the buy-bust operation would be sufficiently met. *Second,* the Certificate of Inventory that was produced by the prosecution was irregularly executed. x x x **The Certificate of Inventory itself reveals that the document was *not signed* by accused-appellant Manabat or by his counsel or representative.** x x x 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, the prosecution neither recognized, much less tried to justify, the police officers' deviation from the procedure contained in Section 21, RA 9165.** *Third,* the Court notes that the marking of the plastic sachets allegedly recovered was irregularly done. x x x [A]s incontrovertibly revealed by the photographs of the plastic sachets allegedly retrieved from accused-appellant Manabat, only the date and initials of the seizing officers were inscribed on the specimens. **The time and place of the buy-bust operation were not indicated in the markings,** in clear contravention of the PNP's own set of procedures for the conduct of buy-bust operations.

5. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF NEVER SHIFTS; IN DRUGS RELATED CASES, THE PROSECUTION ALWAYS HAS THE BURDEN OF PROVING COMPLIANCE WITH THE PROCEDURE OUTLINED IN SECTION 21; BREACHES OF THE PROCEDURE LEFT UNEXPLAINED BY THE STATE MILITATE AGAINST THE FINDING OF GUILT BEYOND REASONABLE DOUBT.— 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. x x x [B]reaches 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.

6. ID.; ID.; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED.— [I]t was an error for the RTC to convict accused-appellant Manabat by relying on the presumption of regularity in the performance of duties supposedly extended in favor of the police officers. **The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.** Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. x x x In this case, the presumption of regularity cannot stand because of the buy-bust team's disregard of the established procedures under Section 21 of RA 9165 and the PNP's own Drug Enforcement Manual.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Mario Manabat *y* Dumagay (accused-appellant Manabat) assailing the Decision[2] dated August 2, 2018 (assailed Decision) of the Court of Appeals (CA) Special Twenty Third Division in CA-G.R. CR-HC No. 01781-MIN, which affirmed the Decision[3] dated September 5, 2017 of the Regional Trial Court of Dipolog City, Branch 8 (RTC) in Criminal Case Nos. 18353 and 18354, finding accused-appellant Manabat guilty beyond reasonable doubt of violating Sections 5 and 11, Article

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[1] See Notice of Appeal dated September 3, 2018; *rollo*, pp. 19-21.

[2] *Rollo*, pp. 3-18. Penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Edgardo T. Lloren and Walter S. Ong concurring.

[3] CA *rollo*, pp. 32-40. Penned by Presiding Judge Ric S. Bastasa.

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, the essential facts of the instant case are as follows:

The accusatory portion of the *Informations* under which the accused-appellant was charged reads:

Criminal Case No. 18353

> That on June 17, 2013, at 6:30 o'clock in the evening, more or less, infront (sic) [of] ABC Printing Press, Miputak, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that unauthorized sale and distribution of dangerous drugs is punishable by law, without legal authority to sell the same, did then and there willfully, unlawfully and feloniously sell, distribute and deliver to a poseur-buyer one (1) small transparent plastic sachet of Methamphetamine Hydrochloride, more popularly known as "Shabu" approximately weighing 0.2079 gram, after receiving marked Five Hundred Peso bill bearing Serial No. TM518077 as payment therefore (*sic*). Subsequently, said marked money and the sum of One Hundred Fifty Pesos (₱150.00), Philippine Currency which are proceeds of his illegal trade were recovered from his possession together with one (1) unit Nokia 1280 which he used in his illegal trade.
>
> CONTRARY TO LAW.

Criminal Case No. 18354

> That on June 17, 2013 at 6:30 o'clock in the evening, more or less, infront (sic) of ABC Printing Press, Miputak, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that unauthorized possession and control of dangerous drug is

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[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.

punishable by law, did then and there willfully, unlawfully and feloniously have in his possession and control nine (9) pieces small transparent plastic sachet of methamphetamine hydrochloride, more popularly known as "Shabu", a form of dangerous drug, approximately weighing a total of 1.8515 grams, without legal authority to possess the same, in gross (v)iolation of Section 11, Par. 3, Article II of R.A. 9165.

CONTRARY TO LAW.

Upon arraignment, appellant pleaded not guilty to both charges. Thereafter, joint pre-trial and trial of Criminal Case Nos. 18353 and 18354 ensued.

Version of the Prosecution

To prove the charges against the appellant, the prosecution presented the testimonies of the following witnesses, namely: PCI Anne Aimee T. Pilayre, PO1 Gilbert Daabay, PO3 Michael Angcon, PO2 Lord Jericho N. Barral [(PO2 Barral)] and SPO2 Roy P. Vertudes [(SPO2 Vertudes)]. Their respective testimonies as summed up by the RTC are as follows:

PCI Anne Aimee T. Pilayre is a Forensic Chemical Officer of the Z.N. Provincial Crime Laboratory Office (ZNPCLO).

On June 22, 2013, at 10:25 pm, her office received a written request from PNP Dipolog for laboratory examination and weighing of ten (10) small transparent plastic sachets containing white crystalline granules believed to be shabu marked MM-01 to MM-09 and MM-BB-01, all dated June 17, 2013. The items were received by PO1 Gilbert Daabay, the officer of the day, endorsed to the evidence custodian and turned over to her for examination on June 18, 2013 at 7:30 in the morning. They also received a request for drug test on the urine samples from Mario Manabat.

She scrutinized the markings on the specimens and the letter-request to make sure that they coincide. She conducted physical test (i.e. ocular inspection of the specimens, taking the net weight of the specimen), the chemical test by taking a representative sample (3%) from each of the specimen and spotted with a reagent known as Simon's 1, Simon's 2 and Simon's 3 to determine the presence of dangerous drug. The specimen from the ten (10) sachets turned deep blue in color. This indicates that that (sic)

all sachets are positive for methamphetamine hydrochloride or shabu. Finally, she conducted confirmatory test where representative samples of the three sachets were spotted into a thin layer chromatographic plate. She prepared Chemistry Report No. D-36-2013 which states that "***Qualitative examination on the above submitted specimen A-1 to A-10 gave POSITIVE result to the tests for the presence of Methamphetamine hydrochloride, a dangerous drug".***

The remainder of the samples were then placed back to the original container and sealed.

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PO1 Gilbert Daabay is a regular member of the PNP assigned as Officer-of-the-Day at the Z.N. Provincial Crime Laboratory Office (ZNPCLO).

On June 17, 2013, he received requests for laboratory examination and weighing and accompanying items involving Mario Manabat delivered personally by SPO(2) Rey (sic) Vertudes at 22:25 HRS. He took the gross weights of each item and recorded them on the logbook. He placed the specimen and documents inside an envelope.

He also received a request for drug test. After Mario filled up the drug consent form, Daabay accompanied the suspect to the comfort room to get his urine sample. The urine sample was in a bottle with control number then placed in the refrigerator.

At 7:30 of the following day, he turned over the received items to the Forensic Chemist. The turnover of evidence to Pilayre was duly recorded in the logbook.

PO3 Michael Angcon is the Evidence Custodian of Z.N. Provincial Crime Laboratory Office (ZNPCLO) responsible for the safekeeping of all evidence and drug specimens submitted to their office for laboratory examination.

He testified that right after Pilayre conducted laboratory examination of drug specimens; he received the drug specimens and documents in the instant case. The same pieces of evidence were released to Pilayre for her Court duties on January 23, 2014.

The said turnover of evidence from Pilayre to Angcon (for safekeeping) and back to Pilayre (for Court duties) were all duly recorded in the logbook.

PO2 Lord Jericho N. Barral is a regular member of the PNP assigned at Dipolog City Police Station designated as member of the City Anti-Illegal Drugs Special Operation Task Force (CAIDSOTF).

On June 10, 2013, he received information through a text message from a confidential informant (CI) that a certain alias Mario is engaged in the selling of prohibited drugs in Estaka, Miputak and other places in Dipolog City. He and SPO(2) Roy Vertudes referred the matter to the Chief of Police, PSupt Joven Rendon Parcon, who instructed [them] to conduct [a] buy bust operation. They complied with such directive. They monitored alias Mario's activities and planned to buy a sachet of shabu from the suspect.

On June 17, 2013, they decided to conduct [a] buy-bust operation because alias Mario arrived from Ozamis and he had already (sic) stocks of shabu. They instructed the CI to negotiate with Mario with Barral acting as the poseur buyer. The CI agreed. At around 6 pm, the CI texted that he and Mario are together and that Mario accepted the request. They agreed to meet at ABC Printing Press.

Barral proceeded to the place on board his motorcycle while Vertudes, who acted as back-up, followed in his four-wheeled tinted vehicle. Barral positioned near the entrance of the printing press while Vertudes was near El Garaje establishment, a few meter (sic) from the printing press.

At about 6:30 pm, the CI and Mario arrived on board a motorcab. The CI introduced Barral to Mario as the buyer of shabu. After a short conversation, Mario agreed to sell to Barral. Barral handed a ₱500 bill marked money to Mario, who received the same and in turn handed to Barral a sachet of shabu from inside a small container in his pocket. Mario placed the P500 inside his wallet. Upon receiving the shabu, [Barral] immediately held Mario. Vertudes came and assisted Barral in the arrest of Mario. They informed Mario that they were police officers of Dipolog City Police Station. Mario was told of his constitutional rights in Visayan dialect.

They called for witnesses to the inventory of items recovered from Mario. Representatives from DOJ, media and the barangay of Miputak came. Barral conducted body search on Mario in the presence of the witnesses. After the search, Mario revealed his full name. Confiscated from Mario's possession were nine (9) pieces small transparent plastic sachets in triangular shape containing white crystalline granules, one (1) piece ₱500 bill (marked money), ₱150 proceeds money, one (1) unit Nokia cellphone. Barral turned over the one (1) piece small sachet bought by Barral from Mario. Vertudes made markings on the confiscated items. He also prepared the certificate of inventory and signed by the witnesses (sic). The sachets of shabu were marked as MM-01 to MM-09 with date and initial (*sic*) and the one (1) piece buy-bust shabu was marked BB-01. Photographs were taken during the conduct of inventory.

In Court, Barral identified Mario Manabat as well as the items recovered from the latter

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SPO2 Roy P. Vertudes is a regular member of the PNP and presently assigned at the Regional Police Holding Administrative Unit in Zamboanga City. He corroborated the testimony of Barral that they received information that a certain Mario Manabat is engaged in selling shabu in Estaka, Miputak and other parts in Dipolog City. They informed the Chief of Police, who in turn instructed them to conduct buy bust operation.

They instructed the CI to contact to (sic) as soon as Mario has available stocks of shabu. On June 17, 2013, the CI sent a text message that Mario has arrived from Ozamis City and he has stocks of shabu. x x x The CI informed that he and Mario will meet in front of ABC Printing Press in Gonzales and Malvar streets. With that information, Barral proceeded to the area on board his motorcycle while Vertudes drove his four-wheeled tinted vehicle. Vertudes parked near El Garaje. He did not alight from the vehicle. At 6:30 pm, a passenger motorcab arrived. Two male persons disembarked, one of them is the CI. Vertudes saw Barral, the CI and another male person conversing about 10 to 15 meters from him. Then, he saw Barral held (*sic*) the other male person which signifies (*sic*) that the transaction was consummated. He rushed to the scene and assisted Barral in

handcuffing Mario. He did not see the exchange of items as it was already dark.

Barral introduced himself to Mario as a police officer and informed him that he was arrested for selling illegal drugs. Barral also informed Mario of his constitutional rights in Visayan dialect. Mario had no reaction. After being handcuffed, the witnesses were called. Merlinda Tenorio of DOJ, Edwin Bation of media, barangay captain Janus Yu and barangay councilor Epifanio Woo arrived. In their presence, Barral conducted body search on Mario. Items recovered by Barral from Mario's possession were turned over to Vertudes, the designated inventory officer and custodial officer. Upon Mario's request, the wallet was returned to him. The recovered items (10 sachets of shabu, ₱500 bill, Nokia cellphone and ₱150 proceeds money) were marked with Vertudes' initial and date of arrest. Pictures were taken. Mario was then brought to the ZaNorte Medical Center for routine medical checkup then to the police station. From the time of the inventory until Mario was brought to the police station, Vertudes kept custody of the drug specimens and other recovered items.

At the police station, he prepared a request for laboratory examination and weighing and request for drug test. He brought the letter with the items and the accused to the PNP Crime Laboratory.

In Court, Vertudes identified Mario Manabat, the items recovered from him and other documents.

Version of the Defense

The defense, for its part, presented Mario D. Manabat as [its] sole witness. The gist of his testimony is as follows:

Mario D. Manabat (*42 years old, widower, Third Year High School level, a detention prisoner of the Dipolog City Jail and a resident of Estaka, Dipolog City*) testified that there was no buy bust operation conducted against him as he was just grappled by persons near Casa Jose in the afternoon of June 17,2013. Thereafter, he was brought to the boulevard then to the Fish Port then to the ABC Printing Press, the alleged place of arrest.

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He recalls that in the morning of June 17, 2013 (a Monday) he was at home fixing a leaking water pipe. Then he cooked and fed his children. At 1 pm, he went to church to pray for his sick child. He stayed in church for an hour and then went to the market to buy rice and viand (*pancit*). From there, he rode a motorcab going home and instructed the driver to pass by Casa Jose to see his friend Jonel Sebe, who is also a security guard. While on the way to Casa Jose, he instructed the motorcab driver to slow down as he would check if Jonel was there. While still in the motorcab, a motorcycle (*with two (2) riders whom he does not know*) blocked their way. Another motorcycle came with two (2) back riders. They alighted and pulled Mario out of the motorcab. Mario did not alight from the motorcab but a person pointed a gun at him and told him that he is a police officer and that he should not be scared. For said reason, Mario alighted. He described the police officer as big and tall and he identified said person as Police Officer Vertudes. He was boarded to (sic) a blue easy-ride multicab. He was handcuffed.

He was brought to the boulevard, particularly in the barbecue area. He was seated behind the driver. There were five persons inside the multicab. While on the way to boulevard, he was asked if he knows a friend or a politician who is using shabu. He replied he does not know anyone because he does not know about it. He was brought to [Barral] near the gate of the Fish Port at about 3 pm. He was frisked and his short pants removed. His wallet and cellphone were taken. They stayed there for more or less 2 hours. He was then brought to ABC Printing Press on board a military jeep at 6 pm with three persons accompanying him. Upon arrival at ABC Printing Press, he was seated and a table from El Garaje establishment was installed. They returned the wallet in his pocket.

He recalls that there were other persons who arrived after 30 minutes. He was searched. Upon their arrival, Mario was searched by a police officer whom he later knew as Officer Jericho Barral. He took his wallet and cellphone. He was surprised that they took "something contained in a cellophane", nine (9) in total. They also took ₱500 from his pocket, which he denies owning. He insists that he has only ₱70 in his possession.

He was shocked upon seeing the nine (9) items displayed on the table. He told the person whom they called "Chairman" that

those were not his and he had nothing to do with it. The "Chairman" did not reply. Mario told the same thing to the woman but she did not reply too.

He recalls that it was already twilight when the pictures were taken from him. The arresting officer told him of his rights. He was told that he could secure a lawyer but there was no lawyer during the search and inventory. He was asked where he got the items but he denies (*sic*) owning them. They were placed on him when the vehicle was running. He was brought to the police station.[5]

The Ruling of the RTC

After trial on the merits, in its Decision[6] dated September 5, 2017, the RTC convicted accused-appellant Manabat of the crimes charged. The dispositive portion of the said Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. **In Criminal Case No. 18353**, the Court finds the accused MARIO MANABAT y Dumagay GUILTY beyond reasonable doubt of the charge for violation of Sec. 5, Art. II, RA 9165 for selling 0.2079 gram of shabu, and sentences him to suffer life imprisonment and to pay a fine of FIVE Hundred Thousand (₱500,000.00) pesos;

2. **In Criminal Case No. 18354**, the Court finds the same accused MARIO MANABAT y Dumagay, GUILTY beyond reasonable doubt of violation Sec. 11, Art. II, RA 9165 for possessing 1.8515 grams of shabu, hereby sentences him to suffer the penalty of imprisonment of Twelve (12) years and one days as minimum to Twenty (2) years as maximum and to pay a fine of Three Hundred Thousand (₱300,000.00);

The shabu, cash money, and cellphone used in the commission of the offense are hereby forfeited in favor of the government to be disposed in accordance with the prescribed rules.

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[5] *Rollo*, pp. 4-10.

[6] CA *rollo*, pp. 32-40. Penned by Presiding Judge Ric S. Bastasa.

Moreover, he is not eligible for parole pursuant to Section 2 of the Indeterminate Sentence Law.

SO ORDERED.[7]

In sum, the RTC ruled that the evidence on record was sufficient to convict accused-appellant Manabat. The RTC did not give credence to accused-appellant Manabat's defense of frame-up as it deemed the same self-serving and unsubstantiated. It held that the defense of a frame-up could not stand against the positive testimonies of PO2 Barral and SPO2 Vertudes whose testimonies enjoy the presumption of regularity. The RTC ultimately held that the prosecution sufficiently discharged its burden of proving accused-appellant Manabat's guilt beyond reasonable doubt.[8]

Feeling aggrieved, accused-appellant Manabat appealed to the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of accused-appellant Manabat, holding that the prosecution was able to prove the elements of the crimes charged.

The dispositive portion of the assailed Decision reads:

WHEREFORE, foregoing premises considered, the instant appeal is **DENIED**. The *Decision* dated 05 September 2017 of the Regional Trial Court (RTC), Branch 8, Dipolog City, in Criminal Case Nos. 18353 and 18354 is **AFFIRMED**.[9]

After carefully reviewing the records of the case, the CA found that:

the prosecution effectively established compliance with the chain of custody rule. Verily, the prosecution, through testimonial and documentary evidence, was able to account [for] the continuous

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[7] *Id*. at 40.

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

[9] *Rollo*, p. 18.

whereabouts of the subject saches of *shabu*, from the time they were seized during the buy-bust operation up to the time it was presented before the court *a quo* as proof of the *corpus delicti*.[10]

Hence, the instant appeal.

The Issue

For resolution of the Court is the sole issue of whether the RTC and CA erred in convicting accused-appellant Manabat of the crimes charged.

The Court's Ruling

The appeal is meritorious. The Court acquits accused-appellant Manabat for failure of the prosecution to prove his guilt beyond reasonable doubt.

Accused-appellant Manabat was charged with the crimes 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.[11]

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.[12]

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the

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

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

[12] *People v. Fernandez*, G.R. No. 198875 (Notice), June 4, 2014.

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.[13] 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,[14] the law nevertheless also requires ***strict compliance*** with procedures laid down by it to ensure that rights are safeguarded.

In this connection, Section 21, Article II of RA 9165,[15] the applicable law at the time of the commission of the alleged crimes, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation**; and (2) **the physical inventory and photographing must be done in the presence of** (a) **the accused or his/her representative or counsel**, (b) **an elected public official,** (c) **a representative from the media**, and (d) **a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

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[13] *People v. Guzon*, 719 Phil. 441, 450-451 (2013).

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

[15] The said section reads as follows:

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

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

This must be so because with the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.[16]

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. The said inventory must be done in the presence of the aforementioned required witness, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made **immediately after, or at the place of apprehension**. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 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.[17] **In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has enough time to gather and bring with it the said witnesses.

As held in the fairly recent case of *People v. Tomawis*,[18] the Court explained that **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

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

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

[18] G.R. No. 228890, April 18, 2018, accessed at < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs /1/64241 >.

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, *viz*.:

> 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*,[19] 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.[20]
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> The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA9165.
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> The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.
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> To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at

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[19] 736 Phil. 749(2014).

[20] *Id*. at 764.

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".[21] (Emphasis in the original)

Based from the foregoing, the Court holds that the buy-bust operation was ***not*** conducted in accordance with law.

First, it is not disputed whatsoever that ***the witnesses were called and eventually arrived at the scene of the crime only after the accused-appellant was already apprehended by PO2 Barral***. On cross-examination, PO2 Barral readily admitted that during the apprehension of accused-appellant Manabat, the witnesses were not present:

Q You mean to say that during the arrest, the witnesses did not arrive yet?

A Not yet, sir.[22]

Further, as testified by SPO2 Vertudes, the buy-bust team did not contact the witnesses at all before the team arrived at the place of the buy-bust operation. The witnesses were contacted only after accused-appellant Manabat was already arrested and handcuffed:

Q Before you proceeded to ABC Printing Press you did not yet contact the witnesses from the DOJ, the media and from the elected officials of the barangay right?

A Not yet, sir.

Q Only after Mario was arrested and handcuffed that you did contact those witnesses, correct?

A Yes, sir.[23]

In fact, the Court notes that the prosecution offered conflicting testimonies as regards the time of arrival of the witnesses.

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[21] *Supra* note 18.

[22] TSN dated October 25, 2016, p. 16.

[23] TSN dated March 2, 2017, p. 21.

According to PO2 Barral, the witnesses arrived "[m]ore or less ten minutes"[24] after they were called. To the contrary, when SPO2 Vertudes was asked as to when the witnesses arrived, he first answered "three to five minutes sir."[25] But when pressed as to the veracity of his answer, considering that the buy-bust was conducted on a Sunday, SPO2 Vertudes eventually admitted that the arrival of the witnesses was completed "[f]ifteen to thirty minutes."[26]

Further creating doubt as to the presence of the witnesses during the buy-bust operation is the admission of PO2 Barral on cross-examination that the photographs of the inventory do not show the presence of the witnesses, except for Councilor Epifanio Woo:

Q The witnesses are not shown in these pictures during the search, right?

A No, sir.

Q All these pictures are also taken close up?

A Yes, sir.

Q No witnesses are shown in this picture, right?

A None, sir.

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Q In the pictures marked as Exhibits "X-9 " and "X-16 ", there is a person with fatigue short pants?

A Yes, sir.

Q You know who is this person?

A Yes, sir. Councilor Epifanio Woo. He is also shown here.[27]

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[24] TSN dated October 25, 2016, p. 16.

[25] TSN dated March 2, 2017, p. 22.

[26] *Id*.

[27] TSN dated October 25, 2016, pp. 18-19.

If the witnesses were indeed present during the entire photographing and inventory of the evidence, obviously, it would have been easy and effortless on the part of the buy-bust team to take photographs of the other witnesses. Yet, this was not done, creating some doubt in the mind of the Court as to the presence of the required witnesses during the buy-bust operation.

The apprehending team cannot justify its failure to ensure the availability of the witnesses during the apprehension of accused-appellant Manabat, considering that the buy-bust operation was conducted *seven days* after the day it received information about accused-appellant and was instructed to conduct the buy-bust operation. Simply stated, the apprehending team had more than enough time to ensure that all the mandatory procedures for the conduct of the buy-bust operation would be sufficiently met.

Second, the Certificate of Inventory that was produced by the prosecution was irregularly executed.

To reiterate, Section 21 of RA 9165 requires that the copies of the inventory should be signed by *all* the following persons: (a) 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).

The Certificate of Inventory[28] **itself reveals that the document was *not signed* by accused-appellant Manabat or by his counsel or representative**. Upon perusal of the records of the instant case, the prosecution did not acknowledge such defect. Nor did the prosecution provide any explanation whatsoever as to why accused-appellant Manabat was not able to sign the Certificate of Inventory.

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

[28] Records, p. 96.

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.[29] **In this case, the prosecution neither recognized, much less tried to justify, the police officers' deviation from the procedure contained in Section 21, RA 9165.**

Third, the Court notes that the marking of the plastic sachets allegedly recovered was irregularly done.

Under the 1999 Philippine National Police Drug Enforcement Manual,[30] the conduct of buy-bust operations requires the following:

Anti-Drug Operational Procedures

Chapter V. Specific Rules

x x x x x x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation — [I]n the conduct of buy-bust operation, the following are the procedures to be observed:

a. Record time of jump-off in unit's logbook;
b. Alertness and security shall at all times be observed:
c. Actual and timely coordination with the nearest PNP territorial units must be made;
d. Area security and dragnet or pursuit operation must be provided[;]
e. Use of necessary and reasonable force only in case of suspect's resistance[;]
f. If buy-bust money is dusted with ultra violet powder make sure that suspect ge[t] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;
g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe

[29] See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

[30] Philippine National Police Drug Enforcement Manual, PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

the negotiation/transaction between suspect and the poseur-buyer;

h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arms' reach;

i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;

j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;

k. Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;

l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;

m. **The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized;**

n. Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera; and

o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination.[31]

In the instant case, as incontrovertibly revealed by the photographs of the plastic sachets allegedly retrieved from accused-appellant Manabat, only the date and initials of the seizing officers were inscribed on the specimens. **The time and place of the buy-bust operation were not indicated in the markings**, in clear contravention of the PNP's own set of procedures for the conduct of buy-bust operations.

At this juncture, it is well to point-out that while the RTC and CA were correct in stating that denial is an inherently weak defense, it grievously erred in using the same principle to convict

[31] *Id*., emphasis and underscoring supplied.

accused-appellant Manabat. Both the RTC and CA 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.[32] And 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 beyond reasonable doubt,[33] 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.[34] 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:*[35]

> x x x We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. **The State must fully establish that for us.** If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.

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[32] CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[33] 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)

[34] See *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[35] 745 Phil. 237 (2014).

Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.[36] (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.

To reiterate, 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.[37] As the Court explained in *People v. Reyes*:[38]

Under the last paragraph of Section 21 (a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism**. Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti***.

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[36] *Id*. at 250-251.

[37] See *People v. Sumili*, 753 Phil. 342, 350 (2015).

[38] 797 Phil. 671 (2016).

With the chain of custody having been compromised, the accused deserves acquittal.[39]

Lastly, it was an error for the RTC to convict accused-appellant Manabat by relying on the presumption of regularity in the performance of duties supposedly extended in favor of the police officers. **The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.**[40] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[41] As the Court, in *People v. Catalan*,[42] reminded the lower courts:

> Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.
>
> We hold that both lower courts committed gross error in relying on the presumption of regularity.
>
> Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence**. Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.
>
> **Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a**

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[39] *Id*. at 690. (Emphasis supplied)

[40] *People v. Mendoza*, 736 Phil. 749, 770 (2014).

[41] *People v. Catalan*, 699 Phil. 603, 621 (2012).

[42] 699 Phil. 603 (2012).

police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that triggers the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[43] (Emphasis supplied)

In this case, the presumption of regularity cannot stand because of the buy-bust team's disregard of the established procedures under Section 21 of RA 9165 and the PNP's own Drug Enforcement Manual.

In sum, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, accused-appellant Manabat must perforce be acquitted.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated August 2, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 01781-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **MARIO MANABAT *y* DUMAGAY** 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 San Ramon Prison and Penal Farm, Zamboanga City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

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[43] *Id.* at 621.

FIRST DIVISION

[G.R. No. 201576. July 22, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANALYN ADVINCULA *y* PIEDAD,** *accused-appellant.*

SYLLABUS

1. CRMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS THAT MUST BE PROVEN TO SECURE CONVICTION.—Basic is the rule that, for a conviction of the crime of illegal sale of dangerous drugs to stand, the prosecution should have proven the following elements beyond reasonable doubt: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and payment. The prosecution has the burden to prove beyond reasonable doubt that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti*.

2. ID.; ID.; ID.; RATIONALE BEHIND THE THREE WITNESSES REQUIREMENT UNDER SECTION 21 OF RA 9165, EXPLAINED.—The presence of the three witnesses required by Section 21 is precisely to protect and to guard against the pernicious practice of policemen in planting evidence. Without the insulating presence of the three witnesses during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A. No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the seized drugs that were evidence of the *corpus delicti*, and thus adversely affecting the trustworthiness of the incrimination of accused-appellant.

3. ID.; ID.; ID.; TWO CONDITIONS TO JUSTIFY NON-COMPLIANCE WITH THE PROCEDURE TO JUSTIFY NON-COMPLIANCE WITH THE PROCEDURE FOR INVENTORY AND PHOTOGRAPHING, ENUMERATED; FAILURE TO SHOW THESE CONDITIONS RENDERS

VOID THE SEIZURE AND CUSTODY OF THE SEIZED DRUGS.—In cases of non-compliance with the procedure for inventory and photographing, Section 21(a), Article II of the IRR of R.A. No. 9165 imposed the twin requirements of *first*, there should be justifiable grounds for the non-compliance, and *second*, the integrity and the evidentiary value of the seized items should be properly preserved. Failure to show these two conditions renders void and invalid the seizure of and custody of the seized drugs.

4. ID.; ID.; ID.; WITH THE BROKEN CHAIN OF CUSTODY BY FAILURE TO COMPLY WITH SECTION 21, THERE IS SERIOUS DOUBT ON THE INTEGRITY OF *CORPUS DELICTI* WHICH IS FATAL TO THE PROSECUTION'S CAUSE; ACCUSED'S ACQUITTAL IS IN ORDER.—In the case at bar, the lapses of the arresting police officers are significant and cannot be ignored. There was no photograph and inventory of the seized items, and no representatives from the Department of Justice (DOJ) and the media, and any elected public official during the marking of the *shabu*. Furthermore, no explanation/ justification was given by the buy-bust team why they did not comply or observe the rule laid down in Section 21. With a broken chain of custody together with the non-compliance by the police officers of Section 21 cited above, there is serious doubt on the integrity of the *corpus delicti* which constitutes a fatal procedural flaw that destroys the reliability of the *corpus delicti*. x x x For failure of the prosecution to establish beyond reasonable doubt the unbroken chain of custody of the drugs seized from accused-appellant, acquittal is in order.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED PREVAILS OVER THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY.—Given the flagrant procedural lapses the police committed in handling the seized *shabu* and the obvious evidentiary gaps in the chain of custody, We cannot presume that the police officers performed their duty regularly. The presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance, the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the

constitutionally enshrined right to be presumed innocent. All in all, the proof adduced against accused-appellant was not sufficient to overcome the presumption of innocence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARANDANG, *J.*:

This is an appeal of the Decision[1] dated October 28, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04260 dismissing the appeal and affirming the Decision[2] dated November 25, 2009 of the Regional Trial Court (RTC) of Manila, Branch 2, convicting Analyn Advincula *y* Piedad (accused-appellant) of violation of Section 5, Article II of Republic Act (R.A.) No. 9165.[3]

The Factual Antecedents

This case stemmed from an Information[4] in Criminal Case No. 09-266519, charging accused-appellant with violation of Section 5, Article II of R.A. No. 9165, the accusatory portion of which reads:

That on or about February 5, 2009, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and

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[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Normandie B. Pizarro (now retired) and Rodil V. Zalameda (now a Member of this Court), concurring; *rollo*, pp. 2-14.

[2] Records, pp. 29-34.

[3] An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6424, otherwise known as the Dangerous Drugs Act of 1972, as amended, Providing Funds Therefor, and for Other Purposes.

[4] Records, p. 1.

there willfully, unlawfully and knowingly sell or offer for sale to a poseur- buyer one (1) heat-sealed transparent plastic sachet containing ZERO POINT ZERO ZERO EIGHT (0.008) [gram] of white crystalline substance, containing methylamphetamine hydrochloride known as "*shabu*", a dangerous drug.

The evidence for the prosecution shows that acting on an information from a civilian informant (CI), Police Sub Inspector (PSI) Johnny Gaspar planned a buy-bust operation against accused-appellant *alias* "Potsie" who was allegedly engaged in selling illegal drugs at Oroquieta Street, Sta. Cruz, Manila. Police Officer 2 (PO2) Jackson Caballero (PO2 Caballero) was designated as the poseur-buyer. One ₱200.00 bill was marked with a dot on the nose of former president Diosdado Macapagal according to the Pre-Operation Report and Coordination Form prepared by PO2 Ireneo Salazar.

PO2 Caballero, PO2 Reynaldo Mallari, and the CI proceeded to the target area. Upon arrival thereat, the CI pointed accused-appellant to the policemen. PO2 Caballero approached accused-appellant and told her that he will buy *shabu*. Accused-appellant asked PO2 Caballero how much he intends to buy. PO2 Caballero answered he wants to buy ₱200.00 worth of *shabu*. He handed the marked money to accused-appellant who took from her pocket one plastic sachet containing white crystalline substance suspected to be *shabu*. Accused-appellant handed said plastic sachet to PO2 Caballero who immediately executed the pre-arranged signal by removing his cap. PO2 Caballero introduced himself as a police officer and arrested accused--appellant. While at the crime scene, PO2 Caballero marked the plastic sachet with the initials of accused or "AAP" in the presence of accused-appellant and the other police officers. PO2 Caballero then placed the heat-sealed transparent plastic sachet containing 0.008 grams of white crystalline substance suspected to be *shabu* inside his left pocket as they proceeded to the police precinct.

Qualitative examination conducted on the confiscated item gave positive result to the tests for methamphetamine hydrochloride or *shabu*.[5]

[5] *Id*. at 10; Exhibit C-1.

During pre-trial, the parties stipulated on the qualification of Police Inspector (P/Insp.) Erickson L. Calabocal as a Forensic Chemist, the genuineness and due execution of the documents (letter request for laboratory examination, one heat-sealed transparent plastic sachet with marking "AAP," small brown envelope, and the Final Chemistry Report) brought by him together with the specimen.

For her defense, accused-appellant testified that on February 5, 2009, she and her daughter were sitting in her husband's parked "*kuliglig*" when two policemen arrived and invited her to the precinct. At the precinct, the police asked for her name and detained her. During cross-examination, accused- appellant testified that her *alias* is "Potchi".

Ruling of the Regional Trial Court

In the Decision dated November 25, 2009, the trial court found accused- appellant guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 and imposed upon her the penalty of life imprisonment with a fine of ₱500,000.00.

The trial court ruled that absent any showing of any ill motive on the part of PO2 Caballero in testifying against accused-appellant, the testimony of the arresting officer deserves full faith and credit. Accused-appellant's claim that without committing any wrong, she was just arrested and charged by the police remained unsubstantiated. Evidence to be believed must not only come from a credible witness but must in itself be credible. Furthermore, the seizure of the dangerous drugs made by the buy-bust team falls under a search incidental to a lawful arrest under Section 13, Rule 126 of the Revised Rules of Criminal Procedure. Lastly, the defense of denial by the accused-appellant cannot prevail over the positive identification of accused-appellant made by police officers as the one caught in illegal sale of the dangerous drugs.

Ruling of the Court of Appeals

In the assailed Decision, the CA affirmed *in toto* the trial court Decision.

The CA, in affirming the conviction of accused-appellant, held that the failure of the prosecution to show how the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, does not automatically render accused-appellant arrest illegal or the items seized from her inadmissible. The prosecution was able to preserve the integrity and evidentiary value of the illegal drugs because the chain of custody did not appear to be broken and the recovery and handling of the seized drugs were satisfactorily established.

Hence, this appeal which raises the sole issue of whether the guilt of accused-appellant was proven beyond reasonable doubt. Both the accused-appellant and the State, through the Office of the Solicitor General (OSG), manifested that they are adopting their respective Briefs previously filed with the CA.

Accused-appellant argues that the prosecution failed to establish compliance with the indispensable requirement of proving the *corpus delicti* due to substantial gaps in the chain of custody of the seized drug subject of this case. She likewise contends that the prosecution failed to prove compliance with the statutory safeguards provided for in Section 21(1) of R.A. No. 9165 which casts doubts on the integrity and authenticity of the evidence subjected to laboratory examination and those presented in court.

Ruling of the Court

The appeal is meritorious.

Basic is the rule that, for a conviction of the crime of illegal sale of dangerous drugs to stand, the prosecution should have proven the following elements beyond reasonable doubt: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and payment. The prosecution has the burden to prove beyond reasonable doubt that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti*.[6]

[6] *People v. Otico*, G.R. No. 231133, June 6, 2018.

Through the testimony of PO2 Caballero, who acted as the poseur- buyer, the prosecution established that a buy-bust team was formed after an information was received from a confidential informant regarding accused-appellant's illegal drug trade activity. At the target area, the CI pointed accused-appellant to the police officers. PO2 Caballero then approached accused-appellant and told her he wanted to buy *shabu*. When asked how much he would buy, PO2 Caballero answered ₱200.00 worth of *shabu*. PO2 Caballero then handed the marked money to accused-appellant who in turn gave him a plastic sachet containing suspected *shabu*. Upon consummation of the sale, PO2 Caballero executed the pre-arranged signal and effected the arrest of accused-appellant.

From the foregoing, it may be said that the prosecution has sufficiently established (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment. However, as will be discussed below, the prosecution must also prove beyond reasonable doubt the integrity and preservation of the *corpus delicti* - the confiscated *shabu*.

After judicious review of the records, this Court finds that the CA erred in simply relying on the prosecution's claim that the integrity of the evidence was preserved in accordance with the chain of custody requirements for proper handling of the drug specimen.

The Court has ruled that even when the illegal sale of a dangerous drug was proven by the prosecution, the latter is still burdened to prove the integrity of the *corpus delicti*.[7] It is important that the State establishes with moral certainty the integrity and identity of the illicit drugs sold as the same as those examined in the laboratory and subsequently presented in court as evidence.[8] This rigorous requirement, known under R.A. No. 9165 as the chain of custody, ensures that unnecessary

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[7] *People v. Alvarado*, G.R. No. 234048, April 23, 2018.

[8] *People v. Ga-a*, G.R. No. 222559, June 6, 2018, citing *People v. Del Mundo*, G.R. No. 208095, September 20, 2017.

doubts concerning the identity of the evidence are removed.[9] Failure to prove the preservation of the integrity of the *corpus delicti* in dangerous drugs cases will lead to the acquittal of the accused on the ground of reasonable doubt.[10]

In order to remove all doubts concerning the identity of the evidence, the prosecution must establish to the very least substantial compliance with the chain of custody requirement. Section 1(b) of Dangerous Drug Board (DDB) Regulation No. 1, Series of 2002, defines chain of custody as follows:

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

The links in the chain of custody that must be established by the prosecution was summarized in the case of *People v. Kamad*:[11]

> [F]*irst*, 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.

In this case, PO2 Caballero testified on the chain of custody as follows: ACP YAP

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[9] *Id.*, citing *People v. Dahil*, 750 Phil. 212, 226 (2015).

[10] *People v. Caiz*, 790 Phil. 183,204 (2016), citing *People v. Rosialda*, 643 Phil. 712 (2010).

[11] 624 Phil. 289 (2010).

Q So, tell us what happened?

A When we arrived (*sic*) the location our confidential informant spotted the subject and he pointed to us and I approached the subject and I made the negotiation, sir.

Q Tell us in what way you made the negotiation?

A I told him- "Pagbilhan ako ng item n'ya".

Q What introduction if there was any?

A In natural way, sir, I will buy illegal drugs from the suspect.

Q So, what was (*sic*) the suspect did?

A Then, he asked how much then I told the suspect ₱200, sir.

Q So, what did you do?

A I handed the ₱200 to the suspect, sir.

Q So, what happened to the ₱200 after it was turned over?

A Then, using the left hand the suspect got the money, sir.

Q Then?

A And then, after getting the money the suspect got something from the right pocket, sit (*sic*).

Q And then, what happened? What was that he pulled out?

A It was one small transparent heat-sealed plastic sachet containing white crystalline substance suspected to be shabu, sir.

Q Why did he give it to you, handed it over to you?

A He gave it to me, sir

Q So, what did you do next, Mr. Witness?

A Upon the consummation of the transaction I made the pre-arranged signal, sir.

Q What was the pre-arranged signal?

A By removing my cap, sir.

Q So, what happened next, Mr. Witness?

A Then, after the pre-arranged signal I introduced myself to the subject and I arrested him, sir.

Q Who assisted you?

A At that time PO Reynaldo Mallari, sir.

Q So, what happened next, Mr. Witness, after that (*sic*)?

A So, after the negotiation and did (*sic*) everything we proceeded to our station, sir..., I marked the said item on (*sic*) the place, sir.

Q When did you mark (*sic*)?

A At that time, sir, when I arrested the subject.

Q What was the marking?

A AAP, sir.

Q Where did you get this abbreviation, initial? What did you mean by that?

A Analyn Advincula Piedad, sir.

Q Where was Analyn then at that time?

A In front of her, sir.

x x x x x x x x x

Q After marking where did you put, place the said evidence?

A At my left front pocket, sir.

Q Who submitted that to the investigator?

A I, myself, sir.[12]

Although PO2 Caballero testified with regard to the seizure and marking of the illegal drug recovered from the accused-appellant and his turnover of the illegal drug seized to the investigating officer, he failed to establish the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination. First, PO2 Caballero did not name

[12] TSN dated October 22, 2009, pp. 7-9.

the investigator but the Spot Report[13] submitted by the prosecution shows that the investigator was PO2 Ireneo Salazar. However, as can be gleaned from the Request for Laboratory Examination,[14] the request and the specimen were delivered to the crime laboratory by PSI Johnny Gaspar and received by Forensic Chemist PSI Erickson Calabocal. Thus, there is a missing link as to how the specimen came into the possession of PSI Gaspar. It must be emphasized that neither PO2 Ireneo Salazar nor PSI Gaspar was presented as witness by the prosecution. PO2 Caballero did not have personal knowledge as to the handling of the seized drug after he turned over the same to the investigator. Hence, his testimony is insufficient to establish the unbroken link in the chain of custody. Consequently, the prosecution failed to prove that the item confiscated by PO2 Caballero is the same item presented in court.

PO2 Caballero further testified during cross-examination:

ATTY. CIRILO:

Q You said that you were able to how many plastic sachets you were able to recover from her?

A One plastic sachet, ma'am.

Q And that you marked the..., where did you mark the plastic sachet?

A At the place of arrest, ma'am.

Q And who were with you at that time that the marking was made?

A PO2 Reynaldo Mallari, ma'am.

Q And that there were no other persons present aside from you and Mallari at that time that the specimen was marked?

A The neighbors, ma'am.

Q That there was no Barangay Kagawad present?

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[13] Records, p. 8.

[14] *Id*. at 9; Exhibit A.

A No, ma'am.

Q Am I correct?

A Yes, ma'am

Q There was no photograph taken on the accused and the dangerous drug recovered from...?

A Yes, ma'am.

Q There was no inventory?

A None, ma'am.

Q And you did not bring Analyn to the hospital when you arrested her, you immediately proceeded to the station? Yes or no, Mr. Witness?

A Yes, ma'am.[15]

Section 21, Article II of R.A. No. 9165 states the procedure to be followed by a buy-bust team in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. This section was amended by R.A. No. 10640 which imposed less stringent requirements in the procedure; but the amendment was approved only on July 15, 2014.[16] As the crime in this case was committed on February 9, 2009, the original version of Section 21 is applicable, thus:

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

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[15] TSN, dated October 22, 2009, p. 12.

[16] *People v. Sood*, G.R. No. 227394, June 6, 2018.

> in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]
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> x x x x x x x x x

The presence of the three witnesses required by Section 21 is precisely to protect and to guard against the pernicious practice of policemen in planting evidence. Without the insulating presence of the three witnesses during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A. No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the seized drugs that were evidence of the *corpus delicti*, and thus adversely affecting the trustworthiness of the incrimination of accused- appellant.[17]

In cases of non-compliance with the procedure for inventory and photographing, Section 21(a), Article II of the IRR of R.A. No. 9165 imposed the twin requirements of *first*, there should be justifiable grounds for the non-compliance, and *second*, the integrity and the evidentiary value of the seized items should be properly preserved. Failure to show these two conditions renders void and invalid the seizure of and custody of the seized drugs, thus:

> 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**.[18] (Emphasis in the original)

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[17] *Id*.

[18] *Id*.

In the case at bar, the lapses of the arresting police officers are significant and cannot be ignored. There was no photograph and inventory of the seized items, and no representatives from the Department of Justice (DOJ) and the media, and any elected public official during the marking of the *shabu*. Furthermore, no explanation/justification was given by the buy-bust team why they did not comply or observe the rule laid down in Section 21.

With a broken chain of custody together with the non-compliance by the police officers of Section 21 cited above, there is serious doubt on the integrity of the *corpus delicti* which constitutes a fatal procedural flaw that destroys the reliability of the *corpus delicti*.[19]

Given the flagrant procedural lapses the police committed in handling the seized *shabu* and the obvious evidentiary gaps in the chain of custody, We cannot presume that the police officers performed their duty regularly.[20] The presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty.[21] And even in that instance, the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. All in all, the proof adduced against accused-appellant was not sufficient to overcome the presumption of innocence.

For failure of the prosecution to establish beyond reasonable doubt the unbroken chain of custody of the drugs seized from accused-appellant, acquittal is in order.

WHEREFORE, premises considered, the Appeal is hereby **GRANTED**. The Decision dated October 28, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 04260 is hereby **SET ASIDE**. Accused-appellant Analyn Advincula *y* Piedad is hereby

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[19] *Supra* note 6.

[20] See *Lescano v. People*, 778 Phil. 460 (2016).

[21] *People v. Reyes*, 797 Phil. 671, 692 (2016).

ACQUITTED and **ORDERED** to be immediately **RELEASED** from detention unless she is confined for any other lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections for immediate implementation, and is **DIRECTED** to report to the Court, within five (5) days from receipt of this Decision, the action taken.

SO ORDERED.

Bersamin, C.J., Gesmundo, and *Lazaro-Javier*,* *JJ.*, concur.

Del Castillo, J., on official leave.

FIRST DIVISION

[G.R. No. 220434. July 22, 2019]

SM DEVELOPMENT CORPORATION, JOANN HIZON, ATTY. MENA OJEDA, JR., and ROSALINE QUA, *petitioners, vs.* **TEODORE GILBERT ANG,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE; TWO CONDITIONS THAT MUST CONCUR TO BE A VALID GROUND FOR DISMISSAL.— To justify a valid dismissal based on loss of trust and confidence, the concurrence of two (2) conditions must be satisfied: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.

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* Designated additional member per Raffle dated April 1, 2019.

2. ID.; ID.; ID.; ID.; DEGREE OF PROOF REQUIRED IN PROVING LOSS OF TRUST AND CONFIDENCE BETWEEN A MANAGERIAL EMPLOYEE AND A RANK AND FILE EMPLOYEE, DISTINGUISHED.— [T]he degree of proof required in proving loss of trust and confidence differs between a managerial employee and a rank and file employee. The Court settled the difference in this manner: In terminating managerial employees based on loss of trust and confidence, proof beyond reasonable doubt is not required, but the mere existence of a basis for believing that such employee has breached the trust of his employer suffices. x x x [W]ith respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient.

3. ID.; ID.; ID.; ID.; BEING A PROJECT DIRECTOR, RESPONDENT HOLDS A POSITION OF RESPONSIBILITY DEMANDING AN EXTENSIVE AMOUNT OF TRUST FROM PETITIONERS; RESPONDENT'S FAILURE TO PROPERLY MANAGE THE PROJECTS ASSIGNED TO HIM CONSTITUTES A VALID REASON FOR PETITIONERS IN LOSING CONFIDENCE IN HIM WHICH JUSTIFIED HIS TERMINATION.— [T]he Court holds that respondent was validly dismissed based on loss of trust and confidence. Respondent was not an ordinary company employee. His position as one of SMDC's Project Director is clearly a position of responsibility demanding an extensive amount of trust from petitioners. The entire project account depended on the accuracy of the classifications made by him. It was reasonable for the petitioners to trust that respondent had basis for his calculations and specifications. The preparation of the project is a complex matter requiring attention to details. Not only does these projects involve the company's finances, it also affects the welfare of all the other employees and clients as well. Respondent's failure to properly manage these projects clearly is an act inimical to the company's interests sufficient to erode petitioners' trust and confidence in him. He ought to know that his job requires that he keep the trust and confidence bestowed on him by his employer untarnished. He failed to perform what he had represented or what was expected of him, thus, petitioners had a valid reason in losing confidence in him which justified his termination.

4. ID.; ID.; ID.; ID.; LACK OF PREVIOUS RECORD OF INEFFICIENCY, INFRACTIONS OR VIOLATIONS OF COMPANY RULES CANNOT SERVE AS JUSTIFICATION TO REDUCE THE SEVERITY OF THE PENALTY.— Respondent's lack of previous record of inefficiency, infractions or violations of company rules for almost six years of service cannot serve as justification to reduce the severity of the penalty. There is really no premium for a clean record of almost six years to speak of, for a belated discovery of the misdeed does not serve to sanitize the intervening period from its commission up to its eventual discovery.

5. ID.; ID.; ID.; ID.; WHERE THERE WAS A JUST CAUSE FOR RESPONDENT'S DISMISSAL BUT HE WAS NOT AFFORDED PROCEDURAL DUE PROCESS, AWARD OF NOMINAL DAMAGES IS IN ORDER.— [A]lthough there was a just cause for respondent's dismissal, he was not afforded procedural due process. In particular, the records of this case was bereft of any showing that a hearing or conference was conducted on May 7 and 9, 2012. While respondent was given a chance to explain his side and adduce evidence in his defense through his written explanation, he was not afforded the opportunity to confront the witnesses against him through an administrative hearing before he was dismissed. Following the prevailing jurisprudence on the matter, if the dismissal is based on a just cause, then the non-compliance with procedural due process should not render the termination from employment illegal or ineffectual. Instead, the employer must indemnify the employee in the form of nominal damages. Therefore, the dismissal of respondent should be upheld, and petitioners cannot be held liable for the payment of either backwages or separation pay. The law and jurisprudence allow the award of nominal damages in favor of an employee in a case where a valid cause for dismissal exists but the employer fails to observe due process in dismissing the employee. Considering all the circumstances surrounding this case, the Courts finds the award of nominal damages in the amount of ₱30,000.00 to be in order.

APPEARANCES OF COUNSEL

Tan Acut Lopez & Pison for petitioners.
Perdigon Duclan & Associates for respondent.

D E C I S I O N

CARANDANG, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated October 2, 2014 and Resolution[3] dated September 1, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 131399. The appellate court nullified and set aside the Decision[4] dated April 26, 2013 and Resolution[5] dated June 20, 2013 of the National Labor Relations Commission (NLRC) in NLRC-LAC No. 01-000111-13/NLRC-NCR 04-05825-12 which affirmed the Decision[6] dated October 29, 2012 of the Labor Arbiter (LA) in NLRC Case No. NLRC-NCR 04-05825-12, dismissing respondent's complaint for lack of merit.

The Case and the Facts

This case arose from a complaint for illegal dismissal with money claims by respondent Teodore Gilbert Ang (respondent) against the petitioners' SM Development Corporation (SMDC), Joann Hizon (Hizon) SMDC's Head of Human Resources Department, Atty. Mena Ojeda, Jr. (Atty. Ojeda, Jr.) SMDC's Vice President Legal, and Rosaline Qua (Qua) SMDC's President (collectively, petitioners).

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[1] *Rollo*, pp. 35-96.

[2] Penned by Associate Justice Ramon A. Cruz, with Associate Justice Hakim S. Abdulwahid and Associate Justice Romeo F. Barza, concurring; *id.* at 9-28.

[3] Penned by Associate Justice Ramon A. Cruz, with Associate Justice Romero F. Barza and Associate Justice Samuel H. Gaerlan, concurring; *id.* at 30-33.

[4] Penned by Commissioner Angelo Ang Palaña, with Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena, concurring; *id.* at 341-351.

[5] Penned by Commissioner Angelo Ang Palaña, with Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena, concurring; *id.* at 359-360.

[6] Penned by Labor Arbiter Edgardo M. Madriaga; *id.* at 249-260.

The records show that respondent was hired by SMDC as its Project Director since December 2006. In his complaint, he alleged that sometime in January 2012, he applied for a two-week vacation leave, from March 30, 2012 to April 15, 2012, which was approved by Qua.[7]

On March 7, 2012, he received a Notice to Explain from Atty. Ojeda, Jr., concerning the cost status of one of his assigned projects, the Field Residences.

On March 13, 2012, he submitted his explanation on the various issues and concerns affecting the Field Residences. He denied the alleged cost overrun in the general preliminaries and presented the data in relation to other projects which negates the accusation of cost overrun. He included relevant documents affecting the project showing that he was not remiss in his duties. He also submitted the joint response letter of the engineers of the project to refute petitioners' claim that the engineers were not aware of the project construction cost.[8]

On March 20, 2012, Atty. Ojeda, Jr. and Hizon called him for a meeting where he was informed that the management, without stating specific reasons, wants him to resign from his current work.

On March 26, 2012, he received a text message from Atty. Ojeda, Jr., stating that due to his "imminent resignation," Henry Sy, Jr., is requesting him to make the necessary turnover of his functions to Ms. Imee Landicho. He received another text message on March 28, 2012 from Atty. Ojeda, Jr., with the same tenor.

On March 30, 2012, he went on his scheduled vacation and reported back to work on April 16, 2012. After office hours at about 3:30 p.m., he was called by Hizon and was made to receive the Memorandum with subject Show Cause Notice, which contains, among others, the following: (a) direction for him to explain more accusations therein enumerated within five working

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[7] *Id*. at 10.

[8] *Id*.

days; (b) direction for him to turn-over work to Landicho; (c) informing him of a 30-day preventive suspension without pay.[9]

In the Show Cause Notice[10] dated April 16, 2012, he was charged with gross and habitual neglect of duties and loss of trust and confidence due to the following infractions and omissions: (1) SM Synergy's non-collection of ₱4.5M cost of repainting of Clusters 1 & 2 in Chateau Elysee; (2) violation of Chateau's Master Deed and Presidential Decree No. 957 in relation to the discrepancy of residential and parking slots at Field Residences; (3) sale of non-existing parking slots at Field Residences; (4) sale of storage areas at Field Residences not covered by license to sell; (5) failure to clear with the COO the expense in the amount of ₱52,000.00 Philippine Currency, for the holding of the 2010 Chateau Elysee Basketball League; (6) SMDC Subsidy of ₱21M OpEx for Field Residences in 2010-11 due to delay in the amendment of MDDR; and (7) low sales generated from Chateau.

On May 17, 2012, he informed Hizon that his suspension was over and he will report back to work; but he received a phone call from the HRD Manager that he does not need to report to work because he was already dismissed. He then called Hizon asking for an explanation, and the latter asked him for a meeting where he was served with a termination letter dated May 15, 2012.[11] He was surprised to learn of an alleged May 7 and 9, 2012 administrative hearing mentioned in the said termination letter because he was never given any notice or even notified of the said hearings.[12]

Consequently, he filed a case for illegal dismissal with money claims against the petitioners.[13]

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[9] *Rollo*, p. 11.

[10] *Id*. at 433-435.

[11] *Id*. at 444-445.

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

[13] *Id*. at 135-137.

For their part, the petitioners averred that sometime in 2012, the management of SMDC received reports on several incidents and negligent acts directly involving respondent as Project Director which resulted in pecuniary loss to SMDC or which exposed the corporation and its officers to possible criminal, administrative and civil sanctions. Several meetings were then held between respondent and the management of SMDC to discuss these incidents. These reports were consolidated and attached to a Memorandum dated April 16, 2012 with the subject "Show-[C]ause Notice." However, respondent did not submit any explanation to the charges hurled against him and even failed to attend the administrative hearings despite due notice. Thus, a decision was rendered to dismiss him effective May 16, 2012.[14]

In a Decision[15] dated October 29, 2012, the LA dismissed the complaint. The LA found that there were substantial documentary evidence showing that there was a just and valid cause for respondent's dismissal on the grounds of incompetence and gross and habitual neglect of duties.

The respondent filed an appeal[16] with the NLRC.

In a Decision[17] dated April 26, 2013, the NLRC dismissed the appeal for lack of merit and affirmed the LA's decision. The NLRC held that respondent's position as a Project Director is imbued with trust and confidence. The charges and violations, as well as his neglectful acts, were inadequately met by his explanations; thus, he was dismissed for loss of trust and confidence.

Aggrieved, he filed a Motion for Reconsideration[18] but it was denied. Hence, he filed a Petition for *Certiorari*[19] with the CA.

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

[15] *Supra* note 6.

[16] *Rollo*, pp. 261-279.

[17] *Supra* note 4.

[18] *Rollo*, pp. 352-357.

[19] *Id*. at 363-381.

On October 2, 2014, the CA granted the petition and reversed and set aside the ruling of the labor tribunals. The CA found that respondent has been illegally dismissed and ordered the petitioners to: (1) reinstate respondent without loss of seniority rights and other privileges; (2) pay full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld up to the time of his actual reinstatement; and (3) pay attorney's fees equivalent to 10% of the total monetary award.

The CA held that the allegation of gross and habitual neglect of duty is not supported by any substantial evidence. Aside from the Inter-Office Memorandums dated March 27, 2012, March 30, 2012 and April 16, 2012, enumerating the alleged infractions of respondent, there were no other documentary evidence such as but not limited to audit reports or affidavits showing that respondent was responsible for the said infractions. The CA also observed that respondent has been with SMDC since December 2006, and for the past six years he has no previous record of inefficiency, infractions or violations of company rules.

The CA also said that the basis for the loss of trust and confidence was not clearly established because there was no evidence showing that respondent abused the trust reposed in him by the petitioners with respect to his responsibility as Project Director.

The CA further held that the notice requirements have not been properly observed. There was also no compliance with the imperatives of hearing or conference. The CA pointed out that the records of this case was bereft of any showing that a hearing or conference was conducted on May 7 and 9, 2012 to explain respondent's side. Even the computer printout of the shipment tracking form notifying the respondent of the said hearings states, "shipment delivered to Gersally Sambrano/ landlady." Thus, the petitioners failed to discharge their burden of proving that respondent's dismissal was for a just cause and that he was afforded due process.

Petitioners filed a Motion for Reconsideration but it was denied. Thereafter, they filed this petition.

Issue

The fundamental issue for the Court's resolution is whether respondent may be dismissed from employment on the ground of loss of trust and confidence.

Ruling of the Court

The Court finds merit in the petition.

Settled is the rule that the Court may review factual issues in a labor case where the factual findings of the CA are contrary to those of the labor tribunals which is the case herein. Here, the LA and the NLRC are one in ruling that respondent was validly dismissed from work while the CA ruled otherwise. Considering these divergent positions, the Court deems it necessary to review, re-evaluate, and re-examine the evidence presented and draw conclusions therefrom.[20]

After a thorough examination of the records, the Court agrees with the findings and conclusion of the labor tribunals.

It has long been established that an employer cannot be compelled to retain an employee who is guilty of acts inimical to his interests. This is more so in cases involving managerial employees or personnel occupying positions of responsibility.

In the present case, respondent was holding an executive position in SMDC as Project Director of Chateau Elysee and Field Residences, both in Parañaque City. As Project Director, respondent was the overall head of the project where he was assigned with the responsibility of ensuring that the expectation and objectives set by management on the project are properly implemented and achieved in terms of business planning, sales, marketing, planning and construction, permits and licenses, finance, sales documentation, property management, customer service, inventory management and legal concerns and requirements.[21]

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[20] *Stradcom Corporation v. Orpilla*, G.R. No. 206800, July 2, 2018.

[21] *Rollo*, pp. 143, 163-164.

Clearly, there is no doubt that respondent is a managerial employee. As such, he should have recognized that such intricate position requires the full trust and confidence of his employer.

Due to the nature of his occupation, respondent's employment may be terminated for willful breach of trust under Article 297(c)[22] of the Labor Code. To justify a valid dismissal based on loss of trust and confidence, the concurrence of two (2) conditions must be satisfied: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. These two requisites are present in this case.

The first requisite has already been determined. Respondent, as SMDC's project director, is holding a position of trust and confidence. As to the second requisite, that there must be an act that would justify the loss of trust and confidence, however, the degree of proof required in proving loss of trust and confidence differs between a managerial employee and a rank and file employee. The Court settled the difference in this manner:

> In terminating managerial employees based on loss of trust and confidence, proof beyond reasonable doubt is not required, but the mere existence of a basis for believing that such employee has breached the trust of his employer suffices. x x x
>
> As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. The betrayal of this trust is the essence of the offense for which an employee is penalized.
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> It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that

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[22] Article 297. Termination by Employer. – An employer may terminate an employee for any of the following causes:

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(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient.[23]

Set against these parameters, the Court holds that respondent was validly dismissed based on loss of trust and confidence. Respondent was not an ordinary company employee. His position as one of SMDC's Project Director is clearly a position of responsibility demanding an extensive amount of trust from petitioners. The entire project account depended on the accuracy of the classifications made by him. It was reasonable for the petitioners to trust that respondent had basis for his calculations and specifications. The preparation of the project is a complex matter requiring attention to details. Not only does these projects involve the company's finances, it also affects the welfare of all the other employees and clients as well.

Respondent's failure to properly manage these projects clearly is an act inimical to the company's interests sufficient to erode petitioners' trust and confidence in him. He ought to know that his job requires that he keep the trust and confidence bestowed on him by his employer untarnished. He failed to perform what he had represented or what was expected of him, thus, petitioners had a valid reason in losing confidence in him which justified his termination.

The right of an employer to freely select or discharge his employees is subject to the regulation by the State in the exercise of its paramount police power. However, there is also an equally established principle that an employer cannot be compelled to continue in employment an employee guilty of acts inimical to the interest of the employer and justifying loss of confidence in him.[24]

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[23] *Casco v. National Labor Relations Commission,* G.R. No. 200571, February 19, 2018.

[24] *Punongbayan and Araullo v. Lepon*, 772 Phil. 311 (2015).

Respondent's lack of previous record of inefficiency, infractions or violations of company rules for almost six years of service cannot serve as justification to reduce the severity of the penalty. There is really no premium for a clean record of almost six years to speak of, for a belated discovery of the misdeed does not serve to sanitize the intervening period from its commission up to its eventual discovery.[25]

Finally, although there was a just cause for respondent's dismissal, he was not afforded procedural due process. In particular, the records of this case was bereft of any showing that a hearing or conference was conducted on May 7 and 9, 2012. While respondent was given a chance to explain his side and adduce evidence in his defense through his written explanation, he was not afforded the opportunity to confront the witnesses against him through an administrative hearing before he was dismissed.

Following the prevailing jurisprudence on the matter, if the dismissal is based on a just cause, then the non-compliance with procedural due process should not render the termination from employment illegal or ineffectual. Instead, the employer must indemnify the employee in the form of nominal damages.[26] Therefore, the dismissal of respondent should be upheld, and petitioners cannot be held liable for the payment of either backwages or separation pay. The law and jurisprudence allow the award of nominal damages in favor of an employee in a case where a valid cause for dismissal exists but the employer fails to observe due process in dismissing the employee.[27] Considering all the circumstances surrounding this case, the Courts finds the award of nominal damages in the amount of ₱30,000.00 to be in order.

WHEREFORE, the instant petition is **GRANTED**. The Decision dated October 2, 2014 and Resolution dated September

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[25] *Alaska Milk Corporation v. Ponce*, 814 Phil. 975 (2017).

[26] *Mendoza v. HMS Credit Corporation*, 709 Phil. 756 (2013).

[27] *Libcap Marketing Corporation v. Baquial*, 737 Phil. 349 (2014).

1, 2015 of the Court of Appeals in CA-G.R. SP No. 131399 are **REVERSED** and **SET ASIDE**. The Decision dated April 26, 2013 of the National Labor Relations Commission is hereby **REINSTATED**. For non-compliance with procedural due process, the petitioners are **ORDERED** to pay respondent nominal damages in the amount of ₱30,000.00.

SO ORDERED.

Bersamin, C.J. (Chairperson), Jardeleza,[*] and *Gesmundo, JJ.,* concur.

Del Castillo, J., on official leave.

THIRD DIVISION

[G.R. No. 226907. July 22, 2019]

GERARDO A. ELISCUPIDEZ, *petitioner, vs.* **GLENDA C. ELISCUPIDEZ,** *respondent.*

SYLLABUS

1. CIVIL LAW; THE FAMILY CODE; VOID MARRIAGES; ARTICLE 36 OF THE FAMILY CODE; PSYCHOLOGICAL INCAPACITY; PSYCHOLOGICAL INCAPACITY AS A GROUND TO NULLIFY THE MARRIAGE SHOULD REFER TO THE MOST SERIOUS CASES OF PERSONALITY DISORDERS CLEARLY DEMONSTRATIVE OF AN UTTER INSENSITIVITY OR INABILITY TO GIVE MEANING AND SIGNIFICANCE TO THE MARRIAGE; IT MUST BE A MALADY THAT IS SO GRAVE AND PERMANENT AS TO DEPRIVE ONE OF AWARENESS OF THE DUTIES AND RESPONSIBILITIES OF THE MATRIMONIAL BOND

[*] Acting Working Chairperson of the First Division.

ONE IS ABOUT TO ASSUME. — It is axiomatic that the validity of marriage and the unity of the family are enshrined in our Constitution and statutory laws; hence any doubts attending the same are to be resolved in favor of the continuance and validity of the marriage and that the burden of proving the nullity of the same rests at all times upon the petitioner. No less than Section 2, Article XV, of the 1987 Constitution imposes upon the State the duty to protect the sanctity of marriage as a social institution and as the foundation of the family. Because of this, the Constitution decrees marriage as legally inviolable and protects it from dissolution at the whim of the parties. Given this constitutional inviolability of the institution of marriage, psychological incapacity as a ground to nullify the same under Article 36 of the Family Code should refer to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. It must be a malady that is so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume.

2. ID.; ID.; ID.; ID.; ID.; PSYCHOLOGICAL INCAPACITY MUST BE CHARACTERIZED BY GRAVITY, JURIDICAL ANTECEDENCE, AND INCURABILITY; GUIDELINES. — This Court has reiterated in a number of cases the landmark doctrine in *Santos v. Court of Appeals,* "that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved." Thereafter, in *Republic v. Court of Appeals, et al.,* this Court laid down more definitive guidelines in the disposition of psychological incapacity cases, including "(t)he root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, **(c) sufficiently proven by experts,** and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was

mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis,* nevertheless **such root cause must be identified as a psychological illness and its incapacitating nature fully explained.** Expert evidence may be given by qualified psychiatrists and clinical psychologists."

3. ID.; ID.; ID.; ID.; ID.; TO ENTITLE PETITIONER SPOUSE TO A DECLARATION OF THE NULLITY OF HIS/HER MARRIAGE, THE ROOT CAUSE OF RESPONDENT SPOUSE'S ALLEGED PSYCHOLOGICAL INCAPACITY MUST BE SUFFICIENTLY PROVEN BY EXPERTS OR SHOWN TO BE MEDICALLY OR CLINICALLY PERMANENT OR INCURABLE.— To entitle petitioner spouse to a declaration of the nullity of his or her marriage, the totality of the evidence must sufficiently prove that respondent spouse's psychological incapacity was grave, incurable and existing prior to the time of the marriage. In this case, this Court agrees with the OSG that the totality of the evidence presented by the petitioner failed to prove psychological incapacity of the respondent to comply with the essential obligations of marriage. The root cause of respondent's alleged psychological incapacity was not sufficiently proven by experts or shown to be medically or clinically permanent or incurable.

4. ID.; ID.; ID.; ID.; ID.; IT IS NOT REQUIRED THAT THE PERSON TO BE DECLARED PSYCHOLOGICALLY INCAPACITATED BE EXAMINED BY A PHYSICIAN, FOR IF THE TOTALITY OF EVIDENCE PRESENTED IS ENOUGH TO SUSTAIN A FINDING OF PSYCHOLOGICAL INCAPACITY, ACTUAL MEDICAL EXAMINATION OF THE PERSON CONCERNED NEED NOT BE RESORTED TO; RESPONDENT SPOUSE'S DRAMATIC, EXTROVERTED BEHAVIOR WHO WAS "PRONE TO INSECURITIES AND AGGRESSIVE OUTBURSTS OF EMOTIONS," FELL SHORT OF PROVING THAT SHE WAS PSYCHOLOGICALLY INCAPACITATED TO ASSUME HER MARITAL RESPONSIBILITIES.— This Court has long been negatively critical in considering psychological evaluations, presented in

evidence, derived solely from one-sided sources, particularly from the spouse seeking the nullity of the marriage. Verily, the guidelines set forth in *Santos v. Court of Appeals* do not require that a physician examine the person to be declared psychologically incapacitated. What is important is the presence of evidence that can adequately establish the party's psychological condition. For indeed, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to. In the present case, however, the totality of the evidence presented by the petitioner fails to convince this Court that respondent suffered from a psychological incapacity that is permanent or incurable, and that has existed at the time of the celebration of the marriage. Although respondent was said to have exhibited "dramatic, extroverted behavior" who was "prone to insecurities and aggressive outbursts of emotions," these characterizations fell short of proving that she was psychologically incapacitated to assume her marital responsibilities. Thus, while this Court commiserates with petitioner's predicament, the evidence on record does not square with the existence of psychological incapacity as contemplated by law and jurisprudence. Petitioner and respondent's marriage cannot therefore be declared null and void under Article 36 of the Family Code.

LEONEN, *J.*, *dissenting opinion*:

1. CIVIL LAW; THE FAMILY CODE; MARRIAGE; THE PURPOSE OF MARRIAGE CANNOT BE MET WHEN THE PARTIES ARE INCAPABLE OF FULFILLING THEIR MARITAL OBLIGATIONS TO EACH OTHER, AS FORCING THEM TO SUSTAIN SUCH A RELATIONSHIP RESULTS IN HARM NOT ONLY TO THE PARTIES, BUT TO THE VERY FOUNDATION OF THE FAMILY WHICH THE STATE SEEKS TO PROTECT.— While our laws, and concurrently our jurisprudence, seek to uphold marriage as an inviolable social institution, the State should be wary of equating inviolability with permanence. x x x [T]he contract of marriage was established for a specific purpose, which bounds the State's interest in its preservation: The notion of "permanent" is not a characteristic that inheres without a purpose. The Family Code clearly provides for the purpose of entering into marriage,

that is, "for the establishment of conjugal and family life." Consequently, the state's interest in protecting the marriage must anchor on ensuring a sound conjugal union capable of maintaining a healthy environment for a family, resulting in a more permanent union. The state's interest cannot extend to forcing two individuals to stay within a destructive marriage. The purpose of marriage cannot be met when the parties are incapable of fulfilling their marital obligations to each other. Forcing them to sustain such a relationship results in harm not only to the parties, but to the very foundation of the family that which the State seeks to protect. x x x. Verily, neglect, abuse, and exploitation flourish under destructive and dysfunctional marriages. Such relationships cannot be the foundation of society that the State is mandated to protect. Rather, it is the family, as a "basic autonomous social institution[,]" that should be protected, regardless of its structure.

2. ID.; ID.; VOID MARRIAGE; PSYCHOLOGICAL INCAPACITY; LIKE ANY EXPERT WITNESS, A CLINICAL PSYCHOLOGIST DOES NOT NEED TO HAVE PERSONAL KNOWLEDGE OF THE MATTERS SUBJECT OF HER TESTIMONY, AS HER CREDIBILITY LIES IN HER SPECIAL KNOWLEDGE, SKILL, EXPERIENCE, AND TRAINING.— [T]he majority held that Dr. Tayag's report "failed to explain in detail how respondent's condition could be characterized as grave, deeply-rooted, and incurable[.]" Ultimately, petitioner was found to have fallen short of satisfying the *Molina* guidelines. x x x [P]etitioner's evidence did satisfy the *Molina* guidelines. Dr. Tayag is a clinical psychologist whose expertise would have allowed her to "medically or clinically" identify the root cause of respondent's histrionic personality disorder. Like any expert witness, she does not need to have personal knowledge of the matters subject of her testimony, as her credibility lies in her special knowledge, skill, experience, and training. Thus, the majority should have considered her testimony, along with the contents of her Psychological Evaluation Report.

3. ID.; ID.; ID.; ID.; RESPONDENT'S MANIPULATIVE BEHAVIOR WHICH EXISTED PRIOR TO THE MARRIAGE, AND WAS SHOWN TO BE GRAVE PREVENTING HER FROM ESTABLISHING A CONJUGAL AND FAMILY LIFE WITH PETITIONER, AND FULFILLING HER ESSENTIAL MARITAL

OBLIGATIONS, ARE INDICATIVE OF PSYCHOLOGICAL INCAPACITY; THE STRICT AND UNDISCERNING GUIDELINES LAID OUT IN *MOLINA* (*REPUBLIC V. COURT OF APPEALS AND MOLINA*) HAVE BECOME INSENSITIVE TO THE GREATER PURPOSE OF "RESILIENCY" OF ARTICLE 36 OF THE FAMILY CODE.— [D]r. Tayag's evaluation was based on testimonies of persons who had observed respondent's behavior from childhood up to the point that she abandoned her family. The root cause of her psychological incapacity was traced back to her upbringing in a second family without proper role models. Viernes' accounts also indicate that respondent has exhibited manipulative behavior since childhood. Not only was the illness duly shown to have existed prior to the marriage, but it was also shown to be grave, as this same behavior prevented respondent from establishing a conjugal and family life with petitioner. It led her to have violent outbursts, to take abortifacients to prevent pregnancy, and to run away and have children with another man. Respondent's complete absence, not only from the proceedings in the lower courts, but also from the lives of her husband and two (2) children, is the most telling. Despite petitioner's attempts to have her return home, she refused and still abandoned her family, choosing to live with another man. She neither returned to visit nor informed them of her whereabouts. *Tani-De La Fuente* discussed a similar pattern of behavior as indicative of psychological incapacity x x x . As with *Tani-De La Fuente,* the circumstances here indicate respondent's incapacity to fulfill her essential marital obligations listed in Articles 68 to 71 of the Family Code. This inability to comprehend and comply with essential marital obligations is the crux of psychological incapacity as a ground for the nullity of marriage. The strict and often undiscerning guidelines laid out in *Molina* have since become insensitive to the greater purpose of resiliently applying Article 36 of the Family Code to the unique circumstances of each case.

APPEARANCES OF COUNSEL

Imelda A. Herrera for petitioner.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 seeking to reverse and set aside the Decision[1] dated May 31, 2016 of the Court of Appeals (*CA*) in CA-G.R. CV No. 103268, and the Resolution[2] dated September 2, 2016 which denied petitioner's motion for reconsideration. The Decision of the CA reversed and set aside the Decision[3] of the Regional Trial Court (*RTC*), Branch 163 of Taguig City, dated November 5, 2013, which declared the marriage between petitioner Gerardo A. Eliscupidez (*petitioner*) and respondent Glenda C. Eliscupidez (*respondent*) void *ab initio* on the ground of the latter's psychological incapacity.

Petitioner and respondent first met in 1986. They eventually became lovers, maintaining an "on-and-off" relationship as respondent would still entertain her other admirers, until they finally exchanged marital vows on November 20, 1990. They begot two children.[4]

On March 13, 2012, petitioner filed before the RTC of Taguig City a Petition for Declaration of Nullity of Marriage under Article 36 of the Family Code. Attempts to personally serve summons on the respondent failed as she could not be located in her last known address. On petitioner's motion, the trial court allowed service of summons by publication.

In compliance with an Order[5] of the RTC dated August 3, 2012, the public prosecutor conducted an investigation to

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[1] Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Ramon R. Garcia and Jhosep Y. Lopez concurring; *rollo*, pp. 45-54.

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

[3] Penned by Judge Leili Cruz Suarez; *id*. at 58-65.

[4] *Id*. at 46.

[5] Records, p. 60.

determine if there was collusion between the parties and found that there was none.

During trial, petitioner presented the following testimony which was adopted by the trial court: petitioner and respondent, while living with petitioner's parents in Manila so as to save money, would have frequent fights, with respondent having a habit of throwing things at petitioner; respondent allegedly tried to avoid getting pregnant, with her repeatedly asking their househelp to buy abortifacient medicines and to accompany her to a *manghihilot*, with respondent eventually suffering a miscarriage with their supposed first child; respondent forbade petitioner from looking at other females, from meeting up with his friends and relatives, and from wearing nice clothes, so that he could not flirt with other women; respondent asked petitioner to resign from his work to avoid meeting other people; on one occasion, respondent allegedly hit petitioner with a knife, injuring his right arm, just because respondent did not want him to attend to his assigned work project; petitioner was once admonished by his superior after respondent, thinking that petitioner was having an affair, went to his office, made a scene in front of his colleagues; respondent would often insult and berate the petitioner because of the latter's meager income, but despite the petitioner giving the respondent all his salary, respondent still incurred debts from their co-workers, the employees' cooperative, and from her credit cards; while petitioner was working in Milan, Italy, respondent neglected her responsibilities to their children; respondent engaged in an illicit affair with another man, with whom she lived together and begot two children; to save their marriage, petitioner repeatedly asked respondent to live with him, but the latter refused; in 2002 or 2003, respondent worked overseas where she had another affair with a married man.[6]

Petitioner presented as his witness Irene V. Oro (*Oro*) who worked as *kasambahay* for him and respondent when the two of them were still living together. Oro confirmed petitioner's

[6] *Rollo*, pp. 46-47.

testimony that respondent was irritable, was a "war freak," and that whenever petitioner and respondent would quarrel, respondent would throw things at the petitioner. Oro further claimed that the couple had a heated argument when petitioner found out that respondent had taken abortion pills. Oro added that the petitioner would be hurt whenever the couple fought with each other. She was, thus, forced to leave her work out of fear for her life, as petitioner and respondent's quarrels were becoming more frequent.[7]

Petitioner, likewise, presented the Psychological Evaluation Report (*Report*) of clinical psychologist Dr. Nedy L. Tayag. Dr. Tayag conducted her psychological evaluation of petitioner through personal examination while her assessment of the psychological behavior of respondent was based on her interviews of petitioner, Oro, and Vilma Cascabel Viernes (*Viernes*), the respondent's sister.[8] A portion of the Report reads:

REMARKS:

After a careful assessment of the data presented, along with the results of the psychological tests administered, the undersigned psychologist arrives to a firm opinion that the collapse of the marriage between the herein couple was triggered by the psychological incapacity of the Respondent to assume and properly discharge her essential roles and obligations in marriage. Meanwhile, Petitioner, Gerardo, had shown a strong-willed and committed approach to his marital and family life with his spouse, child and in-laws so that he was able to fulfill his share of obligations and duties, which are essential to make his marriage a lasting one. He was likewise able to perform his gender role so that he was perceived as a good family man to his wife and child. Even upon exposure to the challenges and demands of being a career-oriented man and at the same time Head of his family, he had shown patience and understanding as well as extreme tolerance towards his irresponsible and abusive wife. For the sake of his child, he continuously strives to uphold his duties and responsibilities[,] thus, enabling him to meet the essential requirements of marriage and family life.

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[7] *Id.* at 47-48.

[8] *Id.* at 48.

On the other hand, Glenda, respondent was seen to be harboring traits of a personality deficit classified as HISTRIONIC PERSONALITY DISORDER with Anti Social Personality Traits. She manifests a colorful, dramatic, extroverted behavior. She is usually adventurous so that she is too involved with her friends and the opposite sex to the extent of neglecting her family. She is also excitable and emotional because she allows her emotions to overrule her decisions such that she is impulsive when it comes to her decisions and actions. She may at times exaggerate while expressing her thoughts and feelings to the extent of being abusive and temperamental to her spouse, thus, humiliating him in front of other people with her nagging ways, fabricated stories and indiscretions. Similarly, she is known as hysterical for she easily reacts to people and situations even with trivial matters and setbacks since she is also prone to insecurities and aggressive outbursts of emotions. She has a high degree of attention-seeking behavior and prefers an extravagant way of life since she is pleased whenever she becomes the center of others' attention and support[,] and also tends to display tantrums and tears whenever she fails to get what she wants or when she experiences problems within [her) marriage. More so, she endlessly needs reassurance from other people. She always attempts to gain her husband's forgiveness and continued loyalty even though she continuously betrayed his trust. Meanwhile, she is basically irresponsible and consistently fails to honor her sexual roles and obligations within their marriage such as taking care of her spouse and remaining faithful to their relationship. She also lacks remorse such that she never was truly guilty of what she did and up to present continues with irresponsible disposition against her spouse since she engaged in extra-marital relations since she wants to maintain her lifestyle of being single. She also abandoned her family in order to cohabit with her paramour.

Evidently, Respondent's flawed personality is a result of the lack of sufficient guidance and discipline from her upbringing as well as poor role models such as her parents and siblings' faulty lifestyle and relationships so that within the family, there was insufficient bonding, closeness and support. Hence, she has a greater need for reassurance, security and affection from others so that she learned to use her charm/good looks and assets in order to obtain such. x x x.

x x x x x x x x x

The psychological incapacity of the Respondent is characterized by juridical antecedence, as it already existed long before she entered

into marriage with the Petitioner. Since it started early in life, it has been deeply embedded within her system and becomes an integral part of her personality structure, thereby rendering such to be permanent and irreversible.

As based on the context mentioned above, the undersigned recommends that their marriage be declared null and void.[9]

On November 5, 2013, the RTC rendered a Decision in favor of petitioner. It disposed, thus:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring the marriage of petitioner and respondent *void ab initio* under Article 36 of the Family Code of the Philippines on the ground of respondent's psychological incapacity to perform her essential marital obligations.

2. Ordering the Local Civil Registrar of Oriental Mindoro as well as the National Statistics Office to cancel from their Book of Marriages the entries on the marriage of petitioner and respondent.

The Decree of Absolute Nullity shall be issued by the Court only after the Entry of Judgment shall have been registered with the Local Civil Registrar (LCR) of Oriental Mindoro where the parties' marriage was celebrated and with the LCR of Taguig City, conformably with Section 22 of A.M. 02-11-10-SC.

Furnish the Office of the Solicitor General, the Public Prosecutor and the herein parties with a copy of this decision.

SO ORDERED.[10]

The Office of the Solicitor General (*OSG*) moved to reconsider, but the RTC denied its motion in an Order dated June 24, 2014.[11]

The OSG filed an appeal before the CA. It argued that the totality of the evidence presented by the petitioner failed to prove that the respondent was suffering from psychological

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[9] *Id*. at 20-23.

[10] *Id*. at 65.

[11] *Id*. at 49.

incapacity. It added that the reliance of the RTC on the findings and conclusions of Dr. Tayag was without merit considering that her psychological evaluation of respondent was based only on the information given to her by petitioner, Oro, and Viernes.[12]

In its assailed Decision, the CA found merit in the appeal of the OSG.

The CA held that the sexual infidelity, irresponsibility, and other negative traits cited by the petitioner were not sufficient grounds to categorize respondent's condition as grave and serious so as to render her incapable of performing her essential marital obligations.[13]

The CA found that according to the records, Oro, the couple's former househelp who provided Dr. Tayag information on the latter's data gathering process with respect to behavioral, social, and emotional characteristics of the respondent, was only hired after the celebration of the marriage. The CA emphasized that while Viernes may be considered competent to provide information on the early life of the respondent, it had not been conclusively established that the alleged psychological incapacity of the respondent existed early in her life given the general information provided by Viernes. Thus, the CA held that Dr. Tayag's finding of "lack of sufficient guidance and discipline" and "poor role models" as root cause of respondent's psychological incapacity appear to be without factual basis.[14] It added that the psychological impression provided by Dr. Tayag failed to explain in detail how the condition of the respondent could be characterized as grave, deeply- rooted, and incurable within the parameters of psychological incapacity.[15] The appellate court found that the methodology used by Dr. Tayag did not meet the required standard of depth and comprehensiveness of examination needed to evaluate a party who is allegedly suffering

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[12] *Id*.

[13] *Id*. at 52.

[14] *Id*.

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

from a psychological disorder.[16] The dispositive portion of the CA Decision reads:

> **WHEREFORE**, the Appeal is **GRANTED**. The Decision of the trial court dated 05 November 2013 is **REVERSED** and **SET ASIDE**. Accordingly, the petition for declaration of nullity of marriage filed by petitioner Gerardo Eliscupidez under Article 36 of the Family Code is **DISMISSED**; and the marriage of the parties remains valid and subsisting.
>
> **SO ORDERED.**[17]

Petitoner's Motion for Reconsideration was denied by the CA in its assailed September 2, 2016 Resolution.[18]

Hence, this Petition raising the sole issue of whether the CA committed an error of law in reversing the Decision of the RTC which granted the Petition for Declaration of Nullity of Marriage under Article 36 of the Family Code filed by the petitioner.[19]

Petitioner argues that the findings of the RTC as regards the existence or non-existence of the psychological incapacity of a party should be final and binding. He also claims that his expert witness has concomitantly identified the juridical antecedence, gravity, and incurability of such psychological incapacity, and that he has presented independent evidence as to the existence of respondent's psychological incapacity and that the totality of evidence presented had duly proven the same.[20]

The OSG, in its Comment,[21] reiterated its arguments below, stressing that the conclusion stated in Dr. Tayag's Report could not be inferred from the statements of Viernes. The OSG

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[16] *Id*. at 53.

[17] *Id*.

[18] *Supra* note 2.

[19] *Rollo*, p. 26.

[20] *Id*.

[21] *Id*. at 84-102.

maintained that the findings of "lack of sufficient guidance and discipline" and "poor role models" were, on respondent's part, contradictory to Viernes' description of her mother as strict, noting that it was stated in the Report that according to Viernes, it was because of their mother that she and respondent "were disciplined and molded to be dedicated to their studies."[22]

We deny the petition.

It is axiomatic that the validity of marriage and the unity of the family are enshrined in our Constitution and statutory laws; hence any doubts attending the same are to be resolved in favor of the continuance and validity of the marriage and that the burden of proving the nullity of the same rests at all times upon the petitioner.[23] No less than Section 2, Article XV, of the 1987 Constitution imposes upon the State the duty to protect the sanctity of marriage as a social institution and as the foundation of the family.[24] Because of this, the Constitution decrees marriage as legally inviolable and protects it from dissolution at the whim of the parties.[25]

Given this constitutional inviolability of the institution of marriage, psychological incapacity as a ground to nullify the same under Article 36[26] of the Family Code should refer to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[27] It must be a malady that is so grave and permanent as to deprive one of awareness of the

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

[23] *Maria Concepcion N. Singson v. Benjamin L. Singson*, G.R. No. 210766, January 8, 2018.

[24] "Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State."

[25] *Del Rosario v. Del Rosario, et al.,* 805 Phil. 978, 987 (2017).

[26] Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

[27] *Id*.

duties and responsibilities of the matrimonial bond one is about to assume.[28]

This Court has reiterated in a number of cases[29] the landmark doctrine in *Santos v. Court of Appeals*,[30] "that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved."

Thereafter, in *Republic v. Court of Appeals, et al.*,[31] this Court laid down more definitive guidelines in the disposition of psychological incapacity cases, including "(t)he root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, **(c) sufficiently proven by experts**, and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless **such root cause must be identified as a psychological illness and its incapacitating nature fully**

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[28] *Republic of the Phils. v. Spouses Romero II*, 781 Phil. 737, 746 (2016).

[29] *Espina-Dan v. Dan*, G.R. No. 209031, April 16, 2018; *Yambao v. Republic of the Phils., et al.*, 655 Phil. 346 (2011); *Alcazar v. Alcazar*, 618 Phil. 616 (2009); *Ting v. Velez-Ting*, G.R. No. 166562, March 31, 2009.

[30] *Santos v. Court of Appeals, et al.*, 310 Phil. 21, 39 (1995).

[31] 335 Phil. 664 (1997).

explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists."[32]

To entitle petitioner spouse to a declaration of the nullity of his or her marriage, the totality of the evidence must sufficiently prove that respondent spouse's psychological incapacity was grave, incurable and existing prior to the time of the marriage.[33] In this case, this Court agrees with the OSG that the totality of the evidence presented by the petitioner failed to prove psychological incapacity of the respondent to comply with the essential obligations of marriage. The root cause of respondent's alleged psychological incapacity was not sufficiently proven by experts or shown to be medically or clinically permanent or incurable.

We agree with the refusal of the CA to give credence and weight to the Report of Dr. Tayag. As found by the CA, Dr. Tayag declared in her Report that her professional services were engaged by petitioner in connection with the petition for nullity of his marriage with respondent, and that the persons who provided her with information as regards her data gathering with respect to the behavioral, social, and emotional characteristics of the respondent were the petitioner himself, their former househelp Oro, and respondent's sister Viernes.[34] This leads to the conclusion that findings in the same were solely based on the self-serving testimonial descriptions and characterizations of respondent rendered by petitioner and his witnesses.

Moreover, the conclusion of Dr. Tayag that respondent's psychological incapacity existed early in her life were merely based on the information provided by Viernes that she and respondent were their father's second family, and that respondent was very manipulative. Dr. Tayag merely generalized her explanations as to the reason behind and the extent of respondent's alleged personality disorder. The CA correctly pointed out that Dr. Tayag's Report failed to explain in detail how respondent's condition could be characterized as grave,

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[32] *Id.* at 677. (Emphasis ours)

[33] *Mendoza v. Republic of the Phils., et al.*, 698 Phil. 241, 243 (2012).

[34] *Rollo*, p. 52.

deeply-rooted, and incurable within the doctrinal context of "psychological incapacity." Said the CA:

> x x x It was arrived at only on the basis of the information gathered from the petitioner, whose bias in favor of his cause cannot be discounted, and the very limited information from the respondent's sister. While this circumstance alone does not disqualify the psychologist for reasons of bias, her report, testimony and conclusions deserve the application of a more rigid and stringent set of standards. The methodology employed simply cannot satisfy the required depth and comprehensiveness of examination required to evaluate a party alleged to be suffering from a psychological disorder. In short, this is not the psychological report that the Court can rely [on] as basis for the conclusion that psychological incapacity exists. Verily, although expert opinion furnished by psychologists regarding the psychological temperament of parties are usually given considerable weight by the court, the existence of psychological incapacity must still be proven by independent evidence.[35]

This Court has long been negatively critical in considering psychological evaluations, presented in evidence, derived solely from one-sided sources, particularly from the spouse seeking the nullity of the marriage.[36] Verily, the guidelines set forth in *Santos v. Court of Appeals*[37] do not require that a physician examine the person to be declared psychologically incapacitated. What is important is the presence of evidence that can adequately establish the party's psychological condition.[38] For indeed, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.[39]

In the present case, however, the totality of the evidence presented by the petitioner fails to convince this Court that respondent suffered from a psychological incapacity that is

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[35] *Id*. at 53. (Citations omitted)

[36] *Toring v. Toring, et al*., 640 Phil. 434, 450 (2010).

[37] *Supra* note 29.

[38] *Marcos v. Marcos*, 397 Phil. 840, 850 (2000).

[39] *Id*.

permanent or incurable, and that has existed at the time of the celebration of the marriage. Although respondent was said to have exhibited "dramatic, extroverted behavior" who was "prone to insecurities and aggressive outbursts of emotions," these characterizations fell short of proving that she was psychologically incapacitated to assume her marital responsibilities. Thus, while this Court commiserates with petitioner's predicament, the evidence on record does not square with the existence of psychological incapacity as contemplated by law and jurisprudence. Petitioner and respondent's marriage cannot therefore be declared null and void under Article 36 of the Family Code.

WHEREFORE, the petition is hereby **DENIED** for lack of merit. The Decision dated May 31, 2016 and the Resolution dated September 2, 2016 in CA-G.R. CV No. 103268 are **AFFIRMED**.

SO ORDERED.

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

Leonen, J., see separate dissenting opinion.

DISSENTING OPINION

LEONEN, *J.*:

By denying this Petition, this Court continues to apply the restrictive interpretation of psychological incapacity begun by *Republic v. Court of Appeals and Molina*.[1] I dissent from the continued application of the rigid *Molina* guidelines as an interpretation of Article 36 of the Family Code.

I

Article 36 of the Family Code provides psychological incapacity as a ground for the nullity of marriage:

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[1] 335 Phil. 664 (1997) [Per *J.* Panganiban, *En Banc*].

ARTICLE 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

This Court first applied this provision in *Santos v. Court of Appeals*,[2] noting that the Family Code Revision Committee must have deliberately omitted a specific definition for psychological incapacity "to allow some resiliency in its application."[3] It also cited the Committee's deliberations in support of its conclusion that "'psychological incapacity' should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage[.]"[4]

Likewise referencing the provision's religious origins in the New Canon Law, this Court cited a former presiding judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila, Dr. Gerardo Veloso, who stated "that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability."[5]

These findings in *Santos* formed the basis of *Molina*, where this Court developed the following guidelines in determining a spouse's psychological incapacity:

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation". It decrees marriage as legally "inviolable", thereby protecting it from dissolution at the whim of

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[2] 310 Phil. 21 (1995) [Per *J*. Vitug, *En Banc*].

[3] *Id*. at 36.

[4] *Id*. at 40.

[5] *Id*. at 39.

the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their *permanence, inviolability* and *solidarity*.

(2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological (*sic*) peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as *root* causes. The illness must be shown as downright incapacity or inability, not a refusal,

neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

> "The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature."

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally — subject to our law on evidence — what is decreed as canonically invalid should also be decreed civilly void.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church — while remaining independent, separate and apart from each other — shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.[6] (Emphasis in the original, citations omitted)

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[6] *Republic v. Court of Appeals and Molina*, 335 Phil. 664, 676-679 (1997) [Per J. Panganiban, *En Banc*]. The eighth guideline has been dispensed with pursuant to A.M. No. 02-11-10-SC (2003) (*Re: Proposed Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages*). See *Padilla-Rumbaua v. Rumbaua*, 612 Phil. 1061, 1078 (2009)

These guidelines have been cited in multiple cases since 1997, and petitions have often been denied when courts find one (1) or more of its requirements absent. Likewise, courts have often denied petitions that allege grounds for annulment or legal separation together with, or as proof of, a spouse's psychological incapacity.[7]

From *Molina's* promulgation in 1997 to 2008, only *Antonio v. Reyes*[8] was able to satisfy the guidelines' stringent requirements. Since the Family Code's passage into law, only the cases of *Chi Ming Tsoi v. Court of Appeals*,[9] *Antonio v. Reyes*,[10] *Ngo Te v. Yu-Te*,[11] *Azcueta v. Republic*,[12] *Halili v. Santos-Halili*,[13] *Camacho-Reyes v. Reyes-Reyes*,[14] *Kalaw v. Fernandez*,[15] *Tani-De La Fuente v. De La Fuente*,[16] *Republic v. Javier*,[17] and *Republic v. Mola Cruz*[18] have sustained a

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[Per J. Brion, Second Division]; *Navales v. Navales,* 578 Phil. 826, 839 (2008) [Per J. Austria-Martinez, Third Division]; *Tongol v. Tongol*, 562 Phil. 725, 735 (2007) [Per J. Austria-Martinez, Third Division]; *Antonio v. Reyes*, 519 Phil. 337, 358 (2006) [Per J. Tinga, Third Division]; and *Carating-Siayngco v. Siayngco*, 484 Phil. 396, 410 (2004) [Per J. Chico-Nazario, Second Division].

[7] See *Hernandez v. Court of Appeals*, 377 Phil. 919 (1999) [Per J. Mendoza, Second Division]; *Matudan v. Republic*, 799 Phil. 449 (2016) [Per J. Del Castillo, Second Division]; and *Tani-De La Fuente v. De La Fuente*, 807 Phil. 31 (2017) [Per J. Leonen, Second Division].

[8] 519 Phil. 337 (2006) [Per J. Tinga, Third Division].

[9] 334 Phil. 294 (1997) [Per J. Torres, Jr., Second Division].

[10] 519 Phil. 337 (2006) [Per J. Tinga, Third Division].

[11] 598 Phil. 666 (2009) [Per J. Nachura, Third Division].

[12] 606 Phil. 177 (2009) [Per J. Leonardo-De Castro, First Division].

[13] 607 Phil. 1 (2009) [Per J. Corona, Special First Division].

[14] 642 Phil. 602 (2010) [Per J. Nachura, Second Division].

[15] 750 Phil. 482 (2015) [Per J. Bersamin, Special First Division].

[16] 807 Phil. 31 (2017) [Per J. Leonen, Second Division].

[17] G.R. No. 210518, April 18, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64164 > [Per J. Reyes, Jr. Second Division].

[18] G.R. No. 236629, July 23, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64585 > [Per J. Gesmundo, Third Division].

marriage's nullity due to a spouse's psychological incapacity.[19] Evidently, the *Molina* guidelines have imposed a restrictive set of requirements for establishing a spouse's psychological

[19] To date, this Court has resolved the following cases via a decision or signed resolution: *Republic v. Deang*, G.R. No. 236279, March 25, 2019, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/6507 > [Per J. Perlas-Bernabe, Second Division]; *Republic v. Tecag*, G.R. No. 229272, November 19, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64764 > [Per J. Perlas-Bernabe, Second Division]; *Republic v. Mola Cruz*, G.R. No. 236629, July 23, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64585 > [Per J. Gesmundo, Third Division]; *Republic v. Javier*, G.R. No. 210518, April 18, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64164 > [Per J. Reyes, Jr. Second Division]; *Espina-Dan v. Dan*, G.R. No. 209031, April 16, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64126 > [Per J. Del Castillo, First Division]; *Republic v. Tobora-Tionglico*, G.R. No. 218630, January 11, 2018,851 SCRA 107 [Per J. Tijam, First Division]; *Lontoc-Cruz v. Cruz*, 802 Phil. 401 [Per J. Del Castillo, First Division]; *Bakunawa III v. Bakunawa*, 816 Phil. 649 (2017) [Per J. Reyes, J., Third Division]; *Garlet v. Garlet*, 815 Phil. 268 (2017) [Per J. Leonardo-De Castro, First Division]; *Tani-De La Fuente v. De La Fuente*, 807 Phil. 31 (2017) [Per J. Leonen, Second Division]; *Del Rosario v. Del Rosario*, 805 Phil. 978 (2017) [Per J. Perlas-Bernabe, First Division]; *Castillo v. Republic*, 805 Phil. 209 (2017) [Per J. Peralta, Second Division]; *Matudan v. Republic*, 799 Phil. 449 (2016) [Per J. Del Castillo, Second Division]; *Republic v. Pangasinan*, 792 Phil. 808 (2016) [Per J. Velasco, Jr., Third Division]; *Republic v. Spouses Romero*, 781 Phil. 737 (2016) [Per J. Perlas-Bernabe, First Division]; *Mallilin v. Jamesolamin*, 754 Phil. 158 (2015) [Per J. Mendoza, Second Division]; *Kalaw v. Fernandez*, 750 Phil. 482 (2015) [Per J. Bersamin, Special First Division]; *Republic v. De Gracia*, 726 Phil. 502 (2014) [Per J. Perlas-Bernabe, Second Division]; *Republic v. Encelan*, 701 Phil. 192 (2013) [Per J. Brion, Second Division]; *Mendoza v. Republic and Mendoza*, 698 Phil. 241 (2012) [Per J. Bersamin, First Division]; *Republic v. The Honorable Court of Appeals (Ninth Division) and De Quintos, Jr.*, 698 Phil. 257 (2012) [Per J. Bersamin, First Division]; *Republic v. Galang*, 665 Phil. 658 (2011) [Per J. Brion, Third Division]; *Ochosa v. Alano and Republic*, 655 Phil. 512 (2011) [Per J. Leonardo-De Castro, First Division]; *Yambao v. Republic and Yambao*, 655 Phil. 346 (201) [Per J. Nachura, Second Division]; *Marable v. Marable*, 654 Phil. 528 (2011) [Per J. Villarama, Jr., Third Division]; *Agraviador v. Amparo-Agraviador,* 652 Phil. 49 (2010) [Per J. Brion, Third Division]; *Baccay v. Baccay and Republic*, 651 Phil. 68 (2010) [Per J. Villarama, Jr., Third Division]; *Camacho-Reyes v. Reyes-Reyes*, 642 Phil. 602 (2010) [Per J. Nachura, Second Division]; *Toring v. Toring and Republic*, 640 Phil. 434 (2010) [Per J. Brion, Third Division]; *Ligeralde v. Patalinghug*, 632 Phil. 326 (2010) [Per J. Mendoza, Third Division]; *Suazo v. Suazo*, 629 Phil. 157 Second Division]; *Paz v. Paz*, 627 Phil. 1 (2010) [Per J. Carpio, Second Division]; *Lim v. Sta. Cruz-Lim*, 625 Phil. 407 (2010) [Per J. Nachura,

incapacity. In *Ngo Te*, this Court stated that our "jurisprudential doctrine has unnecessarily imposed a perspective"[20] that is "totally inconsistent with the way the concept [of psychological incapacity] was formulated[.]"[21] Verily, the strictures of *Molina* have often been applied indiscriminately and without regard for the specific circumstances of suffering petitioners:

> In hindsight, it may have been inappropriate for the Court to impose a rigid set of rules, as the one in *Molina*, in resolving all cases of psychological incapacity. Understandably, the Court was then alarmed by the deluge of petitions for the dissolution of marital bonds, and was sensitive to the OSG's exaggeration of Article 36 as the "most liberal divorce procedure in the world." The unintended consequences of *Molina*, however, has taken its toll on people who have to live with deviant behavior, moral insanity and sociopathic personality

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Third Division]; *Aspillaga v. Aspillaga*, 619 Phil. 434 (2009) [Per J. Quisumbing, Second Division]; *Padilla-Rumbaua v. Rumbaua*, 612 Phil. 1061 (2009) [Per J. Brion, Second Division]; *Najera v. Najera*, 609 Phil. 316 (2009) [Per J. Peralta, Third Division]; *Halili v. Santos-Halili*, 607 Phil. 1 (2009) [Per J. Corona, Special First Division]; *So v. Valera*, 606 Phil. 309 (2009) [Per J. Brion, Second Division); *Azcueta v. Republic*, 606 Phil. 177 (2009) [Per J. Leonardo-De Castro, First Division]; *Ting v. Velez-Ting*, 601 Phil. 676 (2009) [Per J. Nachura, Third Division); *Ngo Te v. Yu-Te*, 598 Phil. 666 (2009) [Per J. Nachura, Third Division]; *Navales v. Navales*, 578 Phil. 826 (2008) [Per J. Austria-Martinez, Third Division]; *Navarro, Jr. v. Cecilio-Navarro*, 549 Phil. 632 (2007) [Per J. Quisumbing, Second Division]; *Tongol v. Tongol,* 562 Phil. 725 (2007) [Per J. Austria-Martinez, Third Division]; *Republic v. Tanyag-San Jose*, 545 Phil. 725 (2007) [Per J. Carpio Morales, Second Division)] *Antonio v. Reyes*, 519 Phil. 337 (2006) [Per J. Tinga, Third Division]; *Republic v. Iyoy*, 507 Phil. 485 (2005) [Per J. Chico-Nazario, Second Division]; *Republic v. Quintero-Hamano*, 472 Phil. 807 (2004) [Per J. Corona, Third Division]; *Pesca v. Pesca*, 408 Phil. 713 (2001) [Per J. Vitug, Third Division]; *Republic v. Dagdag*, 404 Phil. 249 (2001) [Per J. Quisumbing, Second Division]; *Marcos v. Marcos*, 397 Phil. 840 (2000) [Per J. Panganiban, Third Division]; *Hernandez v. Court of Appeals*, 377 Phil. 919 (1999) [Per J. Mendoza, Second Division]; *Republic v. Court of Appeals and Molina*, 335 Phil. 664 (1997) (Per J. Panganiban, *En Banc*); *Chi Ming Tsoi v. Court of Appeals,* 334 Phil. 294 (1997) [Per J. Torres, Jr., Second Division); and *Santos v. Court of Appeals*, 310 Phil. 21 (1995) [Per J. Vitug, *En Banc*].

[20] *Ngo Te v. Yu-Te*, 598 Phil. 666, 669 (2009) [Per J. Nachura, Third Division].

[21] *Id*.

anomaly, which, like termites, consume little by little the very foundation of their families, our basic social institutions. Far from what was intended by the Court, *Molina* has become a strait-jacket, forcing all sizes to fit into and be bound by it. Wittingly or unwittingly, the Court, in conveniently applying *Molina*, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage.[22] (Citations omitted)

In *Kalaw v. Fernandez*,[23] this Court similarly discussed the consequences of our adherence to the *Molina* guidelines:

The [*Molina*] guidelines have turned out to be rigid, such that their application to every instance practically condemned the petitions for declaration of nullity to the fate of certain rejection. But Article 36 of the Family Code must not be so strictly and too literally read and applied given the clear intendment of the drafters to adopt its enacted version of "less specificity" obviously to enable "some resiliency in its application." Instead, every court should approach the issue of nullity "not on the basis of a *priori* assumptions, predilections or generalizations, but according to its own facts" in recognition of the verity that no case would be on "all fours" with the next one in the field of psychological incapacity as a ground for the nullity of marriage; hence, every "trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court."[24] (Citation omitted)

While our laws, and concurrently our jurisprudence, seek to uphold marriage as an inviolable social institution, the State should be wary of equating inviolability with permanence. In a previous opinion, I discussed that the contract of marriage was established for a specific purpose, which bounds the State's interest in its preservation:

The notion of "permanent" is not a characteristic that inheres without a purpose. The Family Code clearly provides for the purpose of entering into marriage, that is, "for the establishment of conjugal and family

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[22] *Id.* at 695-696.

[23] 750 Phil. 482 (2015) [Per *J.* Bersamin, Special First Division].

[24] *Id*. at 499-500.

life." Consequently, the state's interest in protecting the marriage must anchor on ensuring a sound conjugal union capable of maintaining a healthy environment for a family, resulting in a more permanent union. The state's interest cannot extend to forcing two individuals to stay within a destructive marriage.[25] (Citation omitted)

The purpose of marriage cannot be met when the parties are incapable of fulfilling their marital obligations to each other. Forcing them to sustain such a relationship results in harm not only to the parties, but to the very foundation of the family—that which the State seeks to protect.

In *Hernandez v. Court of Appeals*,[26] this Court refused to nullify the petitioner's marriage despite her husband's evident incapability of fulfilling his marital obligations. He refused to support his family, opting to spend his money drinking with friends instead. His constant promiscuity resulted in him infecting his wife with gonorrhea. When she confronted him about his behavior, he beat her so badly that she had a concussion. But since the grounds alleged as proof of the husband's psychological incapacity were also grounds for legal separation, this Court refused to declare the marriage void. Rather, it held that, consistent with *Molina*, the wife needed expert evidence proving that her husband's acts were "manifestations of a disordered personality which make private respondent completely unable to discharge the essential obligations of the marital state[.]"[27]

In *Matudan v. Republic*,[28] this Court also maintained the marriage's validity despite the wife's evident refusal to live with the petitioner and their four (4) children. She went abroad for work in 1985 and never returned. She never informed her family of her whereabouts, and was, thus, unavailable for examination by the petitioner's clinical psychologist. Despite

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[25] *J.* Leonen, Dissenting Opinion in *Mallilin v. Jamesolamin*, 754 Phil. 158, 203 (2015) [Per *J.* Mendoza, Second Division].

[26] 377 Phil. 919 (1999) [Per *J.* Mendoza, Second Division].

[27] *Id.* at 932.

[28] 799 Phil. 449 (2016) [Per *J.* Del Castillo, Second Division].

her inability to live together with or "render mutual help and support"[29] to her spouse, the lower courts found that abandonment was only a ground for legal separation.[30] This Court affirmed this finding, in line with the strict requirements of gravity, juridical antecedence, and incurability as discussed in *Santos*, and standardized in *Molina*.

Verily, neglect, abuse, and exploitation flourish under destructive and dysfunctional marriages.[31] Such relationships cannot be the foundation of society that the State is mandated to protect. Rather, it is the family, as a "basic autonomous social institution[,]" that should be protected, regardless of its structure.[32]

I opine that *Tani-De La Fuente* is more consistent with the resilient application of Article 36 of the Family Code, as envisioned in *Santos*. In *Tani-De La Fuente*, the petitioner was deemed to have established her husband's psychological incapacity by detailing his pattern of physical and psychological abuse. The husband's paranoia and insecurity manifested in his treatment of the petitioner as a "sex slave."[33] The tipping point was when he poked a gun at her head during a heated argument. These accounts were interpreted by the testimony of a clinical psychologist who interviewed the petitioner and her husband's best friend. The husband's condition was diagnosed as "paranoid personality disorder[,]"[34] attributed to a "pathogenic parental model"[35] and hereditary traits from his

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[29] FAMILY CODE, Art. 68.

[30] *Matudan v. Republic*, 799 Phil. 449, 458 (2016) [Per *J*. Del Castillo, Second Division].

[31] See *Republic v. Manalo*, G.R. No. 221029, April 24, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64093 > [Per *J*. Peralta, *En Banc*].

[32] CONST., Art. II, Sec. 12.

[33] *Tani De La Fuente v. De La Fuente*, 807 Phil. 31, 34 (2017) [Per *J*. Leonen, Second Division].

[34] *Id*. at 37.

[35] *Id.*

father, who was also a psychiatric patient. The nature of the illness was also described as grave and incurable because the husband's paranoia compelled him to deny that something was wrong with him.[36]

Even then, the Court of Appeals reversed the Regional Trial Court's declaration of the marriage's nullity. It discarded the expert witness' testimony for being hearsay, noting that the clinical psychologist "had no chance to personally conduct a thorough study and analysis of respondent's mental and psychological condition."[37] Thus, the petitioner was deemed unable to prove the gravity, juridical antecedence, and incurability of her husband's psychological incapacity in accordance with *Molina*.

Before this Court, we held that the petitioner's evidence satisfied the *Molina* guidelines, and that "it would be of utmost cruelty"[38] to force the spouses together given the husband's abusive behavior and his inability to comply with his basic marital obligations of mutual help and support.

It is clear that *Molina's* stringency has rendered it an inconsistent tool in assessing a spouse's psychological fitness to comply with his or her marital obligations, and ineffective at maintaining the intended "resiliency" of Article 36 of the Family Code. Courts have indiscriminately bound couples together instead of recognizing that particular circumstances in specific marriages may deviate from the *Molina* guidelines, but nevertheless indicate an incapability to meet the essential obligations of a married life. A revised framework is, therefore, required.

II

In this light, I opine that petitioner Gerardo A. Eliscupidez sufficiently proved respondent Glenda C. Eliscupidez's psychological incapacity.

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[36] *Id*.

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

[38] *Id*. at 50.

As proof of respondent's psychological incapacity, petitioner testified that their disagreements would often result in physical violence: respondent would often throw things at him, once even assaulting him with a knife. Respondent also asked her helper to purchase abortifacients so that she could avoid getting pregnant with petitioner's child. Despite this, she conceived two (2) children with another man while petitioner was abroad for work.[39] These accounts were corroborated by their household helper, Irene V. Oro (Oro), who confirmed respondent's aggressive tendencies toward her husband and testified on the spouses' quarrel over respondent's use of abortifacients.[40]

Likewise, the expert testimony of clinical psychologist Nedy L. Tayag (Dr. Tayag), which was drawn from interviews with petitioner, Oro, and respondent's sister Vilma Casacbel Viernes (Viernes), assessed respondent's psychological behavior in a Psychological Evaluation Report. Dr. Tayag diagnosed respondent's condition as "histrionic personality disorder with anti[-]social personality traits[,]"[41] characterizing the illness as prone to causing "colorful, dramatic, extroverted behavior"[42] and an "excitable and emotional"[43] state of mind. Thus, during their marriage, respondent would "at times exaggerate while expressing her thoughts and feelings to the extent of being abusive and temperamental to her spouse[.]"[44]

Respondent also prevented petitioner "from meeting up with his friends and relatives,"[45] and even attending certain work projects, out of fear that he would be attracted to other women.[46] These behaviors resulted in respondent often humiliating

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[39] *Ponencia*, p. 2.

[40] *Id*. at 2-3.

[41] *Id*. at 3.

[42] *Id*.

[43] *Id*.

[44] *Id*.

[45] *Id*. at 2.

[46] *Id*.

petitioner in front of other people "with her nagging ways, fabricated stories[,] and indiscretions."[47]

Showing no remorse, she also repeatedly betrayed his trust by cohabiting with other men.[48] Ultimately, respondent "abandoned her family in order to cohabit with her paramour."[49]

Dr. Tayag's interview with Viernes also gave insight into respondent's upbringing. Viernes' accounts of their having grown up as part of their father's second family, and of respondent's "manipulative"[50] tendencies, led Dr. Tayag to conclude that respondent lacked proper role models, and had "insufficient bonding, closeness[,] and support"[51] while growing up. Thus, Dr. Tayag's report indicated that respondent's disorder may have taken root in her childhood and was further embedded when she "learned to use her charm/good looks and assets in order to obtain"[52] her "need for reassurance, security[,] and affection from others[.]"[53]

Despite all of these, the majority affirmed the Court of Appeals' denial of the Petition for declaration of the nullity of marriage. It rejected petitioner's evidence, finding it to be "solely based on the self-serving testimonial descriptions and characterizations of respondent rendered by petitioner and his witnesses."[54] Likewise, the majority held that Dr. Tayag's report "failed to explain in detail how respondent's condition could be characterized as grave, deeply-rooted, and incurable[.]"[55] Ultimately, petitioner was found to have fallen short of satisfying the *Molina* guidelines.

[47] *Id*. at 3.

[48] *Id*. at 4.

[49] *Id*.

[50] *Id*. at 8.

[51] *Id*. at 4.

[52] *Id*.

[53] *Id.*

[54] *Id*. at 8.

[55] *Id*.

My objections to *Molina* notwithstanding, I opine that petitioner's evidence did satisfy the *Molina* guidelines. Dr. Tayag is a clinical psychologist whose expertise would have allowed her to "medically or clinically" identify the root cause of respondent's histrionic personality disorder. Like any expert witness, she does not need to have personal knowledge of the matters subject of her testimony, as her credibility lies in her special knowledge, skill, experience, and training.[56] Thus, the majority should have considered her testimony, along with the contents of her Psychological Evaluation Report.

In any event, Dr. Tayag's evaluation was based on testimonies of persons who had observed respondent's behavior from childhood up to the point that she abandoned her family. The root cause of her psychological incapacity was traced back to her upbringing in a second family without proper role models. Viernes' accounts also indicate that respondent has exhibited manipulative behavior since childhood.[57] Not only was the illness duly shown to have existed prior to the marriage, but it was also shown to be grave, as this same behavior prevented respondent from establishing a conjugal and family life with petitioner. It led her to have violent outbursts, to take abortifacients to prevent pregnancy, and to run away and have children with another man.

Respondent's complete absence, not only from the proceedings in the lower courts, but also from the lives of her husband and two (2) children, is the most telling. Despite petitioner's attempts to have her return home, she refused and still abandoned her family, choosing to live with another man.[58] She neither returned to visit nor informed them of her whereabouts. *Tani-De La Fuente* discussed a similar pattern of behavior as indicative of psychological incapacity:

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[56] RULES OF COURT, Rule 130, Sec. 49.

[57] *Ponencia*, p. 8.

[58] *Id*. at 2.

This Court also noticed respondent's repeated acts of harassment towards petitioner, which show his need to intimidate and dominate her, a classic case of coercive control. *At first, respondent only inflicted non-physical forms of mistreatment on petitioner by alienating her from her family and friends due to his jealousy*, and stalking her due to his paranoia. *However, his jealousy soon escalated into physical violence* when, on separate instances, he poked a gun at his teenage cousin, and at petitioner.

. . . . . .

Respondent's *repeated behavior of psychological abuse by intimidating, stalking, and isolating his wife from her family and friends, as well as his increasing acts of physical violence, are proof of his depravity, and utter lack of comprehension of what marriage and partnership entail.* It would be of utmost cruelty for this Court to decree that petitioner should remain married to respondent. After she had exerted efforts to save their marriage and their family, *respondent simply refused to believe that there was anything wrong in their marriage*. This shows that respondent truly could not comprehend and perform his marital obligations. This fact is persuasive enough for this Court to believe that respondent's mental illness is incurable.[59] (Emphasis supplied)

As with *Tani-De La Fuente*, the circumstances here indicate respondent's incapacity to fulfill her essential marital obligations listed in Articles 68 to 71 of the Family Code. This inability to comprehend and comply with essential marital obligations is the crux of psychological incapacity as a ground for the nullity of marriage. The strict and often undiscerning guidelines laid out in *Molina* have since become insensitive to the greater purpose of resiliently applying Article 36 of the Family Code to the unique circumstances of each case.

ACCORDINGLY, I dissent. I vote to **GRANT** the Petition.

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[59] *Tani-De La Fuente v. De La Fuente*, 807 Phil. 31, 49-50 (2017) [Per J. Leonen, Second Division].

SECOND DIVISION

[G.R. No. 229928. July 22, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DEXTER ASPA ALBINO @ TOYAY and JOHN DOES,** *accused*; **DEXTER ASPA ALBINO @ TOYAY,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; MURDER; ELEMENTS.—**Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing does not amount to parricide or infanticide.

2. **ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE THEREOF AS A QUALIFYING CIRCUMSTANCE, EXPLAINED.—**The Information alleged that treachery attended the killing of Marlon. There is treachery when the offender commits any of the crimes against persons by employing means, methods or forms that tend directly and especially to ensure its execution without risk to the offender arising from the defense that the offended party might make. The essence of treachery is that the attack is deliberate and without warning and is done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim with no chance to resist or escape.

3. **ID.; ID.; ID.; TREACHERY, NOT PROVEN; WHERE THERE WAS NO SHOWING THAT APPELLANT CONSCIOUSLY LAUNCHED THE SUDDEN ATTACK TO FACILITATE THE KILLING WITHOUT RISK TO HIMSELF, HE MAY BE CONVICTED ONLY FOR HOMICIDE.—**Here, appellant's group and the locals were drawn into an altercation when Marlon approached to pacify them. Then, appellant suddenly shot Marlon in the chest. Though sudden, the attack did not amount to treachery. For at that moment, appellant was

enraged and did not have time to reflect on his actions. There was no showing that he consciously launched the sudden attack to facilitate the killing without risk to himself. Hence, appellant may only be convicted of homicide. x x x In conclusion, the qualifying circumstance of treachery was not shown to have attended the killing of Marlon Dionzon Soriano. Verily, therefore, appellant may be convicted only for homicide in accordance with Article 249 of the Revised Penal Code[.]

4. ID.; HOMICIDE; COMMITTED; PENALTY AND CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY AND DAMAGES, MODIFIED.—Applying the Indeterminate Sentence Law, appellant should be sentenced to eight (8) years of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum. In accordance with prevailing jurisprudence, the awards of Php75,000.00 civil indemnity and Php75,000.00 moral damages should be decreased to Php50,000.00 each; and the award of Php30,000.00 as exemplary damages should be deleted. In cases of homicide, exemplary damages are awarded only if an aggravating circumstance was proven during the trial, even if not alleged in the Information. As for actual damages, the Court of Appeals sustained the award of Php28,050.00 on the basis of receipts presented by the prosecution. Prevailing jurisprudence, however, now fixes the amount of Php50,000.00 as temperate damages in homicide cases. So must it be. A six percent (6%) interest *per annum* on these amounts should be paid from finality of this decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision dated September 13, 2016[1] of the Court of Appeals in CA-G.R. CEB-CR H.C. No. 01596 affirming appellant's conviction for murder, with modification.

The Proceedings Before the Trial Court

The Charge

By Information dated May 12, 2009, appellant Dexter Aspa Albino @ Toyay was charged with murder for the killing of Marlon Dionzon Soriano, *viz.*:

> That on or about the 10th day of May 2009, in the municipality of Carigara, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring with unidentified persons, with deliberate intent to kill and with treachery, did, then and there willfully and unlawfully and feloniously attack and shoot MARLON DIONZON SORIANO with the use of an unlicensed firearm, which the above-named accused provided himself for the purpose, thereby inflicting upon the victim a gunshot wound at the left chest at the level of 7th ICS which was the direct and immediate cause of death of said Marlon D. Soriano.
>
> CONTRARY TO LAW.[2]

The case was raffled to the Regional Trial Court - Br. 13, Carigara, Leyte. On arraignment, appellant pleaded "not guilty."

During the trial, Marlon's older brother Jerome Soriano, neighbor Arwin Terrado, mother Gertrudes Soriano, PO2 Noel M. Melgar, and Dr. Ma. Bella V. Profetana testified for the

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[1] Penned by Associate Justice Gabriel T. Robeniol and concurred in by Associate Justices Pamela Ann Abella Maxino and Pablito A. Perez; *Rollo*, pp. 4-17.

[2] *Rollo*, p. 5.

prosecution. On the other hand, appellant and one Pablo Flores testified for the defense.

The Prosecution's Version

Jerome Soriano testified that in the evening of May 9, 2009, he and his siblings Maita and Marlon were attending a benefit dance in Brgy. San Mateo, Carigara, Leyte. They were dancing with fellow residents to the music they requested exclusively for themselves. Appellant's group, however, danced and mixed with them, thus, causing tension.[3]

Around 12:45 in the early morning the following day, an altercation ensued just outside the dance area between appellant's group and some residents in the area. He and Marlon tried to pacify them but appellant drew a revolver from his pocket and shot Marlon in the chest without any warning. As a result, Marlon fell to the ground. He (Jerome) and his friends rushed Marlon to the hospital. Marlon eventually died in the hospital.[4]

He was able to identify his brother's assailant because the benefit dance was held at a basketball court which was illuminated by six (6) mercury lamps. Too, he was merely two arms-length away from his brother when the latter got shot.[5]

Arwin Terrado, who was also at the benefit dance, corroborated Jerome's testimony.[6] **Dr. Ma. Bella V. Profetana** testified that Marlon sustained a gunshot wound in the chest causing the latter to massively bleed and get immobilized. Marlon eventually died due to massive bleeding.[7] The victim's mother **Gertrudes Soriano** testified that their family incurred funeral expenses of Php28,050.00.[8] Finally, **PO2 Noel M. Melgar** testified that he blottered the incident in the police logbook.[9]

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[3] CA *rollo*, pp. 22-23.

[4] *Id.* at 22-24.

[5] *Id.* at 23.

[6] *Id.*

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

[8] *Id.* at 24.

[9] *Id.*

The Defense's Version

Appellant denied the charge. He named Jerome as the person who threatened their group while they were dancing on the floor. They just ignored the threats and walked away. But Jerome grabbed him by the collar and boxed him in the forehead. Then he felt a pointed object on his back, heard a gunshot, and saw Marlon fall to the ground. He did not see who shot Marlon. Because of the commotion, he ran away. Hours later, he got arrested in Brgy. Marag-ing. The arresting officers informed him that he was the suspect in the killing of Marlon.[10] **Pablo Flores** corroborated appellant's testimony.[11]

The Trial Court's Ruling

By Judgment dated November 12, 2012,[12] the trial court found appellant guilty of murder, *viz.*:

> WHEREFORE, premises considered, judgment is hereby rendered, finding accused DEXTER ASPA ALBINO, GUILTY beyond reasonable doubt of Murder as defined in Article 248 of the Revised Penal Code, with the killing attended by treachery. The said accused is hereby sentenced to suffer the penalty of Reclusion Perpetua with all the accessory penalties. He is also ordered to indemnify the heirs of Marlon D. Soriano the following amounts: Php75,000.00 as civil indemnity, Php75,000.00 as moral damages, Php30,000.00 as exemplary damages, and Php28,050.00 as actual damages.
>
> No costs.
>
> SO ORDERED.[13]

The trial court gave credence to the testimonies of prosecution witnesses. Jerome and Terrado who positively identified appellant as the one who slayed Marlon. It found that no ill-

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[10] *Rollo*, pp. 6-7.

[11] *Id.* at 7.

[12] Penned by Presiding Judge Lauro A.P. Castillo, Jr.; CA *rollo*, pp. 20-30.

[13] CA *rollo*, p. 30.

motive could be ascribed to them when they testified against appellant in the case.[14]

Further, the trial court found the qualifying circumstance of treachery attended the killing. It found that as testified to by Jerome and Terrado, appellant pulled out a gun and fired it toward the victim without any warning. The victim, therefore, was rendered totally unable to protect or defend himself.[15]

Meanwhile, use of an unlicensed firearm was not appreciated as an aggravating circumstance for lack of substantiating evidence.[16]

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction against him despite the prosecution's alleged failure to prove the qualifying circumstance of treachery.[17] The crime could not have been committed without risk of retaliation from the victim and his companions since these persons themselves participated in the commotion. In the absence of any qualifying circumstance, appellant prayed that his conviction be downgraded from murder to homicide, and for his prison sentence be modified accordingly.[18]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Bernard G. Hernandez and Associate Solicitor II Karla Monica S. Moraleda-Manabat defended the verdict of conviction. The OSG maintained that treachery was proven through the testimonies of Jerome and Terrado.[19]

The Court of Appeals' Ruling

Under Decision dated September 13, 2016, the Court of Appeals affirmed with modification, *viz.*:

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[14] *Id.* at 28.

[15] *Id.*

[16] *Id.* at 29.

[17] *Id.* at 15.

[18] *Id.* at 17.

[19] *Id.* at 48-56.

WHEREFORE, the appeal is DENIED. The Judgment dated November 12, 2012 of the RTC 8th Judicial Region, Branch 13, Carigara, Leyte, finding accused-appellant Dexter Aspa Albino guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. 5074, is **AFFIRMED with the modifications** that accused-appellant shall not be eligible for parole, and that all damages awarded in this case shall be subject to interest of 6% per annum reckoned from the finality of this decision until the full payment thereof.

SO ORDERED.[20]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew that his conviction be downgraded from murder to homicide. In compliance with Resolution dated April 25, 2017,[21] both appellant and the OSG manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[22]

Issue

Did the Court of Appeals err in affirming appellant's conviction for murder instead of downgrading it to homicide?

Ruling

The appeal is meritorious.

Murder is defined and penalized under Article 248 of the Revised Penal Code, *viz*.:

Article 248. *Murder*. - Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;

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[20] *Rollo*, p. 16.

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

[22] *Id.* at 31-32 and 35-36.

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Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing does not amount to parricide or infanticide.[23]

Here, appellant prays that his conviction be downgraded from murder to homicide. We therefore focus on the third element: the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC.

The Information alleged that treachery attended the killing of Marlon. There is treachery when the offender commits any of the crimes against persons by employing means, methods or forms that tend directly and especially to ensure its execution without risk to the offender arising from the defense that the offended party might make.[24]

The essence of treachery is that the attack is deliberate and without warning and is done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim with no chance to resist or escape.[25]

Here, appellant's group and the locals were drawn into an altercation when Marlon approached to pacify them. Then, appellant suddenly shot Marlon in the chest. Though sudden, the attack did not amount to treachery. For at that moment, appellant was enraged and did not have time to reflect on his actions. There was no showing that he consciously launched the sudden attack to facilitate the killing without risk to himself. Hence, appellant may only be convicted of homicide.

People v. Pilpa[26] is apropos, thus:

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[23] See *People v. Villanueva*, 807 Phil. 245, 252 (2017).

[24] See *People v. Watamama*, 734 Phil. 673, 682 (2014).

[25] *Id.*

[26] G.R. No. 225336, September 5, 2018.

xxx **[M]ere suddenness of the attack is not sufficient to hold that treachery is present**, where the mode adopted by the assailants does not positively tend to prove that they thereby **knowingly intended** to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that the victim might offer. Specifically, it must clearly appear that the method of assault adopted by the aggressor was **deliberately chosen** with a view to accomplishing the act without risk to the aggressor.

In the case at bar, the testimonies of Leonila, Evangeline, and Carolina reveal that the assailants attacked the victim while the latter was having a seemingly random conversation with four friends in a public highway (Quirino Highway), and even in the presence of a *barangay tanod*, who later joined the group. Under these circumstances, the Court finds it difficult to agree that the assailants, including Pilpa, deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to themselves arising from the defense that the victim might offer. To repeat, the victim was with five persons who could have helped him, as they had, in fact, helped him repel the attack. The Court thus fails to see how the mode of attack chosen by the assailants supposedly guaranteed the execution of the criminal act without risk on their end. xxx

x x x x x x x x x

In addition, **the attack itself was frontal.** In *People v. Tugbo, Jr.*, the Court held that treachery was not present because the attack was frontal, and hence, **the victim had opportunity to defend himself**. While a frontal attack, by itself, does not negate the existence of treachery, when the same is considered along with the other circumstances as previously discussed, it already creates a reasonable doubt in the existence of the qualifying circumstance. From the foregoing, the Court must perforce rule in favor of Pilpa and not appreciate the said circumstance, (emphases added, citations omitted)[27]

In conclusion, the qualifying circumstance of treachery was not shown to have attended the killing of Marlon Dionzon Soriano. Verily, therefore, appellant may be convicted only for homicide in accordance with Article 249 of the Revised Penal Code, *viz.*:

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[27] *Id.*

Article 249 of the Revised Penal Code provides, thus:

Article 249. *Homicide*. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

Applying the Indeterminate Sentence Law,[28] appellant should be sentenced to eight (8) years of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum.

In accordance with prevailing jurisprudence, the awards of Php75,000.00 civil indemnity and Php75,000.00 moral damages should be decreased to Php50,000.00 each; and the award of Php30,000.00 as exemplary damages should be deleted.[29] In cases of homicide, exemplary damages are awarded only if an aggravating circumstance was proven during the trial, even if not alleged in the Information.[30]

As for actual damages, the Court of Appeals sustained the award of Php28,050.00 on the basis of receipts presented by the prosecution. Prevailing jurisprudence, however, now fixes the amount of Php50,000.00 as temperate damages in homicide cases. So must it be.[31]

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[28] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (As amended by Act No. 4225.)

[29] See *People v. Jugueta*, 783 Phil. 806, 845 (2016).

[30] *Id.* at 845-846.

[31] See *People v. Macaspac,* 806 Phil. 285, 289-290 (2017).

A six percent (6%) interest *per annum* on these amounts should be paid from finality of this decision until fully paid.

ACCORDINGLY, the appeal is **GRANTED**. Appellant **DEXTER ASPA ALBINO @ TOYAY** is found guilty of **HOMICIDE**. He is sentenced to the indeterminate penalty of eight (8) years of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum.

He is further required to pay Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php50,000.00 as temperate damages. 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*), *Caguioa,* and *Reyes, J. Jr., JJ*., concur.

Perlas-Bernabe, J., on official leave.

FIRST DIVISION

[G.R. No. 230778. July 22, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUAN CREDO *y* DE VERGARA and DANIEL CREDO *y* DE VERGARA** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; ELEMENTS REQUIRED TO SUSTAIN A CONVICTION BASED ON CIRCUMSTANTIAL EVIDENCE.— The Court cites Rule 133, Section 5 of the Rules of Court in stating that "[c]ircumstantial evidence is sufficient

to sustain a conviction if (i) there is more than one circumstance; (ii) the facts from which the inference is derived are proven; and (iii) the combination of all circumstances is such as to produce conviction beyond reasonable doubts.

2. **ID.; ID.; ID.; THERE WAS NO DIRECT PROOF NOR RELIABLE CIRCUMSTANTIAL EVIDENCE ESTABLISHING THAT APPELLANTS CONSPIRED WITH THE UNIDENTIFIED MEN WHO STABBED THE VICTIMS.—** We find that the prosecution failed to present sufficient proof of concerted action before, during, and after the commission of the crime which would demonstrate accused-appellants' unity of design and objective. There is no direct proof nor reliable circumstantial evidence establishing that Juan and Daniel conspired with the unidentified men who stabbed Spouses Asistin. The circumstantial evidence presented by the prosecution – testimonies of Baguio and Ganal claiming that they saw Juan and Daniel talking to each other moments before the crimes were committed do not prove conspiracy.

3. **ID.; ID.; ID.; APPELLANT'S DEGREE OF INTERFERENCE OR PARTICIPATION BY ALLEGEDLY STANDING STILL WHILE THE VICTIM WAS BEING STABBED AND FAILING TO COME TO HER AID IS INSUFFICIENT TO WARRANT THE CONCLUSION THAT HE IS A CO-CONSPIRATOR.—** We find the degree of interference or participation of Daniel by allegedly standing still while Evangeline was being stabbed and failing to come to her and Antonio's aid, insufficient to warrant the conclusion that he is a co-conspirator. His conduct during and immediately after the stabbing incident cannot be equated to a direct or overt act in furtherance of the criminal design of the two unidentified men. While it may be true that Daniel acted differently from what was expected of him in the given situation, We cannot fault him for reacting the way he did. We have held that "different people react differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience." Certainly, a stabbing incident unfolding before his very eyes, involving his aunt and uncle at that, was a frightful experience for Daniel. He should not be faulted for being in a state of shock after witnessing a gruesome event.

4. ID.; ID.; ID.; APPELLANT'S NON-FLIGHT TAKEN TOGETHER WITH NUMEROUS INCONSISTENCIES IN THE CIRCUMSTANTIAL EVIDENCE PROVIDES A SUFFICIENT BASIS FOR ACQUITTAL.— It is also contrary to ordinary human experience to remain at the crime scene after the victims were brought to the hospital. One who is guilty would have immediately fled the scene of the crime to avoid being arrested by the authorities. If Daniel really conspired with the two unidentified men, he would have done acts that would consummate the crime and he would have escaped to avoid being identified. A person with a criminal mind would have ensured Evangeline's death and immediately fled the scene of the crime. Contrary to the observation of the lower court, his non-flight is sufficient ground to exculpate him from criminal liability. His non-flight, when taken together with the numerous inconsistencies in the circumstantial evidence the prosecution presented, provides the Court sufficient basis to acquit Daniel.

5. ID.; ID.; ID.; APPELLANT CANNOT BE CONVICTED FOR VIOLATION OF P.D. 1866 SOLELY ON THE BASIS OF THE SELF-SERVING STATEMENT OF A POLICE OFFICER WHO WAS NOT EVEN PRESENTED DURING TRIAL.— Juan's conviction of violation of P.D. 1866, based solely on the testimony of arresting officer PO2 Guerrero, is erroneous. We cannot ignore the possibility that the shotgun, ammunitions, and knife confiscated from Juan were merely planted. It is too coincidental that at the very moment the police conducted a follow-up operation and made a protective search at the room where Juan was staying, he was caught packing a bag filled with the seized items. x x x There was no admission with regard to the confiscation of a shotgun or *sumpak,* ammunitions or fan knife from Juan's possession. Juan cannot be convicted solely on the basis of the self-serving statement of PO2 Guerrero who was not even presented during trial. Even the shotgun and the ammunitions confiscated were not presented during the trial. The non-presentation of PO2 Guerrero and the seized items was suspicious, and should have alerted the lower courts to be more circumspect in examining the records, considering the persistent claim of Juan of having been a victim of frame-up. In view of the possibility of that the shotgun and ammunitions were planted, We find PO2 Guerrero's statement insufficient to convict Juan of violation of P.D. 1866.

6. ID.; ID.; ID.; HOWEVER WEAK THE DEFENSE OF DENIAL MIGHT BE, THE PROSECUTION'S WHOLE CASE STILL FALLS; EVIDENCE FOR THE PROSECUTION MUST STAND ON ITS OWN WEIGHT AND CANNOT BE ALLOWED TO DRAW STRENGTH FROM THE WEAKNESS OF THE DEFENSE.— We recognize that the evidence for the defense is not strong because Daniel and Juan merely denied participating in the brutal stabbing of Spouses Asistin. Their testimonies were uncorroborated by any other evidence. Admittedly, the defense of denial or frame-up, like alibi, has been viewed with disfavor. Nevertheless, the apparent weakness of Juan and Daniel's defense does not add any strength nor can it help the prosecution's cause. If the prosecution cannot establish, in the first place, Juan and Daniel's guilt beyond reasonable doubt, the need for the defense to adduce evidence in its behalf in fact never arises. However weak the defense evidence might be, the prosecution's whole case still falls. The evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.

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 Decision[2] dated October 13, 2016 of the Court of Appeals (CA) finding accused-appellants Juan Credo *y* De Vergara (Juan) and Daniel Credo *y* De Vergara (Daniel) guilty beyond reasonable doubt of murder and frustrated

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[1] *Rollo*, pp. 19-20.

[2] Penned by Associate Justice Romeo F. Barza, with Associate Justices Andres B. Reyes, Jr. (now a Member of this Court) and Agnes Reyes-Carpio, concurring; *id*. at 2-18.

murder as co-conspirators. Juan was also found guilty for violation of Presidential Decree No. (P.D.) 1866,[3] the dispositive portion of which reads:

WHEREFORE, the appeal is **DENIED**. The assailed Decision of the Regional Trial Court, Branch 219 of Quezon City dated 9 September 2013, is **AFFIRMED**.

SO ORDERED.[4] (Emphasis in the original)

The Antecedents

Juan and Daniel (collectively, accused-appellants) were charged with murder and frustrated murder. The two separate Information[5] respectively read as follows:

MURDER CASE NO. Q-04-125714

That on or about the 16th day of March, 2004, in Quezon City, Philippines, the said accused, conspiring and confederating with four (4) other persons, whose true names, identities and whereabouts have not as yet been ascertained, and mutually helping one another, with intent to kill, qualified by evident premeditation[,] treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of ANTONIO ASISTIN y PALCO@ TONY, by then and there stabbing him several times with a bladed weapon, hitting him on the back and other parts of his body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said ANTONIO ASISTIN y PALCO @ TONY.

CONTRARY TO LAW.[6]

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[3] Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes.

[4] *Rollo*, p. 17.

[5] Records, pp. 2-5.

[6] *Id*. at 2.

FRUSTRATED MURDER CASE No. Q-04-125715

That on or about the 16th day of March, 2004, in Quezon City, Philippines, the said accused, conspiring and confederating with four (4) other persons, whose true names, identities and whereabouts have not as yet been ascertained and mutually helping one another, with intent to kill, with evident premeditation and treachery, did then and there willfully (sic), unlawfully and feloniously attack, assault and employ personal violence upon the person of EVANGELINE CIELOS-ASISTIN @ Vangie, by then and there stabbing her several times with a bladed weapon, hitting her on the different parts of her body, thereby inflicting upon her serious and grave wounds, thus performing all the acts of execution which would produce the felony of MURDER as consequence, but nevertheless, did not produce it by reason of some causes or accident independent of the medical attendance rendered to the will of the said accused, that is, the timely and ablesaid victim, to the damage and prejudice of the said EVANGELINE CIELOS-ASISTIN@ VANGIE.

CONTRARY TO LAW.[7]

Juan was additionally charged with violation of Section 32, in relation to Section 36 of Republic Act No. (R.A.) 7166[8] and Section 264 of Batas Pambansa Blg. (B.P.) 881,[9] and Commission on Election Resolution No. 6446;[10] and violation of P.D. 1866.[11] The Information against Juan states:

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[7] *Id*. at 4.

[8] An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes.

[9] Otherwise known as Omnibus Election Code of the Philippines.

[10] Rules and Regulations on: (A) Bearing, Carrying or Transporting Firearms or Other Deadly Weapons; (B) Security Personnel or Bodyguards; (C) Bearing Arms by Any Member of Security or Police Organization of Government Agencies and Other Similar Organization; (D) Organization or Maintenance of Reaction Forces During the Election Period in Connection with the May 10, 2004 Synchronized National and Local Elections.

[11] Codifying the Laws on Illegal/ Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes.

VIOLATION OF GUN BAN CASE NO. Q-04-125717

That on or about the 16th day of March, 2004 in Quezon City, Philippines, the said accused, without any authority of law, did then and there willfully, unlawfully and feloniously bear, carry or transport [a] firearm, more particularly described as follows: one (1) homemade shotgun (*sumpak*) in a public place, private vehicle or public conveyance, without written authority from the COMMISSION ON ELECTIONS.

CONTRARY TO LAW.[12]

VIOLATION OF P.D. NO. 1866 CASE NO. Q-04-125717

That on or about the 16th day of March, 2004 in Quezon City, Philippines, the said accused, without any authority of law, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) homemade shotgun (*sumpak*), without first having secured the necessary license/ permit issued by the proper authorities.

CONTRARY TO LAW.[13]

Upon arraignment, accused-appellants pleaded not guilty to the charges filed against them.[14] Trial thereafter ensued.

According to the prosecution witnesses, Spouses Antonio Asistin (Antonio) and Evangeline Asistin (Evangeline) operated a computer shop and a store at their residence located at No. 5 Zodiac Ext. Sagittarius St., Remar Village, Bagbag, Novaliches, Quezon City. Daniel and Juan, brothers, are nephews of Evangeline. At around lunch time on March 16, 2004, Daniel, an assistant at the computer shop, entertained male customers who wanted to rent tapes. Evangeline instructed Daniel to let the male customers in. Evangeline got up and asked the men where they are from. One of the men replied, "*ano nga bang Iugar iyon*?." Evangeline then told them that if they are not from the area, they could just buy the tapes. Evangeline went back to the table and continued eating her lunch.[15]

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[12] Records, p. 6.

[13] *Id*. at 8.

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

[15] TSN dated June 14, 2005, p.11.

When Evangeline stood up to get water from the refrigerator, Daniel and the two unidentified men suddenly appeared. One of the unidentified men strangled her. Without saying anything, he pressed the *lanseta* and started stabbing her. Evangeline struggled and resisted until she fell to the floor while that person continued to stab her. Evangeline kicked him so he would not reach her body. Thereafter, the men who assaulted her left. Evangeline recalled that she sustained eight stab wounds.[16]

Once the two unidentified men left, Evangeline stood up and saw Antonio standing at the gate with several stab wounds. Upon seeing Antonio, Evangeline told Daniel to chase the two men who had just left. According to Evangeline, Daniel did not help her and even watched while she was being stabbed. He did not go out to chase the two men.[17]

After being stabbed, Antonio was able to walk to the door of the computer shop.[18] Evangeline and Rufo Baguio (Baguio), a neighbor, allegedly saw Daniel carry Antonio about two feet from the ground and then drop him, causing his head to hit the ground.[19] A few minutes later, Antonio was carried to the vehicle of a neighbor while Evangeline took a tricycle with neighbor Roy Bischotso to the hospita1.[20] Antonio was declared dead on arrival.

Medico-Legal Report No. M-1171-04[21] revealed that the cause of Antonio's death is "multiple stab wounds on the back, chest, and neck."[22] On the other hand, Evangeline's Medico-Legal Certificate [23] showed that she suffered multiple stab wounds specified below:

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

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

[18] *Id* at 17.

[19] TSN dated December 5, 2006, pp. 14-15; TSN dated June 14, 2005, p. 18.

[20] TSN dated June 14, 2005, pp. 18-20.

[21] Records, p. 61.

[22] *Id*.

[23] Records, p. 32.

FINDINGS

GS-conscious, coherent, stretcher-borne.

1. Multiple stab wounds located at the following areas:

a. 2.0 cm, epigastric area;
b. 4.0 cm, left upper quadrant, abdomen;
c. 2.0 cm and 3.0 cm, left anterior pectoral area;
d. 2.0 cm, level of T5-T6, anterior axillary line, left;
e. 3.0 cm, left antero-medical axillary area;
f. 2.0 cm and 3.0 cm, proximal-third, postero-lateral, left brachial region;
g. 3.0 cm, left scapular region;
h. 3.0 cm, left infra-scapular region.

CONLUSION:

Under normal condition without subsequent complications and/or deeper involvement present but not clinically apparent at the time of examination, the above-described physical injuries shall require medical attention or shall incapacitate the patient/ victim for a period not less than 31 days x x x.[24]

Incidentally, Baguio testified that at around 1:45 pm on March 16, 2004, he was in his house located at No. 3 Zodiac Street, Remarville Subdivision, Bagbag, Novaliches, Quezon City. While watching pool players with his grandchild Roy, he saw Juan and another person carrying a heavy bag. Thereafter, two other men arrived.[25] Baguio noticed that Juan pointed to the direction of the residence of Spouses Asistin. The two men proceeded to the house of Spouses Asistin, and, later on, Juan and the other man followed.[26]

Meanwhile, prosecution witness Reynante Ganal (Ganal) testified that he was outside Spouses Asistin's residence when he saw Juan and Daniel talking to each other in a vacant room together with three other male companions. Although he was merely four arms-length away, he did not hear the conversation

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[24] *Id*. at 32.

[25] TSN dated December 5, 2006, pp. 4-6.

[26] *Id*. at 7-9.

of the group.[27] Juan came up to him and asked how much he was renting his place.[28] A few minutes later, while he was preparing to take a bath, he saw Juan walking with an unidentified person.[29] Juan asked permission to urinate at the back of the house.[30] Thereafter, someone shouted "*nasaksak sila tatay at nanay*." Then, his sister-in-law told him that two persons climbed the fence.[31]

In a sworn statement of Felipe Roque (Roque), Bantay Bayan Chairman, he stated that he responded at the crime scene and assisted in rushing the victims to Bernardino Hospital. Roque claimed that at the emergency room, Evangeline told him that Daniel was present when she and her husband were brutally stabbed and that he did not do anything to help them.[32] He went back to the crime scene where he found Daniel cleaning broken plates. He then turned Daniel over to the responding barangay officials who later brought him to the police station for investigation.[33]

On March 17, 2004, a follow-up operation was conducted by the police led by Police Officer 2 (PO2) Victorio B. Guerrero (PO2 Guererro) after Daniel allegedly implicated his brother Juan to the crime. The operation resulted to the arrest of Juan at his rented room. In his sworn statement, PO2 Guerrero alleged that Juan was nabbed while stashing in his bag a homemade shot gun (*sumpak)*. The bag also contained clothing, two live ammunitions for shotgun and a fan knife measuring approximately seven inches long. He was allegedly in the process of absconding when he was apprehended.[34]

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[27] TSN dated September 25, 2007, pp. 8-9.

[28] TSN dated May 20, 2008, p. 14.

[29] *Id*. at 23.

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

[31] *Id*. at 24.

[32] Records, p. 22.

[33] *Id.*

[34] Records, p. 29.

Juan and Daniel denied the allegations against them. Juan maintained that he sought employment with Spouses Asistin but was rejected. Juan accepted their decision without any ill-feelings.[35] On March 16, 2004, at around 1:30 pm, Juan watched television at his rented place in Luzon, Fairview, Quezon City. Thereafter, from 3:00 pm to 5:00 pm, he watched a basketball game about 14 meters away from the room he was renting. Then, at around 6:30 pm to 6:45 pm, he again watched television at his place. It was at this time that he heard a noise coming from outside. Suddenly, someone kicked the door of his room. An armed policeman appeared with his brother Daniel who was in handcuffs. He was asked to go with them to the police station where he was allegedly tortured into admitting committing the crimes he is charged with.[36] He also denied that a shotgun or *sumpak* was confiscated from him.[37]

On the other hand, Daniel testified that at around 11 :00 am on March 16, 2004, he was painting the roof of the house of Spouses Asistin when he suddenly heard Evangeline shouting for help. Daniel immediately went down from the roof and saw Antonio lying covered with blood on the ground near the garage.[38] He was shocked upon seeing Antonio's state.[39] Daniel testified that he raised Antonio when he saw him wounded but the latter stood up, went out, and kept cursing. When he went inside, he fell to the ground so Daniel carried him to a taxi.[40]

Ruling of the RTC

After trial, the Regional Trial Court (RTC) of Quezon City, Branch 219 rendered its Decision[41] dated September 9, 2013, the dispositive portion of which reads:

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[35] TSN dated May 31, 2011, p. 9.

[36] TSN dated February 8, 2011, pp. 11-20.

[37] TSN dated May 31, 2011, p. 6.

[38] TSN dated December 17, 2012, pp. 4-6.

[39] *Id*. at 21.

[40] *Id*. at 8-10.

[41] Penned by Acting Presiding Judge Maria Filomena D. Singh; CA *rollo*, pp. 73-95.

MURDER CASE NO. Q-04-125714

WHEREFORE, judgment is hereby rendered finding the accused Juan Credo y de Vergara and Daniel Credo y de Vergara guilty beyond reasonable doubt of the crime of Murder and they are hereby sentenced to suffer the penalty of *reclusion perpetua* for the death of Antonio Asistin y Palco.

Accused Juan Credo y de Vergara and Daniel Credo y de Vergara are further adjudged to pay jointly and severally, the heirs of Antonio Asistin y Palco, represented by his widow, Evangeline Cielos-Asistin, and his daughter, Juliet Asistin, the following amounts:

1) Php 75,000.00 as civil indemnity *ex delicto;*
2) Php 50,000.00 as moral damages;
3) Php 30,000.00 as exemplary damages; and
4) Php 53,800.00 as actual damages.

FRUSTRATED MURDER CASE NO. Q-04-125715

WHEREFORE, the accused Juan Credo y de Vergara and Daniel Credo y de Vergara are hereby found guilty beyond reasonable doubt of the crime of Frustrated Murder committed against Evangeline Cielos-Asistin, and they are hereby sentenced to suffer the indeterminate penalty of imprisonment of 10 years and 1 day of *prision mayor* as minimum to 12 years and 1 day of *reclusion temporal* as maximum.

The accused Juan Credo y de Vergara and Daniel Credo y de Vergara are also sentenced to pay, jointly and severally, the victim, Evangeline Cielos-Asistin, the sum of ₱207,277,89.00 (sic) as actual damages and moral damages in the sum of ₱20,000.00.

VIOLATION OF GUN BAN CASE NO. Q-04-125716

WHEREFORE, the Court hereby acquits the accused Juan Credo y de Vergara of the offense of violation of Section 32 in relation to Section 36 of Republic Act No. 7166 and Section 264 of Batas Pambansa Blg. 881 and COMELEC Resolution No. 6446, for lack of evidence.

VIOLATION OF P.D. NO. 1866 CASE NO. Q-04- 125717

WHEREFORE, the accused Juan Credo y de Vergara is found guilty beyond reasonable doubt of simple illegal possession of firearm and ammunitions under Section 1 of P.D. No. 1866 and he is hereby imposed an indeterminate sentence of imprisonment ranging from ten (10)

years and one (1) day of *prision mayor* as minimum, up to eighteen (18) years, eight (8) months and one (l) day of *reclusion temporal* as maximum.

The subject firearm and ammunitions shall be turned over to the Firearms and Explosives Division of the Philippine National Police for disposal.

No cost is adjudged in any of these cases.[42]

In convicting Juan, the RTC gave credence to the testimonies of the prosecution witnesses. The RTC found that Juan and Daniel merely made a general denial and failed to support their respective alibis. Consequently, they filed their appeal with the CA.

In their Brief,[43] Juan and Daniel impugned the findings of the RTC and raised the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE INSUFFICIENCY OF THE PROSECUTION'S EVIDENCE.

II

ASSUMING THAT THE ACCUSED-APPELLANTS INFLICTED THE FATAL INJURIES UPON THE VICTIMS, THE TRIAL COURT GRAVELY ERRED IN APPRECIATING TREACHERY AND ABUSE OF SUPERIOR STRENGTH TO QUALIFY THE CRIMES TO MURDER AND FRUSTRATED MURDER.[44]

Juan and Daniel argued that their presence, without executing any overt act, does not prove conspiracy in inflicting of fatal injuries to Spouses Asistin.[45] The defense emphasized that Daniel's alleged failure to help the victims does not constitute positive act of assent or cooperation in the commission of the

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[42] *Id*. at 94.

[43] *Id*. at 52-71.

[44] *Id*. at 54.

[45] *Id*. at 65.

crimes charged.[46] The defense pointed out that the testimonies of the prosecution witnesses even confirmed that Daniel actually helped in carrying Antonio.[47] Also, Juan and Daniel did not flee. Daniel remained at the house of Spouses Asistin and cleaned the place while Juan was found watching television at his rented place.[48] Moreover, the defense insists that no motive can be attributed to Daniel or Juan to conspire with strangers to commit the crimes. For the defense, Antonio's refusal to accommodate Juan in their house is a shallow reason to provoke them to kill Spouses Asistin. The defense also maintained that the admission of his arrest does not suffice to warrant a conviction under P.D. 1866. The defense merely admitted the fact of Juan's arrest effected by PO2 Guerrero and nothing more. There was no admission with regard to the confiscation of a shotgun or *sumpak*, ammunitions, or fan knife from his possession. Hence, his conviction based on his supposed admission constitutes a reversible error.[49]

Ruling of the Court of Appeals

In a Decision[50] dated October 13, 2016, the CA denied Juan and Daniel's appeal and affirmed their respective convictions. In affirming their convictions, the CA held that the sworn statement of PO2 Guerrero sufficiently established Juan's guilt beyond reasonable doubt for violation of P.D. 1866. The CA also found the circumstantial evidence the prosecution presented sufficient to convict Juan and Daniel of conniving to commit murder and frustrated murder.[51] The CA did not consider Daniel's non flight as a badge of innocence sufficient to exculpate him from criminal liability.[52] While the CA did not find treachery

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[46] *Id*. at 66.

[47] *Id*. at 67.

[48] *Id.*

[49] CA *rollo*, p. 64.

[50] *Supra* note 2.

[51] *Rollo*, pp. 11-13.

[52] *Id*. at 14.

and abuse of superior strength attendant in the case, evident premeditation was considered because Juan and Daniel were seen with the other unidentified co-conspirators gathering near the scene of the crime.[53] Hence, this appeal.

Juan and Daniel filed a Notice of Appeal[54] on November 3, 2016. The Court notified the parties to file their supplemental briefs.[55] However, Juan and Daniel opted not to file a supplemental brief since they believe that they had exhaustively discussed the assigned errors in their brief.[56] For its part, the Office of the Solicitor General manifested that it is adopting its brief for the plaintiff-appellee.[57]

Issues

1) Whether Juan and Daniel are guilty of murder;
2) Whether Juan and Daniel are guilty of frustrated murder; and
3) Whether Juan should be held criminally liable for violation of P.D. 1866.

Our Ruling

The appeal is meritorious.

As a rule, the trial court's findings of fact are entitled great weight and will not be disturbed on appeal. However, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.[58] After a judicious examination of the records, this Court found material facts and circumstances that the lower courts had overlooked or misappreciated which, if properly considered, would justify a conclusion different from that arrived by the lower courts.

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[53] *Id*. at 16.

[54] *Rollo*, p. 19.

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

[56] *Id*. at 45.

[57] *Id*. at 40.

[58] *People v. Robles,* 604 Phil. 536, 543 (2009).

Murder Case No. Q-04-125714 & Frustrated Murder Case No. Q-04-125715

The Court cites Rule 133, Section 5 of the Rules of Court in stating that "[c]ircumstantial evidence is sufficient to sustain a conviction if (i) there is more than one circumstance; (ii) the facts from which the inference is derived are proven; and (iii) the combination of all circumstances is such as to produce conviction beyond reasonable doubts.[59] Here, careful scrutiny of the testimonies of the prosecution witnesses reveals flaws and inconsistencies that cast serious doubt on the veracity and truthfulness of their allegations and would merit the acquittal of Juan and Daniel.

Evangeline admitted that neither Daniel nor Juan stabbed her and that she did not see Juan during the incident.[60] Their complicity was merely based on circumstantial evidence, having been allegedly seen near the residence of Spouses Asistin, talking to strangers, before the incident took place. The prosecution witnesses admitted to not knowing nor hearing what Daniel, Juan, and the other men were discussing. They also admitted not seeing who killed Antonio.[61]

As We have held in *Macapagal-Arroyo v. People*,[62] to wit:

x x x x x x x x x

Conspiracy transcends mere companionship, and mere presence at the scene of the crime does not in itself amount to conspiracy. Even knowledge of, or acquiescence in or agreement to cooperate is not enough to constitute one a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose. Hence, conspiracy must be established, not by conjecture, but by positive and conclusive evidence.

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[59] *People v. Gaffud, Jr.*, 587 Phil. 521, 530 (2008).

[60] TSN dated June 8, 2006, pp. 3-5.

[61] TSN dated March 13, 2007, p. 6.

[62] 790 Phil. 367 (2016).

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 crime indubitably pointing to a joint purpose, a concert of action and a community of interest.

But to be considered a part of the conspiracy, each of the accused must be shown to have performed at least an overt act in pursuance or in furtherance of the conspiracy, for without being shown to do so none of them will be liable as a co-conspirator, and each may only be held responsible for the results of his own acts.[63] (Citations omitted; emphasis ours)

In this case, We find that the prosecution failed to present sufficient proof of concerted action before, during, and after the commission of the crime which would demonstrate accused-appellants' unity of design and objective. There is no direct proof nor reliable circumstantial evidence establishing that Juan and Daniel conspired with the unidentified men who stabbed Spouses Asistin.

The circumstantial evidence presented by the prosecution – testimonies of Baguio and Ganal claiming that they saw Juan and Daniel talking to each other moments before the crimes were committed do not prove conspiracy. Baguio and Ganal insisted seeing three (3) unidentified men and Juan enter the house of Spouses Asistin. However, neither of the witnesses could confirm to the Court that these men were the same men who stabbed Spouses Asistin nor could they confirm that they heared their conversation. Furthermore, the claim of Baguio

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[63] *Id*. at 419-420.

and Ganal that three (3) unidentified men entered the house of Spouses Asistin contradicts the statement of Evangeline that only two (2) unidentified men were allowed by Daniel to enter their house,[64] and that she did not see Juan.[65]

Ganal allegedly saw Juan and Daniel climb the fence of the compound of Spouses Asistin's residence moments after they were stabbed.[66] However, this allegation was belied by his subsequent testimony quoted below:

PROS ONG:

Q What did you find out, if any?

A When I went out of the house I heard a shout repeatedly saying "si tatay at nanay nasaksak and **my sister in law told me that two male persons "umakyat sa bakod**".

Q When your hipag told you that there were two persons "umakyat sa bakod" did she point to you the direction of that bakod?

A Yes, ma'am.[67] (Emphasis ours)

It is evident from the above-quoted testimony that he was testifying on a matter not perceived by his very own senses as he did not see Juan and Daniel climb the fence. He merely relied on what his sister-in-law told him.

Moreover, Ganal's statement that Juan and Daniel climbed a fence is belied by the claim of Baguio that he guarded Daniel while waiting for him to be arrested.[68] His statement is difficult to believe since even Roque mentioned in his *Sinumpaang Salaysay*[69] that upon returning to the scene of the crime, he found Daniel cleaning broken plates. Thus, We cannot rely on Ganal 's testimony to corroborate the claim of the prosecution that they tried to escape.

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[64] TSN dated June 14, 2005, pp. 9-10.

[65] TSN dated June 8, 2006, p. 5.

[66] TSN dated September 25, 2007, p. 11.

[67] TSN dated May 20, 2008, p. 24.

[68] TSN dated December 5, 2006, p. 15.

[69] Records, p. 22.

Anent the strange behavior of Daniel, We find the degree of interference or participation of Daniel by allegedly standing still while Evangeline was being stabbed and failing to come to her and Antonio's aid, insufficient to warrant the conclusion that he is a co-conspirator. His conduct during and immediately after the stabbing incident cannot be equated to a direct or overt act in furtherance of the criminal design of the two unidentified men.

While it may be true that Daniel acted differently from what was expected of him in the given situation, We cannot fault him for reacting the way he did. We have held that "different people react differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience."[70] Certainly, a stabbing incident unfolding before his very eyes, involving his aunt and uncle at that, was a frightful experience for Daniel. He should not be faulted for being in a state of shock after witnessing a gruesome event.

Neither Evangeline nor any of the other prosecution witnesses saw who stabbed Antonio.[71] The glaring fact that her statements are not consistent with each other and that her conclusion was not supported by evidence is shown in the exchange quoted below:

Q And, then what happened, Madam Witness? [sic]
A Afterwards, he left me and when I saw that he was gone, I stood up and I saw my husband standing at the gate. But, before that he already sustained several stab wounds because **I think** Daniel and the other man help out in stabbing him.

Prosecutor Macaren
Q And, when you saw your husband bloodied standing by your gate, what happened next?

A When I saw him standing I saw blood in his mouth and I told Daniel to help me in chasing the two (2) men because they

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[70] *People v. Espero*, 400 Phil. 461, 469 (2000).

[71] TSN dated July 1, 2008, pp. 3-4; TSN dated September 7, 2010, p. 15.

had just left but Daniel did not help me. And even before that, I already asked him while we were being stabbed but he didn't help us and instead just watched us being stabbed.

Prosecutor Macaren

Q And, then what did you [sic] after asking Daniel to chase these two (2) persons who he let in?

A He didn't go out?

Q And, what happened then?

A I was even the first one (1) to go out of the house and that's why the neighbors learned that I was stabbed, Sir.[72] (Emphasis ours)

If she really thought at that moment that Daniel conspired with the two unidentified men in stabbing them, then it is illogical for her to ask Daniel to help in chasing the two men. Moreover, considering that Antonio was at the gate outside of the house and Daniel was inside the house while Evangeline was being stabbed, Evangeline could not have known who stabbed Antonio. Thus, Evangeline's statement that Daniel watched her being stabbed inside the house negates her own claim that Daniel helped out in stabbing Antonio who was at the gate of the house.

Interestingly, the claim of Evangeline[73] and Baguio[74] that Daniel carried Antonio and suddenly dropped him, causing the latter to sustain a head injury, is belied by the Medico-legal Report. The report did not indicate that Antonio sustained any head injury at the time of his death.[75] Moreover, this assertion contradicts Evangeline's other claim that Daniel did not assist nor come to their aid after the stabbing incident. Considering that she and Baguio admitted seeing Daniel carrying Antonio, We find no other reasonable explanation for him to carry Antonio at that moment other than to come to the aid of Antonio.

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[72] TSN dated July 1, 2008, pp. 15-17.

[73] TSN dated June 14, 2005, p. 18.

[74] TSN dated March 13, 2007, pp. 8-9.

[75] Records, p. 61.

It is also contrary to ordinary human experience to remain at the crime scene after the victims were brought to the hospital. One who is guilty would have immediately fled the scene of the crime to avoid being arrested by the authorities. If Daniel really conspired with the two unidentified men, he would have done acts that would consummate the crime and he would have escaped to avoid being identified. A person with a criminal mind would have ensured Evangeline's death and immediately fled the scene of the crime. Contrary to the observation of the lower court, his non-flight is sufficient ground to exculpate him from criminal liability. His non-flight, when taken together with the numerous inconsistencies in the circumstantial evidence the prosecution presented, provides the Court sufficient basis to acquit Daniel.

To Our mind, the testimonies of the prosecution witnesses, when taken as a whole, failed to present a coherent and consistent narration of the facts. Absent any proof sufficient to connect/relate Daniel and Juan to the criminal design of killing Spouses Asistin, it cannot be concluded that Daniel and Juan were in conspiracy with the unidentified aggressors in committing murder and frustrated murder. With their inconclusive conduct and participation, We cannot conscientiously declare that they were principals or even accomplices in the crimes charged. The presumption of innocence in their favor has not been overcome by proof beyond reasonable doubt.

Violation of P.D. No. 1866 (Case No. Q-04-125717)

Juan's conviction of violation of P.D. 1866, based solely on the testimony of arresting officer PO2 Guerrero, is erroneous. We cannot ignore the possibility that the shotgun, ammunitions, and knife confiscated from Juan were merely planted. It is too coincidental that at the very moment the police conducted a follow-up operation and made a protective search at the room where Juan was staying, he was caught packing a bag filled with the seized items.

As pointed out by the defense, PO2 Guerrero only admitted the fact of Juan's arrest and nothing more. There was no

admission with regard to the confiscation of a shotgun or *sumpak*, ammunitions or fan knife from Juan's possession.[76] Juan cannot be convicted solely on the basis of the self-serving statement of PO2 Guerrero[77] who was not even presented during trial. Even the shotgun and the ammunitions confiscated were not presented during the trial. The non-presentation of PO2 Guerrero and the seized items was suspicious, and should have alerted the lower courts to be more circumspect in examining the records, considering the persistent claim of Juan of having been a victim of frame-up. In view of the possibility of that the shotgun and ammunitions were planted, We find PO2 Guerrero's statement insufficient to convict Juan of violation of P.D. 1866.

Furthermore, even if the weapons seized from Juan were not planted, it does not follow that the prosecution proved Juan's purported participation in the crimes charged against him. Contrary to what the prosecution would like Us to believe, there appears to be no direct relation between the seized articles and the weapons used to inflict the stab wounds on Evangeline and Antonio. It was not shown during trial that the weapons allegedly confiscated from Juan were the same objects used in stabbing Evangeline and Antonio. In view of the dismissal of the criminal cases for murder and frustrated murder, there is no reason to consider the items seized from Juan during an alleged protective search on the person of Juan pursuant to a follow-up operation PO2 Guerrero conducted.

In conclusion, We recognize that the evidence for the defense is not strong because Daniel and Juan merely denied participating in the brutal stabbing of Spouses Asistin. Their testimonies were uncorroborated by any other evidence. Admittedly, the defense of denial or frame-up, like alibi, has been viewed with disfavor. Nevertheless, the apparent weakness of Juan and Daniel's defense does not add any strength nor can it help the prosecution's cause. If the prosecution cannot establish, in the first place, Juan and Daniel's guilt beyond reasonable doubt,

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[76] CA *rollo*, p. 65.

[77] Records, p. 264.

the need for the defense to adduce evidence in its behalf in fact never arises. However weak the defense evidence might be, the prosecution's whole case still falls. The evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 9, 2013 of the Regional Trial Court of Quezon City, Branch 219 in Criminal Case Nos. Q-04-125714, Q-04-125715, Q-04-125717, as well as the Decision dated October 13, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06428 are hereby **REVERSED** and **SET ASIDE**. Accused-Appellants Juan Credo *y* De Vergara and Daniel Credo *y* De Vergara are **ACQUITTED** for failure to prove their guilt beyond reasonable doubt, and are **ORDERED** to be immediately released unless they are 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., Jardeleza,* and *Gesmundo, JJ.*, concur.

Del Castillo, J., on official leave.

SECOND DIVISION

[G.R. No. 235739. July 22, 2019]

EDWIN DEL ROSARIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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* Acting Working Chairperson.

SYLLABUS

1. CRIMINAL LAW; ROBBERY; ELEMENTS; THE DISTINGUISHING ELEMENT BETWEEN THE CRIMES OF ROBBERY AND THEFT IS THE USE OF VIOLENCE OR INTIMIDATION AS A MEANS OF TAKING THE PROPERTY BELONGING TO ANOTHER.— The elements of robbery are: (1) there is a taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi*; and (4) the taking is with violence against or intimidation of persons or with force upon things. Theft, on the other hand, is committed by any person who, with intent to gain **but without violence against or intimidation of persons nor force upon things**, shall take the personal property of another without the latter's consent. Thus, the distinguishing element between the crimes of robbery and theft is the use of violence or intimidation as a means of taking the property belonging to another; the element is present in the crime of robbery and absent in the crime of theft.

2. ID.; THEFT; WHERE THE SNATCHING OF THE NECKLACE WAS WITHOUT VIOLENCE OR INTIMIDATION OF PERSONS OR WITH FORCE UPON THINGS, THE CRIME COMMITTED IS THEFT; RELEVANT DECISIONS, CITED.— The testimonies of the witnesses reveal that the snatching of the necklace was without violence against or intimidation of persons or with force upon things. x x x In the case of *People v. Concepcion*, the Court ruled that when the complainant herself merely testified that the offender snatched her shoulder bag, without saying that such offender used violence, intimidation or force in snatching her shoulder bag, the snatching of the shoulder bag constitutes the crime of theft, not robbery. x x x In the strikingly similar case of *Ablaza v. People*, the Court clarified that "for the requisite of violence to obtain in cases of simple robbery, the victim must have sustained less serious physical injuries or slight physical injuries in the occasion of the robbery." The Court added that the fact that the necklace was "grabbed" did not automatically mean that force attended the taking. x x x Applying the foregoing in the case at bar, the crime committed by Edwin is thus clearly only theft, instead of robbery.

3. ID.; ID.; ID.; ACCUSED'S INDICTMENT UNDER THE CHARGE OF ROBBERY WILL NOT BAR HIS CONVICTION FOR THE CRIME OF THEFT.— [T]he Court is aware that Edwin was indicted under a charge for robbery, not theft. The failure to specify the correct crime committed, however, will not bar Edwin's conviction for the crime of theft. The character of the crime is not determined by the caption or preamble of the information, or by the specification of the provision of law alleged to have been violated. The crime committed is determined by the recital of the ultimate facts and circumstances in the complaint or information. In this case, the allegations in the Information are sufficient to make out a charge of theft.

4. ID.; ID.; ID.; PROPER PENALTY IMPOSED IS SIX (6) MONTHS OF *ARRESTO MAYOR* MAXIMUM.— Pursuant to Article 64(1) of the Revised Penal Code which provides that in cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, and there being no mitigating or aggravating circumstances, the penalty imposable shall be in its medium period. Hence, the imposable penalty is *arresto mayor* in its maximum period, that is, four (4) months and one (1) day to six (6) months. x x x In other words, since the maximum imposable penalty does not exceed one year, the ISL does not apply. As aforementioned, the maximum term to be considered is the penalty actually imposed in accordance with law, which is *arresto mayor* in its maximum period, that is four (4) months and one (1) day to six (6) months. Accordingly, his penalty is fixed at six (6) months of *arresto mayor* maximum.

APPEARANCES OF COUNSEL

Sarona and Sarona–Lozare Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Edwin del Rosario (Edwin) assailing the Decision[2] dated May 12, 2017 and Resolution[3] dated November 6, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 01228-MIN, which affirmed the Decision[4] dated August 22, 2014 of the Regional Trial Court of Davao City, Branch 16 (RTC) in Criminal Case No. 71,449-11, finding Edwin guilty beyond reasonable doubt of the crime of robbery.

The Facts

Edwin, together with Roxan Cansiancio[5] (Roxan), was charged with Robbery. The accusatory portion of the Information reads:

> That on or about January 30, 2012, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating with one another with intent to gain and by means of violence or intimidation against person, willfully, unlawfully and feloniously took, stole and carried away by means of force an Italian Gold Necklace with pendant worth ₱18,000.00, belonging to private complainant CHARLOTTE CASIANO to the latter's damage and prejudice in the aforesaid
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> CONTRARY TO LAW.[6]

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[1] *Rollo*, pp. 11-33, excluding Annexes.

[2] *Id*. at 35-54. Penned by Associate Justice Perpetua T. Atal-Paño, with Associate Justices Oscar V. Badelles and Rafael Antonio M. Santos concurring.

[3] *Id*. at 57-58. Penned by Associate Justice Perpetua T. Atal-Paño, with Associate Justices Oscar V. Badelles and Ruben Reynaldo G. Roxas concurring.

[4] *Id*. at 117-124. Penned by Presiding Judge Emmanuel C. Carpio.

[5] Also stated as "Casiano," "Cansiano," "Cansancio" and "Consancio" in some parts of the records.

[6] *Rollo*, p. 60.

Upon arraignment, both Edwin and Roxan pleaded not guilty to the crime charged. However, before trial ensued, Roxan changed his mind and decided to withdraw his earlier plea.[7] He plea bargained the charge of consummated robbery to a lower offense of attempted robbery.[8] With the approval of the prosecution and with the conformity of Charlotte Diane[9] Evangelista Casiano (Charlotte), the private complainant, the RTC sentenced Roxan to suffer the straight penalty of six (6) months *arresto mayor*.[10]

As to Edwin, trial ensued thereafter.

Version of the Prosecution

In the afternoon of January 30, 2012, Charlotte and Kim Evangelista Casiano (Kim) flagged down a jeepney going to G-Mall.[11] After boarding said jeepney, two male persons, who were later identified to be Roxan and Edwin, also boarded the vehicle.[12] Roxan sat across Charlotte while Edwin sat on the side of Kim with a woman passenger in between them.[13]

While on board the jeepney, Charlotte and Kim heard Roxan and Edwin talking about who will pay the fare.[14] Upon reaching the corner of Quirino Street near the Villa Abrille Building, the jeepney stopped at a red light.[15] Kim saw Edwin giving the signal to Roxan and heard him say "*tirahi na nang babaye bai*"[16] Thereafter, Roxan snatched the necklace of Charlotte,

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[7] *Id*. at 117.

[8] *Id*.

[9] Also stated as "Dianne" in some parts of the records.

[10] *Rollo*, p. 117.

[11] *Id*. at 36.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id.*

[16] *Id.*

disembarked from the jeepney, and ran away. Edwin also disembarked.[17]

Charlotte shouted "*magnanakaw*".[18] She and Kim disembarked from the jeepney and tried to run after Roxan but they were unable to catch him.[19]

They later learned that Roxan was apprehended.[20] With Roxan in custody, the police decided to conduct a follow-up operation.[21] PO3 Rizalito Clapiz III testified on cross-examination that Roxan provided the police with the information that his companion is a bald person.[22] The police went to the address of Edwin and upon Roxan's confirmation that he is his companion, Edwin was apprehended.[23]

On the same day, the police, at 10:00 in the evening, requested that Charlotte and Kim identify Edwin.[24] Due to health reasons, Charlotte and Kim were only able to go to the police station the next day.[25] They both identified Edwin as the bald person who was the companion of Roxan in the alleged robbery.[26]

Version of the Defense

Edwin's defense was that of an alibi. The defense presented four witnesses, namely Victoriano Lumosad (Victoriano), Emilyn[27]

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[17] *Id.*

[18] *Id*. at 37.

[19] *Id*.

[20] *Id.*

[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] See *id*.

[25] *Id*.

[26] *Id*.

[27] Also stated as "Emelyn" in some parts of the records.

Batulan (Emilyn), Henry Parreño, Sr.[28] (Henry) and Edwin himself.

Victoriano claimed that about 3:30 to 4:00 in the afternoon of January 30, 2012, he saw Edwin driving.[29] Emilyn also testified that she saw Edwin take his usual jeepney route on January 30, 2012 and that she saw him pass by her residence at 10:00 in the morning and at 3:00 to 4:00 in the afternoon.[30] Henry, who is the father-in-law of Edwin, also testified that he saw him on January 30, 2012 at about 2:00 in the afternoon driving his jeepney from Talomo going to downtown.[31]

The defense also averred that the prosecution's witnesses failed to give sufficient identification of Edwin.[32] Their arguments relied heavily on the fact that Charlotte only identified Roxan's companion as a bald person.[33] The defense argued that there was no description provided as to the companion's complexion, built, and other features. Thus, the description of Roxan's companion as a bald person is insufficient to properly identify Edwin as the perpetrator.

Additionally, the defense alleged that the in-court identification made by Charlotte and Kim was heavily tainted because even before they were able to identify Roxan's companion, the police already told them that the perpetrator has been arrested.[34]

Ruling of the RTC

After trial on the merits, in its Decision[35] dated August 22, 2014, the RTC convicted Edwin of the crime charged. The RTC

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[28] Also stated as "Henry Parreno" in some parts of the records.

[29] *Rollo*, p. 119.

[30] *Id*. at 38, 119-120.

[31] *Id*. at 38, 120.

[32] *Id*. at 121.

[33] *Id*. at 40.

[34] *Id*.

[35] *Id*. at 117-124.

ruled that Edwin's alibi would not prosper because he was unable to comply with the requirements of time and place, since he was in Davao City. Hence, it was not physically impossible for him to be at the scene of the crime at the time of its commission.[36]

The dispositive portion of the said Decision reads:

WHEREFORE, PREMISES CONSIDERED, the Court finds the evidence sufficient to prove the guilt of accused **EDWIN DEL ROSARIO** beyond reasonable doubt. There being no mitigating nor aggravating circumstance and pursuant to paragraph 5 of Article 294 of the Revised Penal Code, the Court hereby sentences accused **EDWIN DEL ROSARIO** to suffer the indeterminate penalty, ranging from [s]ix (6) [m]onths and one (1) [d]ay, [p]rision correccional, as minimum, to six (6) [y]ears and [o]ne (1) [d]ay, [p]rision [m]ayor, as maximum.

No award of civil liability.

SO ORDERED.[37]

Aggrieved, Edwin appealed to the CA.

Ruling of the CA

In the questioned Decision[38] dated May 12, 2017, the CA affirmed the RTC's conviction of Edwin. The CA explained that denial and alibi by Edwin cannot prevail over the positive and categorical testimony of the prosecution witnesses.[39] The CA also ruled that there was conspiracy because the commonality of criminal intent between Edwin and Roxan was apparent: (1) Edwin and Roxan rode the jeepney together; (2) Edwin said "*tirahi na ng babaye bai*; (3) Roxan grabbed the necklace of Charlotte; and (4) both Roxan and Edwin disembarked from the jeepney and ran away.[40]

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[36] *Id*. at 124.

[37] *Id.*

[38] *Id.* at 35-54.

[39] *Id*. at 52.

[40] *Id*. at 49-50.

The CA, however, modified the penalty and disposed as follows:

> WHEREFORE, the instant appeal is DENIED. The Decision of the Regional Trial Court, Branch 16, Davao City dated August 22, 2014 is Affirmed but Modified only as to the penalty imposed on the [prison] term which shall be six (6) months of arresto mayor as minimum to six (6) years of prision correccional as maximum.
>
> SO ORDERED.[41]

Issue

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting Edwin of the crime of robbery.

The Court's Ruling

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.[42] 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.[43]

Edwin's guilt was proven beyond reasonable doubt

In the case at bar, the Court adopts the CA's findings and conclusion as to Edwin's guilt. The Court is convinced that the elements of taking of personal property which belongs to another person without his consent have been established and such taking was with intent to gain. The Court consistently held that intent to gain is a mental state whose existence is demonstrated by a person's overt acts.[44]

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[41] *Id*. at 54.

[42] *Gamboa v. People*, 799 Phil. 584, 593 (2016).

[43] *Id*. at 593.

[44] *Briones v. People*, 606 Phil. 354, 366 (2009).

As to Edwin's allegation that the prosecution failed to prove beyond reasonable doubt the required identification that he was one of the persons responsible for the crime charged, the Court agrees with the CA when it ruled as follows:

> Indeed, a perusal of the testimonies [of] both witnesses on direct and cross-examinations would show that they were consistent on their narrative of the incident and of the participation of appellant Del Rosario. Thus, there is no reason to depart from the findings of the trial court especially since "[t]he direct appreciation of testimonial demeanor during examination, veracity, sincerity and candor was foremost the trial court's domain, not that of a reviewing court that had no similar access to the witnesses at the time they testified."[45]

As a matter of fact, the testimonies of Kim and Charlotte demonstrate that they are certain that Edwin was the perpetrator:

[Kim's testimony:]

Q: Okay, are you positive that it is Del Rosario, who is in Court, who gave the signal to Cansancio?

A: Yes sir.

Q: How certain are you from 1 to 100%?

A: 101% sir.

Q: 101%?

A: Yes sir.

Q: 101%, your identification?

A: Yes sir.

Q: That means it is impossible for you to forget the face of accused Del Rosario?

A: Yes sir because it is our first time to meet this kind of incident.

x x x x x x x x x

Q: x x x

What happened after you went to the San Pedro Police Station?

A: They made us identify the companion sir.

[45] *Rollo*, p. 48; citation omitted.

Q: Where (*sic*) you able to identify him?

A: Yes sir.

Q: Who was that?

A: Edwin Del Rosario sir.

Q: The Edwin del Rosario you just identified before this Court, what is his relation to the person you identified in San Pedro Police Station?

A: He is one and the same person sir.

Q: You are very sure that the person in Court who identified himself as Edwin Del Rosario is the same person, Edwin del Rosario you identified in San Pedro Police Station?

A: Very sure sir.[46]

[Charlotte's testimony:]

Q: What happened when you were in the police station?

A: At first, we were not able to see that person but they were detained there, they made us identify that person sir.

Q: Were you able to identify him?

A: Yes sir.

Q: Is he in Court?

A: Yes sir.

Q: If he is in Court, can you point to him?

A: Yes sir.

MR. MOLINA: Witness pointed to a person wearing a black t-shirt and when asked, identified himself as Edwin Del Rosario.

PROS. BELLO: He is the same person you saw boarded on the same jeepney?

A: Yes sir.

x x x x x x x x x

PROS. BELLO: Madam Witness, after you went to the San Pedro Police Station, you identify the accused ...

[46] TSN, May 30, 2013, pp. 12-16.

COURT: Who among the accused?

PROS. BELLO: Accused del Rosario your Honor.

Is he the same person you saw in the puj you boarded earlier?

A: Yes sir.

Q: You are very certain of that?

A: Yes sir, I immediately identify him.

Q: You are very sure that he is the same person?

A: Yes sir.

May be because 1 was angry sir, it was stuck in my mind sir.

Q: Between the range from 1 to 10, what is [your] certainty of your identity?

A: 100% sir.[47]

Crime committed is theft, not robbery

From the foregoing, the Court notes that the material issue left to be addressed is whether the snatching of the necklace is robbery or theft. Did Edwin employ violence or intimidation upon persons, or force upon things, when he snatched Charlotte's necklace?

The elements of robbery are: (1) there is a taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi*; and (4) the taking is with violence against or intimidation of persons or with force upon things.[48] Theft, on the other hand, is committed by any person who, with intent to gain **but <u>without</u> violence against or intimidation of persons nor force upon things**, shall take the personal property of another without the latter's consent.[49]

Thus, the distinguishing element between the crimes of robbery and theft is the use of violence or intimidation as a means of taking the property belonging to another; the element

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[47] *Id*. at 36-37, 45-46.

[48] *Consulta v. People*, 598 Phil. 464, 471 (2009).

[49] REVISED PENAL CODE, Art. 308.

is present in the crime of robbery and absent in the crime of theft.[50]

The testimonies of the witnesses reveal that the snatching of the necklace was without violence against or intimidation of persons or with force upon things. Kim, during his direct examination, testified as follows:

COURT: Okay what happened when these two men boarded the vehicle?

A: They have a conversation about the fare sir, as to who will pay the fare sir.

Q: Then?

A: The jeep stop[ped] briefly at Villa Abrille Building because there was a red light.

Q: So, what happen[ed]?

A: When I looked at them, they gave a signal.

Q: Who gave a signal?

A: Mr. Del Rosario sir.

Q: The one who is in court?

A: Yes sir.

Q: Okay, you just refer to him as Del Rosario. Del Rosario gave a signal?

A: Yes, sir.

Q: What kind of signal?

A: He said "tirahi na nang babaye bai" (Hit that lady bai).

Q: So, upon hearing that message from Del Rosario, what did Cansancio do?

A: He quickly snatched the necklace sir and then Cansancio ran away.

Q: What about del Rosario?

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[50] *Briones v. People*, *supra* note 44, at 366.

A: He was left in the jeep sir.

Q: Then?

A: I chased Cansancio sir and my sister disembark[ed] from the jeep and [s]he als[o] chased Cansancio.[51]

Such fact was also bolstered by Charlotte's testimony:

Q: Madam Witness, what happened when the jeepney you were riding was already in motion?

A: I was hinting something and there was a male person in front of me, in fact, the people who are also about to board a jeep was telling him to move towards the inside direction, but he did not move sir.

Q: What happened?

A: What I was able to recall was that I heard a person saying "you will be the one to pay the fare."

x x x x x x x x x

Q: What else happened?

A: After that sir, upon reaching the corner of Quirino, there was a red light so the jeepney stopped.

Q: What happened when the red traffic light flashed?

A: When the jeep was again about to move that male person in front of me suddenly grabbed my necklace.

Q: What happened after he grabbed your necklace?

A: I was weak at that time sir, coming from the hospital, I tried to hold on to my necklace but I was not able to prevent him from grabbing my necklace so he jumped and ran away and I also jumped and shouted "theft".

Q: What did your brother do, if any?

A: When I jumped off from the jeep, my brother also chased the person sir, we were shouting "magnanakaw" (theft).

Q: What happened when your brother was chasing the person who grabbed your necklace?

[51] TSN, May 30, 2013, pp. 10-12.

A: I was trying to look at the ground sir if there was something that fell your Honor, I return to the multicab sir I identified all those passengers then I followed my brother sir.

Q: What happened to that person who grabbed your necklace?

A: He was running, heading to the direction of Villa Abrille.

Q: Then, what happened next, if any?

A: When I arrived there, there were three civilian police who caught or apprehended that person sir.[52]

In the case of *People v. Concepcion*,[53] the Court ruled that when the complainant herself merely testified that the offender snatched her shoulder bag, without saying that such offender used violence, intimidation or force in snatching her shoulder bag, the snatching of the shoulder bag constitutes the crime of theft, not robbery.[54] The Court reached the same conclusion in the following cases:

In *People v. [De la] Cruz*,[55] this Court found the accused guilty of theft for snatching a basket containing jewelry, money and clothing, and taking off with it, while the owners had their backs turned.

In *People v. Tapang*,[56] this Court affirmed the conviction of the accused for frustrated theft because he stole a white gold ring with diamond stones from the victim's pocket, which ring was immediately or subsequently recovered from the accused at or about the same time it was stolen.

In *People v. Omambong*,[57] the Court distinguished robbery from theft. The Court held:

> Had the appellant then run away, he would undoubtedly have been guilty of theft only, because the asportation was not effected

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

[53] 691 Phil. 542 (2012).

[54] See *id*. at 550.

[55] 76 Phil. 601 (1946).

[56] 88 Phil. 721 (1951).

[57] 34 O.G. 1853 (1936).

> against the owner's will, but only without his consent; although, of course, there was some sort of force used by the appellant in taking the money away from the owner.
>
> x x x x x x x x x
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> What the record does show is that when the offended party made an attempt to regain his money, the appellant's companions used violence to prevent his succeeding.
>
> x x x x x x x x x
>
> The crime committed is therefore robbery and not theft, because personal violence was brought to bear upon the offended party before he was definitely deprived of his money.[58]

In the strikingly similar case of *Ablaza v. People*,[59] the Court clarified that "for the requisite of violence to obtain in cases of simple robbery, the victim must have sustained less serious physical injuries or slight physical injuries in the occasion of the robbery."[60] The Court added that the fact that the necklace was "grabbed" did not automatically mean that force attended the taking. The Court explained:

> The OSG argues that the use of the word "grabbed", by itself, shows that violence or physical force was employed by the offenders in taking Snyders' necklaces. The Court, however, finds the argument to be a pure play of semantics. Grab means to take or seize by or as if by a sudden motion or grasp; to take hastily. Clearly, the same does not suggest the presence of violence or physical force in the act; the connotation is on the suddenness of the act of taking or seizing which cannot be readily equated with the employment of violence or physical force. Here, it was probably the suddenness of taking that shocked Snyder and not the presence of violence or physical force since, as pointed out by petitioner, Snyder did not at all allege that She was pushed or otherwise harmed by the persons who took her necklaces.[61]

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[58] *People v. Concepcion*, *supra* note 53, at 549-550.

[59] G.R. No. 217722, September 26, 2018.

[60] *Id.* at 13.

[61] *Id.* at 10.

Applying the foregoing in the case at bar, the crime committed by Edwin is thus clearly only theft, instead of robbery.

In arriving at this conclusion, the Court is aware that Edwin was indicted under a charge for robbery, not theft. The failure to specify the correct crime committed, however, will not bar Edwin's conviction for the crime of theft. The character of the crime is not determined by the caption or preamble of the information, or by the specification of the provision of law alleged to have been violated.[62] The crime committed is determined by the recital of the ultimate facts and circumstances in the complaint or information.[63] In this case, the allegations in the Information are sufficient to make out a charge of theft.

Proper Penalty to be imposed

The CA imposed the penalty of six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum. Under Republic Act No. 10951,[64] which was promulgated on August 29, 2017, Article 309(4) of the Revised Penal Code has been relevantly amended as follows:

> ART. 309. *Penalties*. – Any person guilty of theft shall be punished by:
>
> x x x x x x x x x
>
> 4. *Arresto mayor* in its medium period to *prision correccional* in its minimum period, if the value of the property stolen is over Five thousand pesos (₱5,000) but does not exceed Twenty thousand pesos (₱20,000).

Accordingly, the Court modifies the penalty. Article 309(4) provides that the penalty shall be *arresto mayor* in its medium

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[62] See *Briones v. People*, *supra* note 44, at 367.

[63] *Id.*

[64] AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE", AS AMENDED.

period to *prisión correccional* in its minimum period, which consist of the following periods:

(a) MINIMUM – *arresto mayor* in its medium period, that is from two (2) months and one (1) day to four (4) months;

(b) MEDIUM – *arresto mayor* in its maximum period, that is four (4) months and one (1) day to six (6) months; and

(c) MAXIMUM – *prision correccional* in its minimum period, that is six (6) months and one (1) day to two (2) years and four (4) months.

Pursuant to Article 64(1)[65] of the Revised Penal Code which provides that in cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, and there being no mitigating or aggravating circumstances, the penalty imposable shall be in its medium period. Hence, the imposable penalty is *arresto mayor* in its maximum period, that is, four (4) months and one (1) day to six (6) months.[66]

In *Romero v. People*[67] citing *Argoncillo v. Court of Appeals*,[68] the Court summarized the application and non-application of the Indeterminate Sentence Law (ISL), to wit:

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[65] ART. 64. *Rules for the application of penalties which contain three periods.* - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

[66] See *People v. Moreno*, 425 Phil. 526, 543 (2002); see also *People v. Alay-ay,* 295 Phil. 943, 957 (1993).

[67] 677 Phil. 151 (2011).

[68] 354 Phil. 324, 340-341 (1998).

x x x It is basic law that x x x the application of the Indeterminate Sentence Law is mandatory where imprisonment exceeds one (1) year, except only in the following cases:

x x x x x x x x x

h. Those whose maximum period of imprisonment does not exceed one (1) year.

Where the penalty actually imposed does not exceed one (1) year, the accused cannot avail himself of the benefits of the law, the application of which is based upon the penalty actually imposed in accordance with law and not upon that which may be imposed in the discretion of the court. (*People v. Hidalgo*, [CA] G.R. No. 00452-CR, January 22, 1962).[69]

In other words, since the maximum imposable penalty does not exceed one year, the ISL does not apply.[70] As aforementioned, the maximum term to be considered is the penalty actually imposed in accordance with law, which is *arresto mayor* in its maximum period, that is four (4) months and one (1) day to six (6) months.[71] Accordingly, his penalty is fixed at six (6) months of *arresto mayor* maximum.

WHEREFORE, in view of the foregoing, the Petition is hereby **PARTIALLY GRANTED**. The Court **DECLARES** petitioner EDWIN DEL ROSARIO **GUILTY** beyond reasonable doubt of **THEFT**, for which he is sentenced to suffer the straight penalty of six (6) months of *arresto mayor*.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

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[69] *Romero v. People*, *supra* note 67, at 166.

[70] *Rimano v. People*, 462 Phil. 272, 288 (2003).

[71] See *People v. Moreno*, *supra* note 66, at 543; see also *People v. Alay-ay*, *supra* note 66, at 957.

SECOND DIVISION

[G.R. No. 239635. July 22, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSE BENNY VILLOJAN, JR.** ***y*** **BESMONTE** ***alias*** **"JAY-AR,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF MARIJUANA; ESSENTIAL ELEMENTS.— The essential elements in the prosecution for illegal sale of marijuana are: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— To successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.

3. ID.; ID.; ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS; CHAIN OF CUSTODY RULE; SINCE THE CONFISCATED ILLEGAL DRUGS THEMSELVES MUST BE PRESENTED IN EVIDENCE, THE PROSECUTION OUGHT TO PROVE THAT THEIR INTEGRITY HAD BEEN PRESERVED FROM THE MOMENT THEY WERE RECOVERED FROM THE ACCUSED UNTIL THEIR PRESENTATION IN COURT AS EVIDENCE, AS THEY WILL BE USED TO DETERMINE THE GUILT OR INNOCENCE OF THE ACCUSED.— In both cases of violation of Article 5 (illegal sale) and violation of Article 11 (illegal possession), the chain of custody over the dangerous drug must be shown to establish

the *corpus delicti*. Since the confiscated illegal drugs themselves must be presented in evidence, the prosecution ought to prove that their integrity had been preserved from the moment they were recovered from the accused up until their presentation in court as evidence. Indeed, primordial importance must be given to "the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused." The chain of custody rule performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved so much so that unnecessary doubts as to their identity are removed. This is done through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.

4. ID.; ID.; ID.; ID.; LAW ENFORCERS OR ANY PERSON WHO CAME IN POSSESSION OF THE SEIZED DRUGS MUST OBSERVE THE PROCEDURE FOR PROPER HANDLING OF THE SEIZED SUBSTANCE TO REMOVE ANY DOUBT THAT IT WAS CHANGED, ALTERED, MODIFIED, OR PLANTED BEFORE ITS PRESENTATION IN COURT AS EVIDENCE.— The chain of custody requires that law enforcers or any person who came in possession of the seized drugs must observe the procedure for proper handling of the seized substance to remove any doubt that it was changed, altered, modified, or planted before its presentation in court as evidence. The chain of evidence is constructed by proper exhibit handling, storage, labeling, and recording, and must exist from the time the evidence is found until the time it is offered in evidence. The strict observance of the chain of custody finds greater significance in buy-bust operations where there are undeniably serious abuses by law enforcement officers. ***People v. Caranto*** elucidates: The built-in danger for abuse that a buy-bust operation carries cannot be denied. It is essential therefore, that these operations be governed by specific procedures on the seizure and custody of drugs. We had occasion to express this concern in *People v. Tan,* when we recognized that "by the very nature of anti-narcotic operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which illegal drugs can be planted in the 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."

5. **ID.; ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY; TO PROVE THAT THE ILLEGAL DRUGS PRESENTED IN COURT ARE THE VERY SAME DRUGS SEIZED FROM ACCUSED, THE PROSECUTION MUST ESTABLISH THAT THERE HAD BEEN NO BREAK IN ANY OF THE FOUR (4) LINKS IN THE CHAIN.—** There are four (4) links in the chain of custody: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. To prove that the illegal drugs presented in court are the very same drugs seized from accused, the prosecution must establish that there had been no break in any of the four (4) links in the chain. The Court keenly notes that here, the second link had been seriously breached.

6. **ID.; ID.; ID.; ID.; THE POLICE OFFICERS WHO CAME IN CONTACT WITH THE SEIZED DRUG DURING ITS TURN–OVER MUST BE IDENTIFIED AND ACCOUNTED FOR AND MADE TO EXPLAIN ABOUT THE STEPS THEY HAD UNDERTAKEN TO ENSURE THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE ILLEGAL DRUG WAS NOT COMPROMISED WHILE IN THEIR POSSESSION; GAPS IN THE CHAIN OF CUSTODY, SPECIFICALLY ON THE TURN-OVER OF THE SEIZED DRUGS IS FATAL TO THE PROSECUTION'S CASE.—** Conspicuously, missing from P02 Baldevia's sworn statement and testimony are the material details of the supposed turn-over of the seized drugs to the investigating officer at the police station *before* their submission for laboratory examination. The second link involves the turn-over of the confiscated drugs to the police station, the recording of the incident, and the preparation of the necessary documents such as the request for laboratory examination of the seized drugs. Since it is not remote that the handling police officer came in

contact with the seized drugs during this procedure, it is, therefore, necessary that such officer/s be identified and accounted for and made to explain about the steps he/she/they had undertaken to ensure that the integrity and evidentiary value of the illegal drugs were not compromised while in his/her/their possession. Here, there was no clear testimony about these crucial details. In ***People v. Dahil,*** the Court overturned the conviction of the accused because of the gaps in the chain of custody, specifically on the second link.

7. ID.; ID.; ID.; ID.; APART FROM PROVING THE PRESENCE OF THE ELEMENTS OF POSSESSION OR SALE WITH THE SAME DEGREE OF CERTITUDE, IT MUST BE ESTABLISHED THAT THE SUBSTANCE ILLEGALLY POSSESSED AND SOLD IS THE SAME SUBSTANCE OFFERED IN COURT AS EXHIBIT; OTHERWISE, A VERDICT OF ACQUITTAL BECOMES INDUBITABLE. — In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is persistent doubt on the identity of the drug. For apart from proving the presence of the elements of possession or sale with the same degree of certitude, it must be established that the substance illegally possessed and sold is the same substance offered in court as exhibit. Otherwise, a verdict of acquittal becomes indubitable. Here, the gap in the chain of custody raises serious uncertainty on whether the drugs presented in evidence were the very drugs traded during the buy-bust operation involving appellant. With this lingering doubt here pervading, the Court is strongly constrained to acquit appellant. In any event, PO2 Baldevia was hard put to state the necessary precautions she ought to have strictly employed to ensure the seized illegal drugs were not contaminated, changed, or altered in transit and while in her custody. In light of the prosecution's failure to establish with moral certainty the identity and the unbroken chain of custody of the dangerous drugs seized from appellant, a verdict of acquittal here is in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This is an appeal from the Decision[1] dated October 23, 2017, of the Court of Appeals in CA-G.R. CR HC No. 02074 entitled *People of the Philippines v. Jose Benny Villojan, Jr. y Besmonte alias "Jay-ar,*'" affirming appellant's conviction for violation of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165) also known as the Comprehensive Dangerous Drugs Act of 2002.

The Proceedings Before the Trial Court

The Charges

Appellant Jose Benny Villojan *y* Besmonte *alias* "Jay-ar" was charged under the following Informations:

Criminal Case No. 2013-02-8319

That on or about the 25th of April, 2012, in the Municipality of San Jose, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being a person authorized by law, did then and there, willfully, unlawfully and feloniously have in his possession and control one (1) tea bag of marijuana leaves weighing 0.147 gram.

Contrary to the provisions of Section 11 (Article II) of Republic Act No. 9165.[2]

Criminal Case No. 2013-02-8320

That on or about the 25th of April, 2012, in the Municipality of San Jose, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully

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[1] Penned by Associate Justice Edward B. Contreras, with Associate Justice Edgardo L. Delos Santos and Associate Justice Gabriel T. Robeniol, concurring, CA *rollo*, pp. 114-127.

[2] Record, p. 1.

and feloniously, sell and deliver to PO2 Aubrey Baldevia, eight (8) tea bags of marijuana leaves weighing 3.667 grams, worth Php800.00 which was seized in the course of the buy-bust operation, then said specimen was examined and evaluated by the Antique Provincial Crime Laboratory Office, PNP Provincial Command, Bugante Point, San Jose, Antique and found the same as marijuana, a dangerous drug.

Contrary to the provisions of Section 5, Article II of R.A. 9165.[3]

On arraignment, appellant pleaded not guilty to both charges.[4] Trial ensued.

The Prosecution's Version

The testimonies of Police Chief Inspector (PCI) Cirox T. Omero, PO2 Aubrey Baldevia, PO1 Marlon M. Grejaldo, and PO1 Genus L. David may be synthesized, *viz*:

The name of appellant Jose Benny Villojan *y* Besmonte alias "Jay-ar" appeared on the drug watchlist of San Jose Police Force in Antique. On April 23, 2012, the San Jose Police Force successfully launched a test-buy operation on appellant. It resulted in a consummated sale of marijuana between the police and appellant.[5]

Two (2) days later, or on April 25, 2012, a buy bust-team was organized to entrap appellant. The members of the buy-bust team were PO2 Aubrey Baldevia, PO2 Franklin Alonsagay, PO2 Mateo Villavert, PO2 Rocky Luzarita, representatives from the Provincial Anti-Illegal Drugs Task Group and Philippine Drug Enforcement Agency (PDEA), and five (5) more members from the Intelligence Group (PO2 Victor Crepe, SPO3 Emmanuel Salvador, PO2 Copias, PO1 Barcemo, PO1/PO2 Aguilar).[6] PO2 Baldevia was designated as poseur buyer. Before heading to the designated place, the confidential informant (CI) talked to appellant on the phone about a prospective customer who wanted

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[3] *Id*. at 3.

[4] *Id*. at 36.

[5] Sworn Statement, *Id.* at 17.

[6] TSN, July 24, 2013, p. 19.

to buy ("score") marijuana.[7] The CI agreed to bring the customer to appellant's place in the afternoon.[8]

Around 1 o'clock in the afternoon, the buy-bust team proceeded to Camp Agape in Brgy. Funda Dalipe approximately thirty (30) to fifty (50) meters away from appellant's house.[9] Together with the CI, PO2 Baldevia waited for appellant while the other team members posted themselves nearby.[10]

Shortly later, appellant arrived on board a motorcycle.[11] He alighted from the motorcycle and got introduced to PO2 Baldevia. Appellant asked PO2 Baldevia how much she was going to buy. Appellant quoted ₱100.00 per tea bag of marijuana. She replied eight (8) tea bags.[12] Appellant retrieved eight (8) tea bags from his pocket and handed them to PO2 Baldevia who, in turn, paid him ₱800.00.[13] Thereupon, PO2 Baldevia announced she was a police officer and she was arresting appellant. The latter immediately turned away and ran toward his house.[14]

Meantime, not far from the *locus criminis*, PO2 Rocky Luzarita, PO2 Mateo Villavert, and PO2 Franklin Alonsagay alighted from their parked car and ran after appellant.[15] After getting hold of appellant, PO2 Alonsagay did a body search on appellant and recovered from his pocket a tea bag of marijuana leaves and a ₱50.00 bill.[16]

The police, thereafter, proceeded with the marking and inventory of the seized items in the presence of Provincial

[7] *Id*. at 11.

[8] *Id*.

[9] *Id*. at 12.

[10] Sworn Statement, Record, p. 14.

[11] TSN, July 24, 2013, p. 12.

[12] Sworn Statement, Record, p. 15.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*. at 16.

Prosecutor Cezar Dan T. Alecando, John Pagunsan of 106.9 Hot PM, Peter Zaldivar of Barbaza Coop TV, and Barangay Kagawad Arman Leong-on.[17] PO2 Rocky Luzarita took photos of appellant. PO2 Franklin Alonsagay also took photos of the witnesses while signing the inventory receipt.[18] Appellant was later brought to the San Jose Police Station.[19]

Meantime, per request for laboratory examination issued by Deputy Chief of Police PI Jose Partisala, PO2 Baldevia brought the confiscated nine (9) tea bags of marijuana leaves to the crime laboratory.[20] The request and the items were received by PO1 Marlon Grejaldo, a Police Community Non-Commissioned Officer (PCNO).[21] PO1 Grejaldo recorded the items in the logbook and turned them over to PCI Omero[22] for laboratory examination. PCI Omero did the physical, chemical, and confirmatory examinations on the specimens which yielded positive results for marijuana.[23]

After the tests, PCI Omero secured the items inside a sealed plastic bag and turned them over for safekeeping to custodian PO1 Genus David.[24] PCI Omero's findings were contained in his Chemistry Report No. D-010-2012.[25] A separate Chemistry Report No. D-09-2012 was also submitted by PCI Omero for the specimen obtained during the earlier test-buy operation launched on appellant."[26] PCI Omero retrieved from PO1 David

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[17] *Id*.

[18] TSN, July 24, 2013, pp. 6-7.

[19] Sworn Statement, Record, p. 16.

[20] *Id*.

[21] TSN, August 14, 2013, pp. 2-4.

[22] *Id*. at 5.

[23] Judicial Affidavit, Record, pp. 53-54.

[24] *Id*.

[25] *Id*.

[26] *Id*.

the previously seized marijuana tea bags for presentation in court.

The prosecution offered[27] the following documentary and object evidence: (1) Judicial Affidavit of PCI Cirox T. Omero (Exhibit "A");[28] (2) Plastic bag containing nine (9) tea bags of marijuana with markings "JBBB-1 to JBBB-9" (Exhibit "B"); (3) Chemistry Report No. D-010-2012 dated April 25, 2012 (Exhibit "C");[29] (4) Plastic sachet containing marijuana with marking "D-09-2012 OCT" (Exhibit "D"); (5) Chemistry Report No. D-09-2012 dated April 23, 2012 (Exhibit "E");[30] (6) Sworn Statement of PO2 Aubrey F. Baldevia (Exhibit "F");[31] (7) Request for Laboratory Examination (Exhibit "G");[32] Photos of appellant (Exhibits "H", "I", "J", and "K");[33] (8) Photos taken during inventory of the seized items (Exhibits "L", "M", "N+", and "O");[34] (9) Receipt/Inventory of Seized Articles dated April 25, 2012 signed by PO2 Aubrey F. Baldevia (Exhibit "P");[35] (10) Judicial Affidavit of PO1 Marlon M. Grejaldo (Exhibit "Q");[36] and (11) Judicial Affidavit of PO1 Genus L. David (Exhibit "R").[37]

The Defense's Version

Appellant Jose Benny Villojan himself and Salvacion Narboneta testified for the defense. Their testimonies may be summarized, in this wise:

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[27] Record, pp. 88-96.

[28] *Id*. at 52-55.

[29] *Id*. at 26.

[30] *Id*. at 24.

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

[32] *Id*. at 25.

[33] *Id*. at 29.

[34] *Id*. at 30.

[35] *Id*.. at 20.

[36] *Id.* at 64-66.

[37] *Id.* at 67-69.

Appellant denied that he sold tea bags of marijuana to PO2 Baldevia. He claimed that on April 25, 2012, on his way to deliver the list of names of persons who had "utang" with the sari-sari store, a police officer held him at gunpoint. He later identified the police officer as PO2 Franklin Alonsagay.[38] The latter ordered him to lie prone on the ground. Before he could even comply, PO2 Alonsagay had already handcuffed and pushed him to the ground.[39] He could see from where he was lying down several tea bags of dried marijuana leaves and two (2) pieces of ₱100.00 bills.[40] And while he was handcuffed, PO2 Alonsagay inserted something in his pocket. He subsequently discovered that these items were actually one (1) tea bag of dried marijuana leaves and one (1) piece of ₱50.00 bill.[41]

Appellant belied the alleged presence of representatives from the DOJ, media, and barangay as witnesses during the inventory.[42] He claimed that there were actually no witnesses present during his unlawful arrest.[43]

Salvacion Narboneta essentially corroborated appellant's testimony. She testified that in the afternoon of April 25, 2012, she was in her residence in Dalipe when she heard a commotion outside. She saw appellant being chased by police officers.[44] When the police officers were able to catch up with appellant, one of them pointed a gun at appellant while the others looked on.[45] The police officers showed appellant a cellophane wrapped in paper.[46] But the cellophane did not come from appellant

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[38] Counter Affidavit, Record, p. 31.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] TSN, October 8, 2014, p. 4.

[45] *Id.* at 5.

[46] *Id.* at 7.

himself.[47] Aside from the police officer who was pointing a gun at appellant, there were at least four (4) other police officers with him, one (1) female and three (3) male.[48] It was PO2 Alonsagay who frisked but got nothing from appellant.[49]

Narboneta denied having seen Fiscal Dela Cruz or any member of the media around during appellant's arrest.[50] When she asked the police why appellant was being arrested, none of them responded.[51] After his arrest, appellant was made to board a police vehicle and brought to the municipal hall.[52]

The defense did not offer any documentary evidence.

The Trial Court's Ruling

By Judgment[53] dated November 25, 2014, the trial court found appellant guilty as charged in both cases. It held that the prosecution was able to establish with moral certainty that appellant was in possession of, and had sold to a police officer during the buy-bust operation, tea bags containing dried marijuana leaves. The forensic chemist confirmed that the eight (8) tea bags sold by appellant to the police officer and one (1) which was separately recovered from appellant were confirmed to be marijuana, a prohibited drug. The trial court disregarded appellant's defenses of denial and frame-up and the so-called inconsistent testimony of Salvacion Narboneta. It gave more credence to the positive and categorical testimonies of the prosecution witnesses. The trial court, thus, ruled:

WHEREFORE, judgment is hereby rendered finding the accused JOSE BENNY VILLOJAN, JR. guilty beyond reasonable doubt of

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[47] *Id.*

[48] TSN, October 8, 2014, p. 5.

[49] *Id.* at 6.

[50] *Id.*

[51] *Id.* at 7.

[52] *Id.*

[53] Record, pp. 123-142.

the two (2) criminal offenses for which he has been charged in the two above-entitled cases, hereby:

(1) IMPOSING upon the said accused the penalty of life imprisonment and a fine of PhP500,000.00 in Criminal Case No. 2013-02-8320 and, independently and separately, the penalty of imprisonment of twelve (12) years and one (1) day and a fine of PhP300,000.00 in Criminal Case No. 2013-02-8319;

(2) DISQUALIFYING the said accused from exercising his civil rights such as the rights of parental authority and guardianship, either as to the person or property of any ward, the rights to dispose of such property by any act or any conveyance inter vivos, as well as from exercising his political rights such as the rights to vote and be voted for;

(3) DECLARING the confiscation and forfeiture in favor of the government, to be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper disposition and destruction, the "eight (8) tea bags of marijuana leaves weighing 3.667 grams" in Criminal Case No. 2013-02-8320 and the "one (1) tea bag of marijuana leaves weighing 0.147 gram" in Criminal Case No. 2013-02-8319; and

(4) PRONOUNCING no cost.

SO ORDERED.

The Court of Appeals' Proceedings

Appellant appealed the verdict of conviction on the following grounds: (1) no buy-bust operation actually took place; and (2) the chain of custody rule was breached. The Office of the Solicitor General (OSG), through Assistant Solicitor General Thomas M. Laragan and Associate Solicitor Leo Adrian B. Morillo maintained that the prosecution had established beyond reasonable doubt appellant's guilt of the twin offenses charged.

By Decision[54] dated October 23, 2017, the Court of Appeals sustained the verdict of conviction. It held that the elements of both illegal sale and illegal possession of drugs had been

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[54] Penned by Associate Justice Edward B. Contreras with Associate Justice Edgardo Delos Santos and Associate Justice Gabriel T. Robeniol, concurring, CA *rollo*, pp. 114-127.

indubitably established - appellant was caught *in flagrante delicto* selling marijuana to PO2 Baldevia, a poseur buyer, who, in exchange for the drugs, paid appellant ₱800.00. Too, another tea bag of marijuana was recovered from appellant when a member of the arresting team bodily searched him.

The Present Appeal

Appellant now faults the Court of Appeals for affirming the trial court's verdict of conviction. Appellant attacks the credibility of prosecution witnesses who allegedly fabricated the story of the test-buy and buy-bust operations. For if truly he sold illegal drug to the police officers during the alleged test-buy operation, why did they not arrest him right there and then? Too, where the request for laboratory examination of the supposed drug purportedly took place on *April 22, 2012*, how could the test-buy operation possibly have taken place only *post facto* on *April 23, 2012*?

Appellant further asserts that PO2 Baldevia's testimony itself negates the existence of the so-called buy-bust operation, *i.e.*, (1) Appellant supposedly threw away some of the ₱100.00 bills he received from the poseur buyer during the hot pursuit launched on him by the police officers; (2) The prosecution did not enter in the police blotter the markings written on the buy-bust money nor were the supposed bills offered in evidence; (3) The CI and appellant allegedly agreed to meet with appellant in the latter's house, yet, the CI, poseur buyer, and the rest of the buy-bust team proceeded to Camp Agape to wait for appellant with nary an explanation why the venue of the sale was suddenly changed. These details, according to appellant, raise serious doubts whether a buy-bust operation truly happened.

More, appellant points to the following missing links in the chain of custody of the alleged seized items which render their identity and integrity questionable: (a) It was unclear where and when the marking of the seized drugs was done. The law requires that marking be done immediately after confiscation, yet, the testimonial and documentary evidence on record failed to establish these details; (b) There is dearth of evidence on

who actually received the alleged seized drugs during their turn-over from PO2 Baldevia to the investigating officer at the police station. Apart from the police blotter and request for laboratory examination, it was unclear whether there were other police officers who took hold of the alleged seized marijuana before the same were submitted for laboratory analysis; and (c) PO2 Baldevia and all other persons who came in contact with the seized drugs failed to show the manner by which they handled, kept, or stored the same while in their custody. It was, thus, unclear whether the items had been safeguarded from any possible tampering, alteration, contamination, or switching. The *corpus delicti* involving illegal drugs is the drug itself. Absent any showing that the drugs presented in evidence were the very same drugs seized from the accused, acquittal is in order.

The OSG counters that the evidence thus far adduced had established with moral certainty the elements of both illegal possession and illegal sale of marijuana. In the sale of dangerous drugs, the prosecution had indubitably established the identity and integrity of appellant as seller, PO2 Baldevia as buyer, the confiscated drugs themselves, and the delivery of the drugs and payment therefor which transpired between PO2 Baldevia and appellant. As defined and penalized under Section 11, Article II of RA 9165, in the charge of illegal possession of prohibited drugs, the prosecution was able to prove beyond reasonable doubt that appellant was freely and consciously in possession of illegal drugs which he was not otherwise authorized to possess.

Finally, contrary to appellant's claim, the prosecution was able to demonstrate an unbroken chain of custody of the seized illegal drugs: ***First***, the marijuana tea bags seized from appellant by PO2 Baldevia were inventoried and marked by PO2 Baldevia herself at the place of arrest; ***Second***, after marking and inventory of the illegal drugs, PO2 Baldevia personally brought them to the crime laboratory where the items were received by PO1 Grejaldo who, in turn, signed the request for laboratory examination and entered the necessary details in the logbook; ***Third***, PO1 Grejaldo handed the seized drugs to PCI Omero

who conducted the laboratory examinations on the seized drugs, yielding positive results for marijuana. PCI Omero reduced the laboratory findings through a written report which was also submitted in court; ***Fourth***, PCI Omero transferred the seized drugs to PO1 David for safekeeping. PCI Omero retrieved the illegal drugs from PO1 David for presentation in evidence. As clearly outlined, the unbroken chain of custody of the illegal drugs here was amply established.

Issue

Was the prosecution able to prove appellant's guilt of violation of Sections 5 and 11, Article II of RA 9165?

Ruling

The essential elements in the prosecution for illegal sale of marijuana are: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[55]

To successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[56]

In both cases of violation of Article 5 (illegal sale) and violation of Article 11 (illegal possession), the chain of custody over the dangerous drug must be shown to establish the *corpus delicti*.

Since the confiscated illegal drugs themselves must be presented in evidence, the prosecution ought to prove that their integrity had been preserved from the moment they were

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[55] See *People v. Honrado*, 683 Phil. 45, 52 (2012) (citations omitted).

[56] See *People v. Gayoso*, 808 Phil. 19, 30 (2017).

recovered from the accused up until their presentation in court as evidence. Indeed, primordial importance must be given to "the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused."[57]

The chain of custody rule performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved so much so that unnecessary doubts as to their identity are removed.[58] This is done through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.[59]

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*, " *viz*:

> "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.

The chain of custody requires that law enforcers or any person who came in possession of the seized drugs must observe the procedure for proper handling of the seized substance to remove any doubt that it was changed, altered, modified, or planted before its presentation in court as evidence. The chain of evidence is constructed by proper exhibit handling, storage, labeling,

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[57] *Id.* at 22.

[58] See *People v. Villarta, et al.,* 740 Phil. 279, 295 (2014).

[59] See *People v. Ditona, et al*., 653 Phil. 529, 533 (2010), citing *People v. Sitco, et al.,* 634 Phil. 627, 640 (2010), *People v. Nandi*, 639 Phil. 134, 144 (2010).

and recording, and must exist from the time the evidence is found until the time it is offered in evidence.[60]

The strict observance of the chain of custody finds greater significance in buy-bust operations where there are undeniably serious abuses by law enforcement officers. ***People v. Caranto***[61] elucidates:

> The built-in danger for abuse that a buy-bust operation carries cannot be denied. It is essential therefore, that these operations be governed by specific procedures on the seizure and custody of drugs. We had occasion to express this concern in *People v. Tan*, when we recognized that "by the very nature of anti-narcotic operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which illegal drugs can be planted in the 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."

There are four (4) links in the chain of custody: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[62] To prove that the illegal drugs presented in court are the very same drugs seized from accused, the prosecution must establish that there had been no break in any of the four (4) links in the chain.

The Court keenly notes that here, the second link had been seriously breached.

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[60] *People v. Balibay, et al.*, 742 Phil. 746, 756 (2014).

[61] 728 Phil. 507, 517-518 (2014) (citations omitted).

[62] See *Dela Riva v. People*, 769 Phil. 872, 886-887 (2015) (citation omitted).

In her Sworn Statement, PO2 Baldevia stated that after the marking and inventory of the seized marijuana tea bags, she personally brought them to the crime laboratory for forensic analysis, *viz*:

x x x x x x x x x

Q20. – What else happened after the inventory of the recovered items from JOSE BENNY VILLOJAN?

A – We photographed all recovered items for documentation.

Q21. – After you photographed all recovered items, what did you do?

A – I personally submitted MARIJUANA leaves to the Provincial Crime Laboratory Office, Antique Police Provincial Office, Bugante Point, San Jose, Antique on (sic) the afternoon of April 25, 2012 which yielded POSITIVE result with Chemistry Result Number D-10-2012 and total weight of 3.814 grams.

Q22. – What else did you to, (sic) after you arrest(ed) and PO2 Franklin Alonsagay apprised JOSE BENNY VILLOJAN @ Jay-ar, of his constitutional rights?

A – We brought JOSE BENNY VILLOJAN @ Jay-ar to SAN JOSE POLICE STATION San Jose, Antique and turned over him to duty Desk Officer for custody and proper disposition while the appropriate charges is being prepared, and we did not harm, force, coerce nor intimidate said JOSE BENNY VILLOJAN @ Jay-ar since he was in our custody until he was turned over to the Desk Officer of San Jose Police Station.

x x x x x x x x x[63]

On cross, PO2 Baldevia reiterated she personally submitted the seized items to the crime laboratory, thus:

x x x x x x x x x

Q: Madam Witness, you bought eight tea bags, according to you from Benny Villojan?

A: Yes, Sir.

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[63] Record, p. 16.

Q: And you identified those tea bags which you bought from Benny Villojan and you have submitted to the crime laboratory at the Antique Police Provincial Office, is that correct?

A: Yes, Sir.

Q: How many teabags where (sic) you able to submit to the Crime Laboratory at the Antique Provincial Police Office?

A: I submitted a total of nine (9) teabags of marijuana. Eight (8) of which were the teabags I bought, Sir.

x x x x x x x x x[64]

Conspicuously, missing from PO2 Baldevia's sworn statement and testimony are the material details of the supposed turn-over of the seized drugs to the investigating officer at the police station *before* their submission for laboratory examination. The second link involves the turn-over of the confiscated drugs to the police station, the recording of the incident, and the preparation of the necessary documents such as the request for laboratory examination of the seized drugs. Since it is not remote that the handling police officer came in contact with the seized drugs during this procedure, it is, therefore, necessary that such officer/s be identified and accounted for and made to explain about the steps he/she/they had undertaken to ensure that the integrity and evidentiary value of the illegal drugs were not compromised while in his/her/their possession.

Here, there was no clear testimony about these crucial details. In ***People v. Dahil***,[65] the Court overturned the conviction of the accused because of the gaps in the chain of custody, specifically on the second link. The Court elucidated:

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Second Link: Turnover of the Seized Drugs by the Apprehending Officer to the Investigating Officer

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. Usually,

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[64] TSN, July 24, 2013, p. 14.

[65] 750 Phil. 212, 234-235 (2015) (citations omitted).

the police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing. This is a necessary step in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents.

The investigator in this case was a certain SPO4 Jamisolamin. Surprisingly, there was no testimony from the witnesses as to the turnover of the seized items to SPO4 Jamisolamin. It is highly improbable for an investigator in a drug-related case to effectively perform his work without having custody of the seized items. Again, the case of the prosecution is forcing this Court to resort to guesswork as to whether PO2 Corpuz and SPO1 Lieu gave the seized drugs to SPO4 Jamisolamin as the investigating officer or they had custody of the marijuana all night while SPO4 Jamisolamin was conducting his investigation on the same items.

In *People v. Remigio*, the Court noted the failure of the police officers to establish the chain of custody as the apprehending officer did not transfer the seized items to the investigating officer. The apprehending officer kept the alleged shabu from the time of confiscation until the time he transferred them to the forensic chemist. The deviation from the links in the chain of custody led to the acquittal of the accused in the said case.

x x x x x x x x x

Notably, records bear the request for laboratory examination issued by a certain PI Jose Partisala. According to PO2 Baldevia, she presented this request including the seized items to the crime laboratory. And yet, neither PI Partisala nor the investigating officer testified in court to shed light on their participation in the handling of the seized drugs. Such deviation from the prescribed procedure is fatal to the prosecution's case for it raises serious doubts on the preservation of the integrity and evidentiary value of the seized illegal drugs. In ***People v. Enad***,[66] the Court held that when the police officers who

[66] See 780 Phil. 346, 367 (2016), citing *People v. Capuno*, 655 Phil. 226, 242 (2011).

confiscated the dangerous drugs testified that they brought the accused and the seized item to the police station without identifying the police officer to whose custody the seized item was actually given, the second link in the chain of custody is deemed not to have been established.

In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is persistent doubt on the identity of the drug. For apart from proving the presence of the elements of possession or sale with the same degree of certitude, it must be established that the substance illegally possessed and sold is the same substance offered in court as exhibit.[67] Otherwise, a verdict of acquittal becomes indubitable.

Here, the gap in the chain of custody raises serious uncertainty on whether the drugs presented in evidence were the very drugs traded during the buy-bust operation involving appellant. With this lingering doubt here pervading, the Court is strongly constrained to acquit appellant.

In any event, PO2 Baldevia was hard put to state the necessary precautions she ought to have strictly employed to ensure the seized illegal drugs were not contaminated, changed, or altered in transit and while in her custody.

In light of the prosecution's failure to establish with moral certainty the identity and the unbroken chain of custody of the dangerous drugs seized from appellant, a verdict of acquittal here is in order.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated October 23, 2017 of the Court of Appeals in CA-G.R. CR HC No. 02074 is **REVERSED and SET ASIDE**. Appellant **JOSE BENNY VILLOJAN, JR. *y* BESMONTE** is **ACQUITTED** of violation of Section 11, Article II of RA 9165 in Criminal Case No. 2013-02-8319 and violation of Section 5, Article II of RA 9165 in Criminal Case No. 2013-02-8320.

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[67] See *People v. Hementiza*, 807 Phil. 1017, 1038 (2017), citing *People v. Lorenzo*, 633 Phil. 403 (2010).

The Director of the Bureau of Corrections is ordered to (a) immediately **RELEASE JOSE BENNY VILLOJAN, JR. *y* BESMONTE** from custody, unless he is being held for some other lawful cause; and (2) **SUBMIT** his compliance report within five (5) days from notice.

Let entry of judgment be immediately issued.

SO ORDERED.

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

Perlas-Bernabe, J., on official leave.

THIRD DIVISION

[G.R. No. 192956. July 24, 2019]

VENUS BATAYOLA BAGUIO, JUPITER BATAYOLA, MANUEL BATAYOLA, JR., ISABELO BATAYOLA, RAMILO BATAYOLA, RAUL BATAYOLA, LEONARDO BATAYOLA, MILAGROS BATAYOLA, JULIETA BATAYOLA CANTILLAS, ENRIQUETA BATAYOLA ROSACENA, FELICIANO BATAYOLA, ONESEFERO[*] PACINA, VERONICA FERNANDEZ BATAYOLA, LUCIO HUBAHIB, VICENTA REVILLA, PERLA UMBAO, BRIGILDA MORADAS, and THE REGIONAL DIRECTOR, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES VII, *petitioners, vs.* **HEIRS OF RAMON ABELLO, namely: the late LOLITA ABELLO DE SEARES, represented by her heirs: ROSARIO A. JIMENEZ,**

[*] Also spelled "Onesifero," "Onecefero," "Onecifero," "Onicefero," "Onesefiro," and "Unisefero" in some parts of the record.

CANDELARIA A. CHAN LIM, RAFAEL ABELLO and HEIDE ABELLO CABALUNA, and the late EDUARDO ABELLO, represented by his heirs SANDRA S. ABELLO and IAN GERARD S. ABELLO, *respondents.*

[G.R. No. 193032. July 24, 2019]

HEIRS OF RAMON ABELLO, namely: the late LOLITA ABELLO DE SEARES, represented by her heirs: ROSARIO A. JIMENEZ, CANDELARIA A. CHAN LIM, RAFAEL ABELLO and HEIDE ABELLO CABALUNA, and the late EDUARDO ABELLO, represented by his heirs SANDRA S. ABELLO and IAN GERARD S. ABELLO, *petitioners, vs.* **VENUS BATAYOLA BAGUIO, JUPITER BATAYOLA, MANUEL BATAYOLA, JR., ISABELO BATAYOLA, RAMILO BATAYOLA, RAUL BATAYOLA, LEONARDO BATAYOLA, MILAGROS BATAYOLA, JULIETA BATAYOLA CANTILLAS, ENRIQUETA BATAYOLA ROSACENA, FELICIANO BATAYOLA, ONESEFERO PACINA, VERONICA FERNANDEZ BATAYOLA, LUCIO HUBAHIB, VICENTA REVILLA, PERLA UMBAO, BRIGILDA MORADAS, and THE REGIONAL DIRECTOR, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES VII,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; ACTION FOR NULLITY OF TITLE DISTINGUISHED FROM ACTION FOR REVERSION.— The case of *Heirs of Kionisala v. Heirs of Dacut* states the distinction between an action for reversion and an action tor nullity of title, *viz*.: An ordinary civil action for declaration of nullity of free patents and certificates of title is not the same as an action for reversion. **The difference between them lies in the allegations as to the character of ownership of the realty whose title is sought to be nullified.** In an action for reversion. the pertinent allegations in the complaint would admit State ownership of the disputed land. Hence in *Gabila v. Barriga* where the plaintiff in his complaint admits that he has

no right to demand the cancellation or amendment of the defendant's title because even if the title were canceled or amended the ownership of the land embraced therein or of the portion affected by the amendment would revert to the public domain, we ruled that the action was for reversion and that the only person or entity entitled to relief would be the Director of Lands. On the other hand, a cause of action for declaration of nullity of free patent and certificate of title would require allegations of the plaintiff's ownership of the contested lot prior to the issuance of such free patent and certificate of title as well as the defendant's fraud or mistake; as the case may be, in successfully obtaining these documents of title over the parcel of land claimed by plaintiff. In such a case, the nullity arises strictly not from the fraud or deceit but from the fact that the land is beyond the jurisdiction of the Bureau of Lands to bestow and whatever patent or certificate of title obtained therefor is consequently void ab initio. The real party in interest is not the State but the plaintiff who alleges a pre-existing right of ownership over the parcel of land in question even before the grant of title to the defendant.

2. **POLITICAL LAW; STATE; REGALIAN DOCTRINE; LANDS OF PUBLIC DOMAIN CAN NEVER BECOME PRIVATE LAND, UNLESS DECLARED TO BE ALIENABLE AND DISPOSABLE BY THE POSITIVE ACT OF THE GOVERNMENT AND SO ALIENATED OR DISPOSED THROUGH ANY OF THE MEANS PROVIDED BY LAW; CASE AT BAR.—** The Court, likewise, affirms the CA's approach to the resolution of the case. The appellate court correctly held that the root issue in the appeal was the nature and legal status of the disputed land. The Regalian Doctrine is a fundamental tenet of our land ownership and registration laws, such that lands of the public domain can never become private land, unless declared to be alienable and disposable by the positive act of the government and so alienated or disposed through any of the means provided for by law. It is an elementary principle that the incontestable and indefeasible character of a Torrens certificate of title does not operate when the land thus covered is not capable of registration. Furthermore, the rights of the State may not be waived by mistakes of officers entrusted with the exercise of such rights. Applied to the case at bar, the titles held by the parties over the disputed parcel are not completely indefeasible and may be cancelled upon a showing that the parcel is indeed foreshore lands of the public domain.

3. CIVIL LAW; LAND REGISTRATION; FORESHORE LANDS; DEFINED; CASE AT BAR.— Foreshore lands are defined as those lands adjacent to the sea or immediately in front of the shore, lying between the high and low water marks and alternately covered with water and left dry according to the ordinary flow of the tides. Foreshore lands are usually indicated by the middle line between the highest and the lowest tides. x x x [I]t must be noted that the Del Monte report was adopted by both courts *a quo*, albeit for different reasons. Nevertheless, the fact remains that the concerned administrative agency, the trial court, and the appellate court unanimously found the disputed parcel to be foreshore land; and as such, this finding ought to be accorded great weight, if not finality, by this Court. Furthermore, this conclusion is bolstered by survey plans showing that the disputed parcel directly borders the shoreline and the salvage zones; and the testimonial evidence obtained not only from the actual occupants of the disputed parcel but also from witnesses presented by parties who have adverse claims on the property, to the effect that the disputed parcel was reached by seawater during high tide and the occupants thereof had to conduct earthworks in order to elevate their houses and protect them from the seawater. The CA, therefore, did not commit reversible error in holding that the land subject of this dispute is foreshore land.

4. ID.; ID.; FORESHORE LANDS BELONG TO THE PUBLIC DOMAIN AND CANNOT BE THE SUBJECT OF FREE PATENTS OR TORRENS TITLE; CASE AT BAR.— The non-registrability of foreshore lands is a well-settled jurisprudential doctrine. In *Republic of the Phil. v. CA*, it was held that foreshore lands belong to the public domain and cannot be the subject of free patents or Torrens titles. x x x Therefore, to ascertain the validity of the titles held by the parties herein, the Court now determines if the disputed parcel was foreshore land at the time said titles were issued. x x x [I]t must be emphasized that the disputed parcel was still foreshore land in 1972, as found by the Del Monte report and the BL-VII decision. The disposition of foreshore lands is governed by Sections 58, 59, and 61 of the Public Land Act. These legal provisions mandate that foreshore lands of the public domain must first be opened to disposition or concession by the President; and afterwards may only be disposed of through lease, *and not* otherwise. The "appropriate public lands application" adverted to in the BL-VII decision, therefore, can only refer to a foreshore lease application. However, both the Batayola heirs and Pacina filed

FP applications, in 1983 and 1985, respectively, instead of foreshore lease applications. There is nothing in the record which indicates that the disputed parcel had been released into the public domain and reclassified as agricultural land prior to 1983; or that the Batayola group filed any foreshore lease application. On the other hand, Presidential Proclamation No. 2151, dated December 29, 1981, expressly declared Bantayan a Wilderness Area, with the effect of withdrawing all lands therein "from entry, sale, settlement, exploitation of whatever nature or forms of disposition, subject to existing recognized and valid private rights, if any there be"; and placing said lands under the administration and control of the DENR. This fact is annotated in the 1982 cadastral survey plan of Bantayan, which already reflects the 1972 BL-VII decision separating the disputed parcel from the rest of the land covered by the Abello heirs' OCT No. 1208. It is clear from the foregoing that the Batayola heirs and Pacina failed to tile the appropriate public lands application as required by the BL-VII decision. Worse, they repeated the same error committed by Diego in 1963: filing an application for free patent over land that is neither agricultural nor alienable and disposable. Even assuming *arguendo* that the disputed parcel somehow became disposable agricultural land after 1972, the FP and OCT issued to Batayola should still be considered null and void, as they were issued on November 25, 1983, almost two years after Presidential Proclamation No. 2151, which withdrew the disputed parcel from any form of disposition. Having failed to properly exercise the preferential rights given to them by the Bureau of Lands, the Batayola group must now face the consequences thereof.

LEONEN, *J.*, *separate concurring opinion*:

1. POLITICAL LAW; 1987 CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; CONTRARY THERETO, NOT ALL LANDS ARE PRESUMED TO BE OWNED BY THE STATE; TIME IMMEMORIAL POSSESSION OF LAND IN THE CONCEPT OF OWNERSHIP EITHER THROUGH THEMSELVES OR THROUGH THEIR PREDECESSORS-IN-INTEREST SUFFICES TO CREATE A PRESUMPTION THAT SUCH LANDS HAVE HELD IN THE SAME WAY FROM BEFORE THE SPANISH CONQUEST, AND NEVER HAVE BEEN PUBLIC LANDS.— [T]he regalian doctrine's application is not as expansive as it may appear in the *ponencia*.

I do not agree that it "is a fundamental tenet of our land ownership and registration laws[.]" The regalian doctrine originated from early Spanish decrees that embraced the feudal theory that all lands were held by the Crown. However, since the American colonization period, the doctrine has already been made subject to several exceptions. In *Cariño v. Insular Government*, this Court recognized native titles and held that some lands were never deemed to have been public land: x x x This position was further affirmed when the 1987 Constitution limited the State's ownership to lands of *public domain*. Contrary to the regalian doctrine, not *all* lands are presumed to be owned by the State. Article XII, Section 2 of the 1987 Constitution states, in part: SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. Furthermore, the due process clause of the 1987 Constitution protects all types of property, including those not covered by a paper title, those whose ownership resulted from possession and prescription, and those who hold their properties in the concept of owner since time immemorial. I elaborated on this position in my separate opinion in *Heirs of Malabanan v. Republic*: We have also recognized that "time immemorial possession of land in the concept of ownership either through themselves or through their predecessors in interest" suffices to create a presumption that such lands "have been held in the same way from before the Spanish conquest, and never to have been public land." This is an interpretation in *Cariño v. Insular Government* of the earlier version of Article III, Section I in the McKinley's Instructions. The case clarified that the *Spanish sovereign's concept of the "regalian doctrine" did not extend to the American colonial period and to the various Organic Acts extended to the Philippines.*

2. ID.; ID.: ID.: LEASE IS NOT A TENURIAL ARRANGEMENT FOR OUR NATURAL RESOURCES; TO EXPLORE, DEVELOP, OR UTILIZE THE NATURAL RESOURCES, INCLUDING FOREHORE LANDS, THE STATE MAY NOW ONLY DO SO THROUGH CO-PRODUCTION, JOINT VENTURE, OR PRODUCTION-SHARING AGREEMENTS.— Moreover, I note that while the ponencia rightfully ruled that the parties should have filed the appropriate foreshore lease application as provided in the Public Land Act, this procedure is no longer viable to parties today. The leasing

> of foreshore lands was provided in the Public Land Act because it was allowed under the 1973 Contitution, as amended. x x x However, the 1987 Constitution no longer mentions lease as a tenurial arrangement for our natural resources. x x x The change in the text of the 1987 Constitution indicates an intent to modify the previous provision. It should be interpreted in accordance with this intent. Thus, should the State wish to explore, develop, or utilize its natural resources, including its foreshore lands, through private parties, it may now only do so through co-production, joint venture, or production-sharing agreements.

APPEARANCES OF COUNSEL

Florido & Largo Law Office for Heirs of Ramon Abello.
Loreto T. Lara for Venus Batayola Baguio, *et al.*
Office of the Solicitor General for public respondents.

D E C I S I O N

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

These petitions for review on *certiorari* assail the Decision[1] dated November 10, 2008 and Resolution[2] dated July 5, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 79669. The said issuances set aside the Decision[3] dated September 3, 2002 and Order[4] dated March 31, 2003 of the Regional Trial Court (RTC) of Bogo, Cebu, Branch 61, in Civil Case No. BOGO-00147, a case for declaration of nullity of title to a parcel of land.

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[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Franchito N. Diamante and Edgardo L. Delos Santos concurring; *rollo* (G.R. No. 193032), pp. 105-121.

[2] Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Agnes Reyes-Carpio and Eduardo B. Peralta, Jr., concurring; *id*. at 134-136.

[3] Rendered by Executive Judge Antonio D. Marigomen; CA *rollo*, pp. 82-90.

[4] Rendered by Executive Judge Antonio D. Marigomen; *rollo* (G.R. No. 193032), pp. 100-102.

The Facts

This case stems from a dispute over a title to a parcel of land located in Barrio Sillon, Municipality of Bantayan, Province of Cebu. The parcel has an area of 16,295 square meters and is located on the eastern shores of Bantayan Island, along the Visayan Sea.[5]

On one hand, Lolita Abello De Seares (Lolita), Eduardo Abello, and the other petitioners in G.R. No. 193032 are the heirs of Ramon Abello (Abello heirs) who claim the parcel on the strength of Original Certificate of Title (OCT) No. 1208, which was issued to their predecessor-in-interest, Diego Abello (Diego), on July 3, 1967, by virtue of Free Patent (FP) No. 335423. This OCT issued to Diego covers 30,256 sq m, including the disputed parcel. On the other hand, the petitioners in G.R. No. 192956 (hereinafter referred to as the Batayola group)[6] trace their claims to Manuel Batayola (Batayola) and Onesefero Pacina (Pacina). Batayola was issued OCT No. 0-24953 on November 25, 1983, by virtue of FP No. (VII-4)114. This OCT issued to Batayola covers 8,495 sq m on the easterly side of the disputed parcel, denominated as Lot No. 3864. Pacina also had a successful sales patent application over 7,709.75 sq m in the westerly side of the disputed parcel, denominated as Lot No. 3863, but was not issued a free patent title because of a Presidential Proclamation[7] which suspended free patent and sales patent applications for lands in Bantayan Island. Batayola and his heirs have been occupying and possessing their claimed

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[5] *Id*. at 40.

[6] Venus Batayola Baguio, Jupiter Batayola, Manuel Batayola, Jr., Isabelo Batayola, Ramilo Batayola, Raul Batayola, Leonardo Batayola, Milagros Batayola, Julieta Batayola Cantillas, Enriqueta Batayola Rosacena, and Feliciano Batayola are the children of Manuel Batayola. Onesefero Pacina, Veronica Fernandez Batayola, and Lucio Hubahib are relatives of the Batayolas who reside in the disputed parcel; while Vicenta Revilla, Perla Umbao, and Brigilda Moradas are neighbors of the Batayolas who also reside in the disputed parcel of land.

[7] Presidential Proclamation No. 2151, dated December 29, 1981, declaring Bantayan Island a wilderness area. Records, Vol. 1, p. 633.

portion of the disputed parcel since 1944, while Pacina has been occupying his claimed portion since 1947. Both have introduced substantial improvements on the lots.

On April 6, 1972, the Abello heirs[8] filed a Sales Application with the Bureau of Lands[9] Region VII (BL-VII) over the disputed parcel. Batayola and Pacina opposed the application and filed their respective claims over the portions they have been occupying. The designated BL-VII investigator, Jose M. del Monte (LI del Monte) heard the parties on their claims. After due proceedings, the BL-VII rendered a Decision[10] dated March 21, 1974, in favor of Batayola and Pacina. The dispositive portion of the decision states:

> Wherefore, it is ordered that the Sales Application Nos. and (VI-1) 114 of [Diego] and [Abello heirs], represented by Lolita Abello be, as hereby they are, REJECTED, forfeiting in favor of the Government whatever amount has been paid on account thereof.
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> The approved plan of Lot 1 Psu-130749 in the name of [Diego] be amended, so as to exclude the area subject of this controversy as shown in the sketch drawn at the back hereof.
>
> If qualified, Messrs. [Batayola] and [Pacina], shall file their respective appropriate public lands application within sixty (60) days from the receipt hereof, otherwise they shall lose their preferential rights thereto.
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> SO ORDERED.[11]

Consequently, Batayola's heirs[12] and Pacina filed the aforementioned free patent applications, which were both granted

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[8] Diego died sometime between 1969 and 1970. Records, Vol. 1, pp. 362 and 669; TSN, Apr. 1, 1998, p. 58.

[9] Now the Lands Management Bureau under the Department of Environment and Natural Resources.

[10] Penned for and by authority of the Director or Lands, by then-BL-VII Regional Director Cornelio C. Albos. *Rollo* (G.R. No. 193032), pp. 57-60.

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

[12] Batayola died sometime between 1977 and 1978 (Records, Vol. 1, p. 319; TSN, September 1, 2000, p. 6.) and his claim to the parcel passed on

by the government. However, in April 1996, the Abello heirs discovered the existence of OCT No. 1208, which was in the custody of their uncle, Valentin Pacina.

Armed with evidence of their own title, the Abello heirs filed a complaint for nullity of title dated May 1997 before the RTC of Bogo, Cebu, Branch 61. The complaint sought the following reliefs: the nullification of the BL-VII decision and the consequent issuance of the free patents and the OCT in favor of Batayola the ejectment of the Batayola group from their claimed portions and damages.

The Abello heirs asseverated that the Decision dated March 21, 1974 of the BL-VII and the FPs and OCT issued to Batayola and Pacina on the basis of said decision are null and void, for the Bureau had no jurisdiction to award the parcel in dispute, which has become private land on July 3, 1967 when OCT No. 1208 was issued. The Batayola group answered that OCT No. 1208 is void insofar as their occupied portions are concerned, since they have been in occupation and possession of said lots long before the issuance thereof. Furthermore, the said lots were still public land at the time the parcel was surveyed sometime in 1951; hence, the same cannot be surveyed as private land in behalf of Diego; and, therefore, the issuance or OCT No. 1208 should have been done either through mistake or fraud. The Batayola group further asserted that it was the Abello heirs who voluntarily submitted themselves to the jurisdiction of the BL-VII when they filed their sales application over the disputed parcel in 1972; hence, they are estopped from denying the jurisdiction of the BL-VII. The Department of Environment and Natural Resources (DENR) Region VII, as representative of the BL-VII, also filed an answer, asserting that the BL-VII Decision dated March 21, 1974 was issued only after a thorough examination and evaluation of all the evidence submitted; and that OCT No. 1208 was neither presented nor submitted by

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to his heirs Venus Batayola Baguio, Jupiter Batayola. Manuel Batayola. Jr., Isabelo Batayola, Ramilo Batayola, Raul Batayola, Leonardo Batayola, Milagros Batayola, Julieta Batayola Cantillas, Enriqueta Batayola Rosacena, and Feliciano Batayola.

the Abello heirs during the proceedings; hence, the office cannot be faulted for it simply relied on the evidence submitted by the parties.

On September 3, 2002, the trial court rendered a Decision[13] dismissing the complaint, *viz.*:

WHEREFORE, premises considered, the instant complaint is hereby **DISMISSED** for lack of merit, with no award, however, of counterclaims in favor of the defendants.

SO ORDERED.[14] (Emphases in the original)

The trial court held that the Abello heirs were estopped from questioning the BL-VII decision since they failed to file an appeal therefrom; and as such, the findings of the BL-VII and the adjudication of rights to the disputed parcel made therein have become final and executory. Furthermore, the Batayola group was shown to be in prior physical possession of the disputed parcel. As a result, the trial court declared OCT No. 1208 void insofar as it covers the disputed parcel, and upheld the validity of OCT No. 0-24953.

The Batayola group, seeking an enforceable pronouncement on the cancellation of OCT No. 1208, filed a Motion to Amend Dispositive Part of Decision dated October 3, 2002, which the trial court denied in its Order dated January 8, 2003. However, the trial court, upon motion of the Batayola group, reconsidered the denial and issued another Order[15] dated March 31, 2003, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court hereby AMENDS the dispositive portion of the Decision of this Court in the above-captioned case dated September 3, 2002, by adding as second paragraph thereof the following:

x x x x x x x x x

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[13] CA *rollo*, pp. 82-90.

[14] *Id*. at 90.

[15] *Rollo* (G.R. No. 193032), pp. 100-102.

> [OCT] No. 1208 in the name of [Diego] is hereby ordered cancelled. However, in lieu thereof, another certificate/s of title be issued in his name to cover the remaining areas after the exclusion from the said title (i.e. OCT No. 1208), the areas owned and occupied by the Heirs of [Batayola] containing an area of Eight Thousand Four Hundred and Ninety-Five (8,495) sq. meters and that occupied and owned by [Pacina] containing an area of Seven Thousand Seven Hundred and Nine and Seventy Five Hundredths (7,709.75) sq. meters.
>
> SO ORDERED.[16]

From these dispositions, the Abello heirs appealed to the CA. In the assailed Decision[17] dated November 10, 2008, the CA set aside the trial court's Decision dated September 3, 2002 and Order dated March 31, 2003, and decreed the cancellation of the titles issued to Diego and Batayola, insofar as these covered the disputed parcel, *viz.*:

> **WHEREFORE**, in view of all the foregoing, the impugned Decision of the [RTC] dated September 3, 2002 and the Order of March 31, 2003 is **SET ASIDE** and a new [one] is hereby entered declaring the Decision or the Office of the Regional Director or the Department of Agriculture and Natural Resources dated March 21, 1974 as **NULL and VOID**. Consequently, [FP] No. (VII-4)114. [OCT] No. 0-24953 in the name of the Heirs of [Batayola], [FP] No. 335423 and [OCT] No. 1208 in the name of [Diego] are likewise declared **NULL and VOID** insofar as the land subject or the present controversy with an area or 16,295 square meters is concerned.
>
> Let a copy of this decision be furnished the Office of the Solicitor General.
>
> **SO ORDERED.**[18] (Emphases in the original)

The CA held that the fundamental issue in the appeal was whether or not the disputed parcel was alienable and disposable land of the public domain: a question it answered in the negative. According to the appellate court, there was no evidence of any

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[16] *Id*. at 101-102.

[17] *Id*. at 105-121.

[18] *Id*. at 120.

positive act or declaration of the government setting aside the disputed parcel as alienable and disposable land of the public domain. Furthermore, the disputed parcel is foreshore land, which cannot be disposed of by free patent. In so ruling, the appellate court cited the BL-VII decision, the report[19] of LI del Monte, and his testimony before the trial court. Under Sections 58 to 61 of Commonwealth Act No. 141,[20] foreshore lands may only be disposed of to private parties by lease, after a declaration by the President that the same are not necessary for public service and are open to disposition under the Act. As a consequence of this finding, the appellate court cancelled the certificates of title of Batayola and Diego, ratiocinating that:

> In fact, the Supreme Court annulled the registration of land subject of cadastral proceedings when the parcel subsequently became foreshore land. In another case, the Court voided the registration decree of a trial court and held that said court had no jurisdiction to award foreshore land to any private person or entity. The subject land in the instant case, being foreshore land should, therefore, be returned to the public domain.[21] (Citation omitted)

Both parties filed motions for reconsideration,[22] which the CA denied in the assailed Resolution[23] dated July 5, 2010. Hence, these petitions.

The Issues

In G.R. No. 192956, the Batayola group assigns the following errors:

I. THE CA WITH DUE RESPECT GRAVELY ERRED IN DECLARING NULL AND VOID INSOFAR AS THE LAND SUBJECT OF THE PRESENT CONTROVERSY WITH AN AREA OF 16,295 SQ M IS CONCERNED;

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[19] Dated August 1, 1973 and hereinafter referred to as the del Monte report.

[20] Also known as the Public Land Act approved on November 7, 1936.

[21] *Rollo* (G.R. No. 193032), p. 119.

[22] CA *rollo*, pp. 168-173; pp. 176-178.

[23] *Rollo* (G.R. No. 193032), pp. 134-136.

II. THE CA WITH DUE RESPECT SERIOUSLY ERRED IN DECLARING AS NULL AND VOID THE DECISION OF THE BL-VII DATED MARCH 21, 1974; and

III. THE CA GRAVELY ERRED IN SETTING ASIDE THE DECISION DATED SEPTEMBER 3, 2002 AND THE ORDER DATED MARCH 31, 2003 OF THE RTC.[24]

In G.R. No. 193032, the Abello heirs assign the following errors:

I. THE HONORABLE CA GRAVELY AND SERIOUSLY ERRED IN DECLARING THE AREAS COVERED WITH TORRENS TITLE AS FORESHORE AREAS, AND IN INVALIDATING THE TITLE LONG ISSUED TO THE ABELLO HEIRS; and

II. THE HONORABLE CA GRAVELY AND SERIOUSLY ERRED IN NOT INVALIDATING THE SUBSEQUENT TITLES ISSUED IN FAVOR OF BATAYOLA GROUP AND IN NOT UPHOLDING THE VALIDITY OF THE PRIOR TITLE IN FAVOR OF THE ABELLO HEIRS.[25]

These assigned errors boil down to two essential issues: first, the nature and status of the disputed parcel of land; and second, the validity of the titles being claimed by the Abello heirs, the Batayola heirs, and Pacina. Stated differently, did the appellate court commit reversible error in: 1) declaring the disputed parcel of land a foreshore area and 2) by virtue of such declaration, nullifying all the parties' titles thereto?

Ruling of the Court

The petitions lack merit.

A. Nature of the proceeding vis-à-vis necessity of State intervention to revert the property back to the public domain

Both the Abello heirs and the Batayola group accuse the appellate court of reversible error in annulling both OCT Nos.

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[24] *Rollo* (G.R. No. 192956), pp. 16-19.

[25] *Rollo* (G.R. No. 193032), p. 13.

1208 and 0-24953 on the ground that the said OCTs cover unregistrable foreshore land, arguing that this is not possible under the circumstances since the case at bar is for nullity of title and not for reversion; and because Section 101 of the Public Land Act provides that reversion suits must be instituted by the Solicitor General, who was not made a party to the case.

The case of *Heirs of Kionisala v. Heirs of Dacut*[26] states the distinction between an action for reversion and an action for nullity of title, *viz*.:

> An ordinary civil action for declaration of nullity of free patents and certificates of title is not the same as an action for reversion. **The difference between them lies in the allegations as to the character of ownership of the realty whose title is sought to be nullified.** In an action for reversion. the pertinent allegations in the complaint would admit State ownership of the disputed land. Hence in *Gabila v. Barriga* where the plaintiff in his complaint admits that he has no right to demand the cancellation or amendment of the defendant's title because even if the title were canceled or amended the ownership of the land embraced therein or of the portion affected by the amendment would revert to the public domain, we ruled that the action was for reversion and that the only person or entity entitled to relief would be the Director of Lands.
>
> On the other hand, a cause of action for declaration of nullity of free patent and certificate of title would require allegations of the plaintiff's ownership of the contested lot prior to the issuance of such free patent and certificate of title as well as the defendant's fraud or mistake; as the case may be, in successfully obtaining these documents of title over the parcel of land claimed by plaintiff. In such a case, the nullity arises strictly not from the fraud or deceit but from the fact that the land is beyond the jurisdiction of the Bureau of Lands to bestow and whatever patent or certificate of title obtained therefor is consequently void ab initio. The real party in interest is not the State but the plaintiff who alleges a pre-existing right of ownership over the parcel of land in question even before the grant of title to the defendant.[27] (Emphasis and underscoring Ours; citations omitted)

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[26] 428 Phil. 249 (2002).

[27] *Id*. at 260.

In the case at bar, the Abello heirs alleged ownership of the disputed parcel, arguing that the BL-VII decision was null and void because its subject has since become private land titled in favor of Diego. It is, therefore, clear that the root of the present petition was a complaint for nullity of title to real property, an action which does not require the participation of the Solicitor General.[28] The Abello heirs specifically alleged in their complaint that: they are the owners of the disputed parcel by virtue of OCT No. 1208; the BL-VII decision was void for lack of jurisdiction since the disputed parcel was already private land; and OCT No. 1208 was fraudulently concealed, resulting in the Abello heirs being unable to defend their title to the disputed parcel before the BL-VII They, thus, prayed for the cancellation of Batayola's FP and OCT No. 0-24953 and the nullification of the BL-VII decision which allowed Batayola and Pacina to apply for, and obtain FPs.[29] In their answer with counterclaim, the Batayola group set up their own title to the disputed parcel; and sought the following reliefs: a declaration that the Batayola heirs and Pacina are the true and lawful owners of Lot Nos. 3864 and 3863, respectively; a declaration that OCT No. 0-24953 is valid and indefeasible; and the exclusion from the disputed parcel Diego's FP No. 335423.[30]

By virtue of the foregoing allegations, the parties thus put in issue before the trial court the validity of both certificates of title: a fact which is reflected in the pre-trial order of the case.[31] It is, therefore, incorrect to assert, as the parties did, that the appellate court had no jurisdiction to rule upon the issue of the validity of *both* certificates of title, since this issue was submitted to and passed upon by the trial court and, therefore, became subject to the review power of the CA on appeal; and that the appellate court found neither party to be the true owner is immaterial, since the requisite allegations to make out a case for nullity of title were stated in the complaint.

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[28] *Batas Pambansa Blg. 129*, Section 19(2).

[29] Records, Vol. 1, p. 153.

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

[31] *Id*. at 176.

The Court is not unaware of the requirement in Section 101 of the Public Land Act that all actions for the reversion to the Government of lands of the public domain or improvements thereon be instituted by the Solicitor General or the officer acting in his stead. Suffice it to say that the appellate court's decision does not bar the Solicitor General from filing a reversion suit, for it stopped short of explicitly decreeing the reversion of the disputed parcel back to the public domain. The CA even ordered that the Office of the Solicitor General be furnished a copy of the assailed decision. Furthermore, there is precedent for the adjudication of title to land in favor of the government even in the absence of a reversion suit.[32] In *Manotok IV, et al. v. Heirs of Homer L. Barque*,[33] which involved real property under the Friar Lands system, the Court reviewed the decision of the appellate court in an appeal from a decision of the Land Registration Authority in an administrative reconstitution proceeding. Finding doubts as to the veracity of the certificates of title presented by the parties, the Court ordered the parties to present evidence of their titles and ultimately adjudged the disputed land in favor of the government (which was not a party to the case) after finding that none of the parties were able to prove that they were able to comply with the requisites for a valid disposition of land under the Friar Lands Act. The Court held:

> Considering that none of the parties has established a valid acquisition under the provisions of Act No. 1120, as amended. we therefore adopt the recommendation of the CA declaring the Manotok title as null and void *ab initio*, and Lot 823 of the Piedad Estate as still part of the patrimonial property of the Government.
>
> **WHEREFORE**, the petitions filed by the Manotoks under Rule 45 of the 1997 Rules of Civil Procedure, as amended. as well as the petition-in-intervention of the Manahans, are *DENIED*. The petition for reconstitution of title filed by the Barques is likewise **DENIED**. TCT No. RT-22481 (372302) in the name of Severino Manotok IV, *et al.*, TCT No. 210177 in the name of Homer L. Barque and Deed

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[32] *Alonso v. Cebu Country Club, Inc.*, 426 Phil. 61, 88 (2002) and its resolution on the motion for reconsideration, 462 Phil. 546, 566 (2003).

[33] 643 Phil. 56 (2010).

of Conveyance No. V-200022 issued to Felicitas B. Manahan, are all hereby declared *NULL and VOID*. The Register of Deeds or Caloocan City and/or Quezon City are hereby ordered to CANCEL the said titles. The Court hereby *DECLARES* that Lot 823 of the Piedad Estate, Quezon City, legally belongs to the NATIONAL GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, without prejudice to the institution of REVERSION proceedings by the State through the Office of the Solicitor General.

x x x x x x x x x

SO ORDERED.[34] (Emphases, italics and underscoring in the original)

It must be recalled that a reversion suit presupposes State ownership of the property sought to be reverted. The CA, by categorically declaring the disputed parcel as foreshore land and nullifying the certificates of title held by Diego and the Batayola heirs, merely provided the basis by which the Solicitor General can allege State ownership of the disputed parcel for purposes of filing a reversion suit.

The Court, likewise, affirms the CA's approach to the resolution of the case. The appellate court correctly held that the root issue in the appeal was the nature and legal status of the disputed land. The Regalian Doctrine is a fundamental tenet of our land ownership and registration laws, such that lands of the public domain can never become private land, unless declared to be alienable and disposable by the positive act of the government and so alienated or disposed through any of the means provided for by law. It is an elementary principle that the incontestable and indefeasible character of a Torrens certificate of title does not operate when the land thus covered is not capable of registration.[35] Furthermore, the rights of the State may not be waived by mistakes of officers entrusted with

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[34] *Id*. at 169.

[35] *Republic of the Philippines v. Heirs of Ignacio Daquer and the Register of Deeds, Province of Palawan*, G.R. No. 193657, September 4, 2018; *Republic of the Philippines v. Court of Appeals*, 188 Phil. 142, 146-147 (1980); and *Dizon v. Rodriguez*, 121 Phil. 681, 686 (1965).

the exercise of such rights.[36] Applied to the case at bar, the titles held by the parties over the disputed parcel are not completely indefeasible and may be cancelled upon a showing that the parcel is indeed foreshore lands of the public domain.

B. Nature and status of the disputed land

This issue is implicated in the first two errors assigned by the Batayola group and directly raised by the Abello heirs. As earlier stated, the CA relied on the findings of the pertinent administrative agency - the Bureau of Lands and its investigators - in declaring that the disputed parcel is foreshore land.

Foreshore lands are defined as those lands adjacent to the sea or immediately in front of the shore, lying between the high and low water marks and alternately covered with water and left dry according to the ordinary flow of the tides. Foreshore lands are usually indicated by the middle line between the highest and the lowest tides.[37]

The Court first turns to the determination of the parcel's nature and status by the proper administrative agency, *i.e.*, the Bureau of Lands under the DENR. The records reveal two conflicting Bureau of Lands reports regarding the disputed parcel, which led to the issuance of the certificates of title held respectively by Diego and Batayola. The first report, dated May 30, 1963, was prepared by Land Investigator Mauro T. Torreda.[38] It states that Diego has been in open, continuous, notorious, and exclusive possession since 1916 of a parcel of land with an area of 3.5730 hectares, comprised of two lots in Psu-130749 of the Bantayan Cadastre, one of which (Lot 2) is the disputed

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[36] *Republic of the Philippines v. Filemon Saromo*, G.R. No. 189803, March 14, 2018; *Republic of the Phils. v. Alagad*, 251 Phil. 406, 410 (I989); and *Lewin v. Galang*, 109 Phil. 1041, 1052 (1960).

[37] *Republic of the Philippines v. Court of Appeals*, 476 Phil. 693, 701 (2004); and *Republic v. Vda. de Castillo*, 246 Phil. 294, 303 (1988), citing Castillo, *Law on Natural Resources*, Fifth Edition, 1954, p. 67; and *Hacut v. Director of Land*, CA-G.R. No. 6724-R, February 11, 1953, 49 OG 1863, 1865, citing 2 *Bouvier's Law Dictionary* 1278.

[38] Records, Vol. 1, p. 207. Hereinafter referred to as the Torreda report.

parcel. The lots were found to be within agricultural land and planted with coconut trees. This report became the basis for FP No. 335423 which, in turn, was the basis for OCT No. 1208. The second report was the Del Monte report, which was prepared in connection with the sales patent application filed by the Abello heirs in 1972. The Del Monte report categorically describes the disputed parcel as foreshore land which was gradually filled in through the efforts of Batayola and Pacina, who made the necessary works to keep the land from being submerged during high tide, built houses, sheds and fish driers, and planted coconut trees thereon.

The survey plans, sketch maps, and other documentary evidence on record clearly establish that the disputed parcel is located along the eastern shoreline of Bantayan Island, but are inconclusive as to whether the parcel is foreshore land. The plan of the 1951 private survey ordered by Abello, which was approved by the then-Director of Lands, does not include the boundaries of the disputed parcel. However, said plan clearly indicates that the shoreline on the area corresponding to the disputed parcel includes a 20-meter salvage zone.[39] The approved amendment survey plan of the disputed parcel, which was conducted on September 10, 1980, in view of the BL-VII decision which found the disputed parcel to be foreshore land and ordering that it be excluded from the meter and bounds of the area claimed by Diego under OCT No. 1208, shows that the areas occupied by Batayola and Pacina lie adjacent to the shoreline and the edges thereof which border the Visayan Sea are subjected to a three-meter legal easement.[40] The sketch plan of the disputed parcel prepared by LI Del Monte explicitly shows the disputed parcel as "reached by sea water during high tide."[41]

The Court now considers the testimonial evidence presented during the 1972 proceeding before the BL-VII and the 1997 proceeding for quieting of title. Testifying in the Bureau of Lands proceeding, Batayola declared that the area where his

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[39] *Id*. at 224-225.

[40] *Id*. at 320.

[41] *Id*. at 310.

house stood was a sandbar in 1944. He then filled it up with stones, lumber, and sand.[42] He also explicitly stated that the sea freely enters the area during high tide at the time he built his house thereon in 1944.[43] Also testifying in the Bureau of Lands proceeding, Pacina made the same declaration, *viz*.:

> [Atty. Monteclar:] What was the condition of the land before you constructed your house?
> [Pacina:] **It could be reached and covered by sea water during high tide.**
>
> [Atty. Monteclar:] You said that the land would be covered with water during high tide at the time when you first occupied it. Then what did you do about it?
> [Pacina:] We covered it with stones, put wall boards on the sides, then placed sand or earth to cover the stones so that the area will be elevated. And then it would not be reached anymore with water during high tide.[44] (Emphasis and underscoring Ours)

On cross-examination by counsel for the Abello heirs, Pacina testified on the condition of the land in 1972, when the BL-VII proceedings were conducted, *viz*.:

> [Atty. Montecillo:] Up to now the land can still be reached by water during high tide?
> [Pacina:] A portion.
>
> [Atty. Montecillo:] The portion which Mr. Batayola is occupying or the portion you are occupying?
> [Pacina:] Which one?
>
> [Atty. Montecillo:] You said that a portion of the land could be reached by sea water, during high tide. Which portion could be reached by water during high tide, the one occupied by Mr. Batayola or the one you are occupying?
> [Pacina:] **The portion occupied by our "landahaw" both Mr. Batayola and mine.**

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[42] *Id*. at 336.

[43] *Id*. at 347.

[44] *Id*. at 365.

[Atty. Montecillo:] So is it correct to say that the whole portion on which the landahaw was constructed could be reached by water during high tide?
[Pacina:] Partly.

[Atty. Montecillo:] It could partly be reached by water because the terrain is not level?
[Pacina:] **A little bit elevated but the elevation is below the high tide.**

[Atty. Montecillo:] So that the area occupied by the landahaw is not level, so much so that a portion could be reached by water during high tide and a portion is far from sea water during high tide, is that correct?
[Pacina:] Yes, Sir. But that part which could not be reached by sea water during high tide was improved by us.

[Atty. Montecillo:] You said that you placed wall boards in order to avoid sand erosion during high tide, am I correct?
[Pacina:] To prevent the sand from being eroded.

[Atty. Montecillo:] Where did you place the wall boards then?
[Pacina:] Facing the sea.

[Atty. Montecillo:] The portion of the land occupied by the landahaw which can still be reached by sea water during high tide was there no wall board constructed on it?
[Pacina:] There are also.[45] (Emphases and underscoring Ours)

Batayola and Pacina's declarations are corroborated not only by their own witnesses, but also by those called by the other parties in the BL-VII proceeding. Marciano Batiancila, who had been living in Sillon before 1944, testified that the houses of Batayola and Pacina were built on *suba-suba*, or land which is reached by sea water during high tide.[46] He further testified that both Batayola and Pacina filled their home lots with sand, stones, and lumber to prevent erosion.[47] Rosario Batuigas (Batuigas), who worked for Batayola and lived in Sillon from 1944 to 1955, testified that he helped Batayola in filling the area with stones.[48] Batuigas further declared that Pacina and Batayola's houses were constructed on a sandbar, *viz.*:

[45] *Id.* at 390-392.
[46] *Id.* at 402, 404.
[47] *Id.* at 403-404.
[48] *Id.* at 424.

[Atty. Monteclar:] Do you also know if Mr. Pacina has a residential house in Sillon, Bantayan, Cebu?
[Batuigas:] Yes, Sir.

[Atty. Monteclar:] In what particular place in Sillon did Mr. Pacina construct his house?
[Batuigas:] He also constructed his house in the sand bar (pasil) adjacent to the land of Mr. Batayola.

[Atty. Monteclar:] Could you describe to us the condition of the land wherein Mr. Pacina constructed his house?
[Batuigas:] **It could also be reached by water.**

[Atty. Monteclar:] Then, what did Mr. Pacina do with that land?
[Batuigas:] He also filled it up with stones and sand.

[Atty. Monteclar:] Do you know who were filling the land occupied by Mr. Pacina with sand and stones?
[Batuigas:] One by the name of Atawo, Mariano, Jose, and I.[49] (Emphasis and underscoring Ours)

The barrio captain of Sillon, Perseverando dela Peña (dela Peña), testified for another claimant of the disputed parcel who intervened in the BL-VII proceedings. He testified that Batayola built a house on the disputed parcel in 1944, while Pacina did so in 1947.[50] On cross-examination, dela Peña testified that the parcel claimed by the intervenor, which corresponds to the disputed parcel, was bounded on the south by a sandbar known as a *camino vecinal*, *viz*.:

[Atty. Monteclar:] When you were requested by your counsel to make a circle in Exhibit "1-Sebelleno" as to the area of the land claimed by Lourdes Sebelleno, you encircled the whole portion Exhibit "A" and Exhibit "B". Would you still insist that this is the area owned by Modesto Alolod?
[dela Peña:] When I encircled it it is only in accordance with the boundary owners.

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[49] *Id*. at 426.

[50] *Id*. at 460.

[Atty. Monteclar:] You said that the land allegedly owned by Modesto Alolod is bounded on the south by camilo vesenal [*sic*]. Could you tell us what camilo vesenal [*sic*] is?
[dela Peña:] What I mean is that in this portion of the south there is a sand bar wherein during fiestas in Sillon horse racing is made.

[Atty. Monteclar:] Could you tell us then what is camilo vesenal [*sic*]?
[dela Peña:] What I mean by camilo vesenal [*sic*] is that no plants would grow because it is reached by water during high tide.[51]

Eustaquio Dawa (Dawa), who acted as overseer of the disputed parcel for Diego, testified that Batayola's portion had been filled in naturally and not through human effort.[52] As regards Pacina's parcel, he declared:

[Atty. Montecillo:] According to Mr. Pacina, corroborating the testimony of Mr. Batayola, that they were the ones who filled that up with earth in order that that portion will not be reached by water. What can you say to that?
[Dawa:] **Mr. Pacina has made some stone walls there only to protect his house because it could be reached by water.**

[Atty. Montecillo:] Before Mr. Pacina constructed his house was that portion wherein he constructed his house already elevated or there is already land (sic)?
[Dawa:] That is already an elevated portion of the land. It was only the side of the house which he placed stone walls to preserve the walling of his house.

x x x x x x x x x

[Atty. Monteclar:] You will agree with me that until now the warehouse, fish dryers and residential house of Mr. Pacina are still existing on the land now in litigation?
[Dawa:] His warehouse is now destroyed. What remains is [*sic*] only his residential house and fish dryers.

[Atty. Monteclar:] And these warehouses, fish dryers and residential houses of Mr. Batayola and Mr. Pacina are still near the seashore?
[Dawa:] **It could be passed by seawater.**

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[51] *Id.* at 466-467.

[52] *Id.* at 525.

[Atty. Monteclar:] Are you sure that this land now occupied by Mr. Manuel Batayola and Mr. Onecefero Pacina could be passed by sea water?
[Dawa:] The sea water will not often pass there.

[Atty. Monteclar:] In a year how often does the sea water passed (sic) the residential houses of Mr. Pacina and Mr. Batayola?
[Dawa:] **During high tide the residential houses of Mr. Batayola and Mr. Pacina could be reached by sea water.**

[Atty. Monteclar:] And that was precisely the reason why you stated a while ago that Mr. Pacina constructed stone walls to protect his house from sea water?
[Dawa:l Yes. Sir.

x x x x x x x x x

[Atty. Monteclar:] In the stenographic notes it appears that you testified that the residential house of Mr. Batayola could be reached by sea water during high tide. Would you change your statement?
[Dawa:] Yes, Sir. Because that place of Mr. Batayola is already distant of the place which could be reached by sea water.

[Atty. Monteclar:] How about the fish dryers of Mr. Batayola where are they located in relation to his residential house?
[Dawa:] At the side of his house.

[Atty. Monteclar:] How far is it from his house?
[Dawa:] About five armslenght [*sic*] towards the eastern portion.

[Atty. Monteclar:] Could it he reached by sea water?
[Dawa:] That is the portion which is the passage or sea water.

[Atty. Monteclar:] How about the warehouses of Mr. Batayola, where is it situated?
[Dawa:] Behind his house.

[Atty. Monteclar:] How far is it from the fish dryers?
[Dawa:] Six arms lenght [*sic*].

[Atty. Monteclar:] This warehouse could also be reached by sea water?
[Dawa:] It can not (sic).

[Atty. Monteclar:] You said that Mr. Pacina also constructed fish dryers way back in the year 1952 which until now is still existing. My question is where is it situated in relation to his house?

[Dawa:] In front of his house.

[Atty. Monteclar:] How far is it from the [seashore]?
[Dawa:] Forty arms lenght (*sic*).

[Atty. Monteclar:] How about his residential house, how far is it from the [seashore]?
[Dawa:] More or less the same.

[Atty. Monteclar:] So these fish dryers of Mr. Pacina could also be reached by sea water?
[Dawa:] That fish dryers is the usual passage of sea water during high tide.

[Atty. Monteclar:] Where is the warehouse of Mr. Pacina situated in relation to his residential house?
[Dawa:] Beside his house.

[Atty. Monteclar:] So this could also be reached by sea water during high tide?
[Dawa:] It can not (sic).

x x x x x x x x x

[Atty. Buenconsejo:] Yesterday during the direct-examination you stated that the land where the house of Onecefero Pacina was constructed is on a land where it could be reached by water during high tide. I will asked [*sic*] you whether that reaching of water could be by crossing around the house or going around the house?
[Dawa:] The water will be going around the house.

[Atty. Buenconsejo:] The water that goes around where did it pass?
[Dawa:] There is a passage of water which directly goes to their fish dryers.[53] (Emphasis and underscoring Ours)

In 1999, or 27 years after the BL-VII proceedings, Dawa's wife, Concepcion, who was also an overseer for the Abello heirs, testified before the trial court on behalf of the Abello heirs, *viz.*:

[Atty. Quijano:] Now, this land where Batayola and Pacina constructed their house, their warehouse and their fish dried [*sic*], do you know if during high tide you can be reach (sic) by high waters?
[Concepcion]: Yes, it can be reach (*sic*) during high tide.

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[53] *Id.* at 525-526, 532-537 and 544-545.

x x x x x x x x x

[Atty. Quijano:] How far was this warehouse and fish dried (*sic*) from the beach?
[Concepcion]: Maybe ten meters.[54]

Luz Armojalas, whose husband, Carnoto Ungod (Ungod), gathered coconuts and acted as overseer for the Abellos, corroborated Dawa's assertion that Batayola's claimed portion had been filled in naturally even before 1944.[55] She admitted that Pacina did place stones on his claimed portion but asserted that they were only used to hold flower pots. She also claimed that coconut trees, *agonoy, bantigue*, and *kandangkandang* shrubs grew on the disputed parcel.[56]

Lolita, the wife of Diego's son Ramon, also testified in her own behalf as the sales patent applicant before the BL-VII. On cross-examination, she admitted that she did not know the condition of the disputed land in 1944, as she was only 9 years old at that time and had not yet married into the Abello family.

The Abello heirs, through counsel, admitted during the pre-trial of the nullity case that they are not in possession of the disputed parcel.[57] Furthermore, the testimonial evidence provides no indication that either Diego or his heirs actually occupied the disputed parcel from 1972 onwards. Prior to 1972, Diego employed overseers like Dawa and Ungod to gather its fruits and to collect landing fees and rentals from the actual occupants. On the other hand, it has been established that Batayola and his heirs, as well as Pacina, have been actually occupying their portions of the disputed parcel since 1944 and 1947, respectively.[58] As the long-time occupants of the disputed parcel,

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[54] TSN, September 24, 1999, pp. 16-17.

[55] Records, Vol. 1, pp. 548-549, 551-552.

[56] *Id*. at 552-553.

[57] TSN, August 25, 1997, pp. 15-18.

[58] Two of the Abello heirs, Rosario Abello Jimenez, and Eduardo Abello, explicitly admitted that the actual occupants of the property are Pacina and the Batayola heirs; TSN, April 1, 1998, p. 39; TSN, March 29, 1999, p. 32.

the Court is inclined to give more weight and credence to the testimonies of Batayola and Pacina as regards the condition thereof more so since their assertions are supported by the testimonies of non-parties to the case as presented not only by the Batayola group but also by the other claimants in the BL-VII proceedings.

Further, it must be noted that the Del Monte report was adopted by both courts *a quo*, albeit for different reasons. Nevertheless, the fact remains that the concerned administrative agency, the trial court, and the appellate court unanimously found the disputed parcel to be foreshore land; and as such, this finding ought to be accorded great weight, if not finality, by this Court. Furthermore, this conclusion is bolstered by survey plans showing that the disputed parcel directly borders the shoreline and the salvage zones; and the testimonial evidence obtained not only from the actual occupants of the disputed parcel but also from witnesses presented by parties who have adverse claims on the property, to the effect that the disputed parcel was reached by seawater during high tide and the occupants thereof had to conduct earthworks in order to elevate their houses and protect them from the seawater. The CA, therefore, did not commit reversible error in holding that the land subject of this dispute is foreshore land.

C. *Validity of titles over the disputed parcel*

Having established that the disputed parcel is foreshore land, the Court now proceeds to the determination of the validity of the titles held by the parties thereto, guided primarily by the provisions of the Public Land Act, the new Civil Code, and applicable jurisprudence.

Article 420 of the new Civil Code provides:

> Article 420. The following things are property of public dominion:
>
> (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, **banks, shores, roadsteads, and others of similar character**[.] (Emphasis and underscoring Ours)

The non-registrability of foreshore lands is a well-settled jurisprudential doctrine.[59] In *Republic of the Phil. v. CA*,[60] it was held that foreshore lands belong to the public domain and cannot be the subject of free patents or Torrens titles, *viz.*:

> The application for a free patent was made in 1972. From the undisputed factual findings of the [CA], however, the land has since become foreshore. Accordingly, it can no longer be subject of a free patent under the Public Land Act. x x x.
>
> x x x x x x x x x
>
> When the sea moved towards the estate and the tide invaded it, the invaded property became foreshore land and passed to the realm of the public domain. In fact, the Court in *Government vs. Cabangis* annulled the registration of land subject of cadastral proceedings when the parcel subsequently became foreshore land. In another case, the Court voided the registration decree of a trial court and held that said court had no jurisdiction to award foreshore land to any private person or entity. The subject land in this case, being foreshore land, should therefore be returned to the public domain.[61] (Citations omitted)

Therefore, to ascertain the validity of the titles held by the parties herein, the Court now determines if the disputed parcel was foreshore land at the time said titles were issued.

1. Validity of OCT No. 1208

The record sufficiently establishes that the disputed parcel was foreshore land in 1944, when Batayola and Pacina first came to occupy the land; and it was still foreshore land in 1972, when the Del Monte report was prepared. As a result, the BL-VII decision held that the inclusion of the disputed parcel in the survey plan of Lot 1, Psu-130749, which was the basis of Diego's FP and Torrens title, was "contrary to the existing

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[59] *Manese v. Spouses Velasco*, 597 Phil. 101, 107-108 (2009); *Spouses Gulla v. Heirs of Alejandro Labrador*, 528 Phil. 1115, 1123 (2007); *Republic of the Philippines v. Alagad, et al.*, *supra* note 36, at 412-415; and *Republic of the Philippines v. Lozada*, 179 Phil. 396, 403-404 (1979).

[60] 346 Phil. 637 (1997).

[61] *Id.* at 653-655.

rules and regulations of this office";[62] and ordered the amendment of the aforementioned survey plan to exclude the disputed parcel. The Abello heirs did not appeal from this ruling; hence, it became final and executory.

On the basis of the BL-VII's final and executory ruling, both courts *a quo* upheld the cancellation of OCT No. 1208 in favor of Diego insofar as it covered the disputed parcel; and both courts did not commit reversible error on this point, because the disputed parcel was foreshore land, and therefore non-registrable, at the time that Diego filed his FP application on April 24, 1961;[63] and it was still foreshore land when FP No. 335423 and OCT No. 1208 were both issued in his name in 1967.[64]

It must also be emphasized that OCT No. 1208 is based on a free patent. A free patent, under Section 44 of the Public Land Act, covers "agricultural public lands subject to disposition." Therefore, in his FP application, Diego had to state that the land sought to be covered by the FP was agricultural land. This is a material fact necessary to the validity of the application; and under Section 91 of the Public Land Act, "any false statements therein or omission of facts altering, changing, or modifying the consideration of the facts set forth in such statements, and any subsequent modification, alteration, or change of the material facts set forth in the application shall *ipso facto* produce the cancellation of the concession, title, or permit granted." Since Diego misrepresented the disputed parcel to be agricultural land, his title thereto should be deemed *ipso facto* cancelled. That his misrepresentation was corroborated by the Torreda report is of no moment, tor the subsequently issued Del Monte report and the BL-VII decision explicitly declared that the inclusion of the disputed parcel in the survey plan which formed the basis for OCT No. 1208 was irregular and contrary to the rules and regulations of the Bureau of Lands.

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[62] *Rollo* (G.R. No. 193032), pp. 57-60.

[63] Records, Vol. 1, p. 206.

[64] FP No. 335423 in the name of Diego was issued on May 29, 1967. *Id.* at 208.

2. Validity of titles held by the Batayola group

Turning now to the rights held by the Batayola group, the basis thereof is the BL-VII decision, specifically this portion:

> **If qualified**, Messrs. Manuel Batayola and Onesefero Pacina, shall file their respective **appropriate public lands application** within sixty (60) days from the receipt hereof, otherwise they shall lose their preferential rights thereto.[65] (Emphasis and underscoring Ours)

Once again, it must be emphasized that the disputed parcel was still foreshore land in 1972, as found by the Del Monte report and the BL-VII decision. The disposition of foreshore lands is governed by Sections 58, 59, and 61 of the Public Land Act, *viz.*:

> TITLE III
> Lands for Residential, Commercial or Industrial Purposes and Other Similar Purposes
>
> CHAPTER VIII
> Classification and Concession of Public Lands Suitable for Residence, Commerce and Industry
>
> SECTION 58. **Any tract of land of the public domain** which, being neither timber nor mineral land, is intended to be used for residential purposes or for commercial, industrial, or other productive purposes other than agricultural, and is open to disposition or concession, **shall be disposed of under the provisions of this chapter and not otherwise**.
>
> SECTION 59. The lands disposable under this title shall be classified as follows:
>
> (a) Lands reclaimed by the Government by dredging, filling, or other means;
> **(b) Foreshore;**
> (c) Marshy lands or lands covered with water bordering upon the shores or banks of navigable lakes or rivers;
> (d) Lands not included in any of the foregoing classes.

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

SECTION 61. **The lands comprised in classes (a), (b), and (c) of section fifty-nine shall be disposed of to private parties *by lease only and not otherwise***, as soon as the President, upon recommendation by the Secretary of Agriculture, shall declare that the same are not necessary for the public service and are open to disposition under this chapter. The lands included in class (d) may be disposed of by sale or lease under the provisions of this Act. (Emphases and underlining Ours)

These legal provisions mandate that foreshore lands of the public domain must first be opened to disposition or concession by the President; and afterwards may only be disposed of through lease, *and not* otherwise. The "appropriate public lands application" adverted to in the BL-VII decision, therefore, can only refer to a foreshore lease application. However, both the Batayola heirs and Pacina filed FP applications, in 1983 and 1985, respectively,[66] instead of foreshore lease applications. There is nothing in the record which indicates that the disputed parcel had been released into the public domain and reclassified as agricultural land prior to 1983; or that the Batayola group filed any foreshore lease application. On the other hand, Presidential Proclamation No. 2151,[67] dated December 29, 1981, expressly declared Bantayan a Wilderness Area, with the effect of withdrawing all lands therein "from entry, sale, settlement, exploitation of whatever nature or forms of disposition, subject to existing recognized and valid private rights, if any there be"; and placing said lands under the administration and control of the DENR.[68] This fact is annotated in the 1982 cadastral survey plan of Bantayan, which already reflects the 1972 BL-VII decision separating the disputed parcel from the rest of the land covered by the Abello heirs' OCT No. 1208.[69]

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[66] The application filed by the heirs of Batayola is in records. Vol. 1, p. 319, while Pacina's FP application is in records. Vol. 1, pp. 629-631.

[67] 78 OG (Supp. No. 2) 126-3.

[68] *Id*. at 126-4. The DENR was then known as the Ministry of Natural Resources.

[69] Records, Vol. 1 p. 289.

It is clear from the foregoing that the Batayola heirs and Pacina failed to file the appropriate public lands application as required by the BL-VII decision. Worse, they repeated the same error committed by Diego in 1963: filing an application for free patent over land that is neither agricultural nor alienable and disposable. Even assuming *arguendo* that the disputed parcel somehow became disposable agricultural land after 1972, the FP and OCT issued to Batayola should still be considered null and void, as they were issued on November 25, 1983,[70] almost two years after Presidential Proclamation No. 2151, which withdrew the disputed parcel from any form of disposition. Having failed to properly exercise the preferential rights given to them by the Bureau of Lands, the Batayola group must now face the consequences thereof.

IN VIEW OF THE FOREGOING, both petitions are hereby **DENIED**. The Decision dated November 10, 2008 and the Resolution dated July 5, 2010 of the Court of Appeals in CA-G.R. CV No. 79669 are hereby **AFFIRMED**, without prejudice to the institution of reversion proceedings by the State through the Office of the Solicitor General.

SO ORDERED.

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

Leonen, J., see separate opinion.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur with the *ponencia*. Since the property is a foreshore land, it is part of the public domain, and neither of the parties is entitled to it.

However, I seek to clarify my position on two (2) points.

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[70] *Id.* at 321.

I

First, the regalian doctrine's application is not as expansive as it may appear in the *ponencia*. I do not agree that it "is a fundamental tenet of our land ownership and registration laws[.]"[1]

The regalian doctrine originated from early Spanish decrees that embraced the feudal theory that all lands were held by the Crown.[2] However, since the American colonization period,[3] the doctrine has already been made subject to several exceptions. In *Cariño v. Insular Government*,[4] this Court recognized native titles and held that some lands were never deemed to have been public land:

> It is true that Spain, in its earlier decrees, embodied the universal feudal theory that all lands were held from the Crown, . . . It is true also that, in legal theory, sovereignty is absolute, and that, as against foreign nations, the United States may assert, as Spain asserted, absolute power. *But it does not follow that, as against the inhabitants of the Philippines, the United States asserts that Spain had such power. When theory is left on one side, sovereignty is a question of strength, and may vary in degree. How jar a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past, and how far it shall recognize actual facts, are matters for it to decide.*
>
> *. . . Whatever may have been the technical position of Spain, it does not follow that, in the view of the United States, [plaintiff who held the land as owner] had lost all rights and was a mere trespasser when the present government seized his land. The argument to that effect seems to amount to a denial of native titles throughout an important part of the island of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.*
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> . . . No one, we suppose, would deny that, so far as consistent with paramount necessities, our first object in the internal administration

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[1] *Ponencia*, p. 11.

[2] *Cariño v. Insular Government*, 212 U.S. 449, 457-460 (1909).

[3] See *J.* Leonen, Separate Opinion in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 203-209 (2013) [Per *J.* Bersamin, *En Banc*].

[4] 212 US 449.

of the islands is to *do justice* to the natives, not to exploit their country for private gain. By the Organic Act of July 1, 1902, c. 1369, § 12, 32 Stat. 69 l, *all the property and rights acquired there by the United States are to be administered "for the benefit of the inhabitants thereof.*" . . .

. . . . . .

It is true that, by § 14, the government of the Philippines is empowered to enact rules and prescribe terms for perfecting titles to public lands where some, but not all, Spanish conditions had been fulfilled, and to issue patents to natives for not more than sixteen hectares of public lands actually occupied by the native or his ancestors before August 13, 1898. But this section perhaps might be satisfied if confined to cases where the occupation was of land admitted to be public land, and had not continued for such a length of time and under such circumstances as to give rise to the understanding that the occupants were owners at that date. We hesitate to suppose that it was intended to declare every native who had not a paper title a trespasser, and to set the claims of all the wilder tribes afloat. It is true again that there is excepted from the provision that we have quoted as to the administration of the property and rights acquired by the United States such land and property as shall be designated by the President for military or other reservations, as this land since has been. But there still remains the question what property and rights the United States asserted itself to have acquired.

Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the government in a case like the present. *It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly, in a case like this, if there is doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt.* Whether justice to the natives and the import of the organic act ought not to carry us beyond a subtle examination of ancient texts, or perhaps even beyond the attitude of Spanish law, humane though it was, it is unnecessary to decide. If, in a tacit way, it was assumed that the wild tribes of the Philippines were to be dealt with as the power and inclination of the conqueror might dictate, Congress has not yet sanctioned the same course as

the proper one "for the benefit of the inhabitants thereof."[5] (Emphasis supplied)

This position was further affirmed when the 1987 Constitution limited the State's ownership to lands of *public domain*. Contrary to the regalian doctrine, not *all* lands are presumed to be owned by the State.[6] Article XII, Section 2 of the 1987 Constitution states, in part:

> SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated.

Furthermore, the due process clause of the 1987 Constitution protects all types of property, including those not covered by a paper title, those whose ownership resulted from possession and prescription, and those who hold their properties in the concept of owner since time immemorial.[7] I elaborated on this position in my separate opinion in *Heirs of Malabanan v. Republic*:[8]

> We have also recognized that "time immemorial possession of land in the concept of ownership either through themselves or through their predecessors in interest" suffices to create a presumption that such lands "have been held in the same way from before the Spanish conquest, and never to have been public land." This is an interpretation in *Cariño v. Insular Government* of the earlier version of Article III, Section I in the McKinley's Instructions. The case clarified that the *Spanish sovereign's concept of the "regalian doctrine" did not extend to the American colonial period and to the various Organic Acts extended to the Philippines.*

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[5] *Id.* at 457-460.

[6] J. Leonen, Separate Opinion in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 203-209 (2013) [Per J. Bersamin, *En Banc*].

[7] *Id.* at 206-207.

[8] 717 Phil. 141 (2013) [Per J. Bersamin, *En Banc*].

. . . . . .

Cariño is often misinterpreted to cover only lands for those considered today as part of indigenous cultural communities. However, nothing in its provisions limits it to that kind of application. We could also easily see that the progression of various provisions on completion *of imperfect titles* in earlier laws were efforts to assist in the recognition of these rights. In my view, these statutory attempts should never be interpreted as efforts to limit what has already been substantially recognized through constitutional interpretation.[9] (Emphasis supplied, citations omitted)

This position echoes the same rulings in previous and succeeding cases.

In *Republic v. Court of Appeals*,[10] this Court allowed the registration of a parcel of land situated in Beckel, La Trinidad, Benguet in favor of Benguet natives and Ibaloi tribespeople. This was despite the opposition of the Director of Lands, who argued that the property is a forest land within the Central Cordillera Forest Reserve. This Court held:

The evidence of record thus appears unsatisfactory and insufficient to show clearly and positively that the land here involved had been officially released from the Central Cordillera Forest Reserve to form part of the alienable and disposable lands of the public domain. We consider and so hold that once a parcel of land is shown to have been included within a Forest Reservation duly established by Executive Proclamation, as in the instant case, a presumption arises that the parcel of land continues to be part of such Reservation until clear and convincing evidence of subsequent withdrawal therefrom or declassification is shown. A simple, unsworn statement of a minor functionary of the Bureau of Forest Development is not, by itself, such evidence. Under the view we take of this case, however, the definite resolution of this question becomes unnecessary.

The applicants in the instant case are natives of Benguet and members of the Ibaloi tribe. They are members of a cultural minority whose application for registration of land should be considered as falling

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[9] *Id.* at 207-209.

[10] 278 Phil. 1 (1991) [Per *J.* Feliciano, Third Division].

under Section 48(c) of C.A. No. 141. At the time private respondents filed their application, the text of Section 48 read:

"Sec. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title thereafter, under the Land Registration Act, to wit:

. . . . . .

"(b) Those who by themselves or through their predecessors-in-interest have been, in continuous, exclusive and notorious possession and occupation of *agricultural lands of the public domain,* under a *bona fide* claim of acquisition or ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title, except when prevented by war or *force majeure*. Those shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title under the provisions of this chapter.

"(c) *Members of the national cultural minorities* who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of *lands of the public domain suitable to agriculture whether disposable or not*, under a *bona fide* claim of ownership for at least 30 years shall be entitled to the rights granted in subsection (b) hereof.". . .

. . . . . .

The Court stressed in *Director of Lands vs. Funtilar*:

"The Regalian doctrine which for as the basis of our land laws and, in fact, all laws governing natural resources is a revered and long standing principle. *It must, however, be applied together with the constitutional provisions on social justice and land reform and must be interpreted in a way as to avoid manifest unfairness and injustice.*

"*Every application for a concession of public lands has to be viewed in the light of its peculiar circumstances*. A strict application of the Heirs of *Amunategui v. Director of Forestry*

> *(supra)* ruling is warranted whenever a portion of the public domain is in danger of ruthless exploitation, fraudulent titling, or other questionable practices. But *when an application appears to enhance the very reasons behind the enactment of Act 496, as amended, or the Land Registration Act, and Commonwealth Act 141, as amended, or the Public Land Act, then their provisions should not be made to stand in the way of their own implementation."* . . .

The land registration court found that the possession of private respondents, if tacked on to that of their predecessors-in-interest, sufficiently meets the requirement of thirty (30) years open, continuous, exclusive and notorious possession. Private respondents acquired the property from their deceased father who, in turn, had inherited it from private respondents' grandfather. Even before the death of their father, private respondents were already occupying the land. They lived on it since their father had built a house on the land and had planted it with bananas, camote, avocadoes, oranges and mangoes. Dayotao Paran had declared the land for taxation purposes prior to 1938 and had since paid the corresponding realty taxes.

The Declarations of Real Property submitted by private respondents indicated that the land had become suitable to agriculture. Aside from sweet potatoes and vegetables, private respondents harvested rice from the land. To enhance their agricultural production, private respondents or their predecessors-in-interest had built terraces and dikes. Forester Luis Baker noted this fact in his report. [11] (Emphasis in the original, citations omitted)

In *Republic v. Court of Appeals*,[12] this Court again allowed the registration of a parcel of land found within the Central Cordillera Forest Reserve on the same ground-possession of the property in the concept of owner since time immemorial. It held:

The present case, however, admits of a certain twist as compared to the case of *Director of Lands*, in that evidence in this case shows that as early as 1933, Aguinaya, mother of petitioner has filed an Application for Free Patent for the same piece of land. In the said

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

[12] 284 Phil. 575 (1992) [Per J. Nocon, Second Division].

application, Aguinaya claimed to have been in possession of the property for 25 years prior to her application and that she inherited the land from her father, named Acop, who himself had been in possession of the same for 60 years before the same was transferred to her.

It appears, therefore, that respondent Cosalan and his predecessors-in-interest have been in continuous possession and occupation of the land since the 1840s. Moreover, as observed by the appellate court, the application of Aguinaya was returned to her, not due to lack of merit, but –

> "As the land applied for has been occupied and cultivated prior to July 26, 1894, title thereto should be perfected thru judicial proceedings in accordance with Section 45 (b) of the Public Land Act No. 2874, as amended."

Despite the general rule that forest lands cannot be appropriated by private ownership, it has been previously held that "while the Government has the right to classify portions of public land, *the primary right of a private individual who possessed and cultivated the land in good faith much prior to such classification must be recognized and should not be prejudiced by after-events which could not have been anticipated* . . . Government in the first instance may, by reservation, decide for itself what portions of public land shall be considered forestry land, unless private interests have intervened before such reservation is made."

As early as in the case of *Oh Cho v. Director of Lands* this Court has held that "all lands that were not acquired from the Government, either by purchase or by grant, belong to the public domain. An exception to the rule would be any land that should have been in the possession of an occupant and of his predecessors-in-interest since time immemorial, for such possession would justify the presumption that the land had never been part of the public domain or that it had been a private property even before the Spanish conquest."[13] (Emphasis supplied, citations omitted)

More recently, in *Republic v. Cosalan*,[14] this Court again granted the application for registration of title of ancestral land

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[13] *Id.* at 579-580.

[14] G.R. No. 216999, July 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64401> [Per J. Gesmundo, Third Division].

by a member of the Ibaloi Tribe. This was despite the contention of the Department of Environment and Natural Resources-Cordillera Administrative Region that the land was part of the Central Cordillera Forest Reserve:

> As a rule, forest land located within the Central Cordillera Forest Reserve cannot be a subject of private appropriation and registration. Respondent, however, was able to prove that the subject land was an ancestral land, and had been openly and continuously occupied by him and his predecessors[-]in-interest, who were members of the ICCs/IPs.
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> . . . . . .
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> Ancestral lands are covered by the concept of native title that "refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest." To reiterate, they are considered to have never been public lands and are thus indisputably presumed to have been held that way.
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> . . . . . .
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> From the foregoing, it appears that lands covered by the concept of native title are considered an exception to the *Regalian Doctrine* embodied in Article XII, Section 2 of the Constitution which provides that all lands of the public domain belong to the State which is the source of any asserted right to any ownership of land.
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> . . . . . .
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> . . . Section 12, Chapter III of IPRA Law states that individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.
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> . . . . . .
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> In *Heirs of Gamos v. Heirs of Frando*, it was held that where all the necessary requirements for a grant by the Government are complied with through actual physical possession openly, continuously, and publicly, with a right to a certificate of title to said land under the provisions of Chapter VIII of Act No. 2874, amending Act No. 926 (carried over as Chapter VIII of Commonwealth Act No. 141), the possessor is deemed to have already acquired by operation of law

not only a right to a grant, but a grant of the Government, for it is not necessary that a certificate of title be issued in order that said grant may be sanctioned by the court — an application therefore being sufficient.

Certainly, it has been proven that respondent and his predecessors-in[-] interest had been in open and continuous possession of the subject land since time immemorial even before it was declared part of the Central Cordillera Forest Reserve under Proclamation No. 217. Thus, the registration of the subject land in favor of respondent is proper.[15] (Citations omitted)

II

Moreover, I note that while the *ponencia* rightfully ruled that the parties should have filed the appropriate foreshore lease application as provided in the Public Land Act,[16] this procedure is no longer viable to parties today.

The leasing of foreshore lands was provided in the Public Land Act because it was allowed under the 1973 Constitution, as amended. Its Article XIV, Section 8 stated:

SECTION 8. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong

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[15] *Id.*

[16] Commonwealth Act No. 141 (1936), Secs. 58, 59, and 61 state:

SECTION 58. Any tract of land of the public domain which, being neither timber nor mineral land, is intended to be used for residential purposes or for commercial, industrial, or other productive purposes other than agricultural, and is open to disposition or concession, shall be disposed of under the provisions of this chapter and not otherwise.

SECTION 59. The lands disposable under this title shall be classified as follows:

. . . .

(b) Foreshore;

. . . .

SECTION 61. The lands comprised in classes (a), (b), and (c) of section fifty-nine shall be disposed of to private parties by lease only and not otherwise, as soon as the President, upon recommendation by the Secretary of Agriculture, shall declare that the same are not necessary for the public service and are open to disposition under this chapter. The lands included in class (d) may be disposed of by sale or lease under the provisions of this Act.

to the State. With the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public domain, natural resources shall not be alienated, and no license, concession, or *lease* for the exploration, development, exploitation, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases, beneficial use may be the measure and the limit of the grant. (Emphasis supplied)

However, the 1987 Constitution no longer mentions lease as a tenurial arrangement for our natural resources. Article XII, Section 2 of the 1987 Constitution provides:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into *co-production, joint venture, or production-sharing agreements* with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-

scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution. (Emphasis supplied)

The change in the text of the 1987 Constitution indicates an intent to modify the previous provision. It should be interpreted in accordance with this intent.[17]

Thus, should the State wish to explore, develop, or utilize its natural resources, including its foreshore lands, through private parties, it may now only do so through co-production, joint venture, or production-sharing agreements.

ACCORDINGLY, I vote to **DENY** the Petitions.

FIRST DIVISION

[G.R. No. 194403. July 24, 2019]

SPOUSES HIPOLITO DALEN, SR. and FE G. DALEN, EVERLISTA LARIBA and the minor BEVERLY T. LARIBA, MAGDALENA F. MARPAGA and the minors MIKE ANTHONY and THOMIE MAE, both surnamed MARPAGA, AGNES C. MOLINA and the minors SHEILA, SIMOUN, STEPHEN JOHN and SHARON ANN, all surnamed MOLINA, EMMA C.

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[17] *Aratuc v. Commission on Elections*, 177 Phil. 205 [Per J. Barredo, *En Banc*].

NAVARRO and the minors RAYMOND, MARAH, and RYAN all surnamed NAVARRO, RUTH T. SULAM and the minor JEINAR REECE T. SULAM, *petitioners, vs.* **MITSUI O.S.K. LINES and DIAMOND CAMELLA, S.A.,** *respondents.*

SYLLABUS

1. CIVIL LAW; QUASI-DELICT; CLAIM FOR DAMAGES ARISING FROM QUASI-DELICT IS WITHIN THE JURISDICTION OF THE REGULAR COURTS; ELEMENTS THAT MUST CONCUR TO SUSTAIN A CLAIM LIABILITY UNDER QUASI-DELICT.—In this case, petitioners' claim for damages is grounded on respondents' gross negligence which caused the sinking of the vessel and the untimely demise of their loved ones. Based on this, the subject matter of the complaint is one of claim for damages arising from quasi-delict, which is within the ambit of the regular court's jurisdiction. According to Article 2176 of the New Civil Code, "Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called quasi-delict." Thus, to sustain a claim liability under quasi-delict, the following requisites must concur: (a) damages suffered by the plaintiff; (b) fault or negligence of the defendant, or some other person for whose acts he must respond; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.

2. ID.; ID.; ID.; THE LABOR COURTS HAVE NO JURISDICTION OVER TORT CASES.—In deciding whether a case arises out of employer-employee relations, the Court formulated the "reasonable causal connection rule", wherein if there is a reasonable connection between the claim asserted and the employer-employee relations, then the case is within the jurisdiction of the labor courts. x x x Where the resolution of the dispute requires expertise, not in labor management relations nor in wage structures and other terms and conditions of employment, but rather in the application of the general civil law, such claim falls outside the area of competence or expertise

ordinarily ascribed to the LA and the NLRC. Therefore, the LA has no jurisdiction over the case in the first place; it should have been filed to the proper trial court.

3. ID.; ID.; ID.; WHERE THE SETTLEMENT AGREEMENTS ARE COMPREHENSIVE ENOUGH TO INCLUDE EVEN CAUSES OF ACTION ARISING FROM QUASI-DELICT, THEY ARE CONSIDERED VALID AND BINDING; PETITIONERS ARE BARRED FROM FILING A COMPLAINT WITH THE TRIAL COURT BASED ON THE SAME CAUSE OF ACTION.— [I]t should be noted that when petitioners signed the Settlement Agreements, they did it with their counsel of choice. It could be said that they brought their counsel along to make sure that they would understand the contents of the agreements and that they are not tricked into signing the same. A lawyer would know whether the agreement is unreasonable and one-sided on its face. Second, the agreement provides for the "release of respondents from all liabilities including those based from torts, arising from the death/ disappearance of the crewmembers as a result of the sinking of the vessel." Hence, even claims arising from quasi-delict would be barred as shown in the blanket waiver of right to sue. Moreover, petitioners failed to substantiate their claim that they received less of what they are really entitled to based on said Settlement Agreements. They wanted the Court to believe that since their cause of action is for damages and what they received in accordance with the Settlement Agreement was only those under the POEA Standard Employment Contract and the overriding CBA, then they are not barred from filing the instant complaint. Petitioners are misled. As discussed above, the Settlement Agreement signed by petitioners are comprehensive enough to include even causes of action arising from quasi-delict.

APPEARANCES OF COUNSEL

Valmores & Valmores Law Offices for petitioners.
Del Rosario & Del Rosario Law Offices for respondents.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated July 20, 2010 and Resolution[3] dated October 26, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 112551 filed by Sps. Hipolito Dalen, Sr. and Fe G. Dalen; Everlista Lariba and the minor Beverly T. Lariba; Magdalena F. Marpaga and the minors Mike Anthony and Thomie Mae, both surnamed Marpaga; Agnes C. Molina and the minors Sheila, Simoun, Stephen John and Sharon Ann, all surnamed Molina; Emma C. Navarro and the minors Raymond, Marah, and Ryan all surnamed Navarro; Ruth T. Sulam and the minor Jeinar Reece T. Sulam (Petitioners).

FACTS OF THE CASE

This case arose from a complaint for damages, plus attorney's fees filed by petitioners together with Teresa Derder and the minors Vinna Marie Derder, Bon Erik Derder, and Frances Karen Derder; Lolita Tolentino, minors Ann Brigette Tolentino, Fe Clarin Tolentino, Elvido Tolentino, Jr., Sarah Mae Tolentino, and Farah Jane Tolentino; and Luz Marina Reyes and the minors Carolina Marie Rose Reyes and Rossmark Reyes who, however, did not join as parties in this petition for review, against Mitsui O.S.K. Lines and Diamond Camella, S.A. (collectively, Respondents).[4]

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[1] *Rollo*, pp. 8-26.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Celia C. Librea-Leagogo and Michael P. Elbinias, concurring; *id*. at 284-295.

[3] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Celia C. Librea-Leagogo and Michael P. Elbinias, concurring; *id*. at 311-312.

[4] *Id*. at 43.

Based on the records of the case, it was found that Mitsui O.S.K. Lines, a non-resident corporation, not doing business in the Philippines, was the charterer of MV Sea Prospect while Diamond Camella, S.A., another non-resident corporation, not doing business in the Philippines, and of Panamian registry is the registered owner of the said vessel.[5]

On January 1, 1998, Magsaysay Maritime Corporation (Magsaysay), the manning agent of the respondents in the Philippines, hired the following, among others, as crew members:

Name	Position
1. Rosadel Reyes	Captain
2. Simplicia Molina	Chief Engineer
3. Antonio Marpaga	First Engineer
4. Ramon Navarro	Second Engineer
5. Fonillo Derder	Second Engineer
6. Hipolito Dalen, Jr.	Oiler
7. Vicente Lariba, Jr.	Oiler
8. Elvido Tolentino	Oiler
9. Joey Sulam	Wiper
10. Donato Cabungcag	Chief Cook
11. Felix Makiling	Deck Chief
12. Tito Robillos	2nd Officer
13. Emesto Gambalan	3rd Officer
14. Marlon Marasigan	Sailor
15. Eduardo Camacho	Radio Operator
16. Frederick Llanes	M/M[6]

On or about August 15, 1998, MV Sea Prospect was making a regular traffic between Japan and Indonesia and arrived at the Port of Sebe, Indonesia in order to perform loading operations of nickle-ore. Prior to its arrival therein, it had been raining, hence, the nickle-ore was wet when loaded onboard MV Sea Prospect.[7]

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[5] *Id*. at 47.

[6] *Id*. at 47-48.

[7] *Id*. at 48.

On or about August 22, 1998, MV Sea Prospect headed to Japan. While there, or on August 26, 1998, weather was inclement and the vessel developed a list between 10 and 15 degrees to starboard. Upon inspection, it was found that the cargo was very wet so the Captain ordered to fill the ballast tanks, thus achieving the vessel's stability. He then ordered a change in the course of the vessel to the Island of Okinawa to seek refuge. While nearing the Island of Okinawa, the vessel listed again 3 to 5 degrees then to 90 degrees, taking water in the bridge, the engine stopping and the electric power being cut. After 30 minutes, MV Sea Prospect sunk, drowning 10 crew members, namely: (1) Rosadel Reyes; (2) Simplicio Molina; (3) Antonio Marpaga; (4) Ramon Navarro; (5) Fonillo Derder; (6) Hipolito Dalen, Jr.; (7) Vicente Lariba, Jr.; (8) Elvido Tolentino; (9) Joey Sulam; and (10) Donato Cabungcag. Eleven other crew members were saved and were brought to the Japanese ports including (1) Felix Makiling; (2) Tito Robillos; (3) Ernesto Gambalan; (4) Marlon Marasigan; (5) Eduardo Camacho; and (6) Frederick Llanes.[8]

Respondents alleged that on November 4, 1998, November 5, 1998 and December 10, 1998, petitioners who are heirs and beneficiaries of the missing seafarers received full payment of death benefits based on the employment contract as well as the International Transport Workers' Federation-Japan Seaman Union Associated Marine Officers and Seafarers Union of the Philippines Collective Bargaining Agreement (CBA) governing the employment of the seafarers. Petitioners were accompanied by their counsel, Atty. Emmanuel Partido in signing the settlement agreements, affidavits of heirship and receipts of payment before the Overseas Workers Welfare Administration (OWWA).[9]

According to respondents, the contents of said documents were explained to petitioners, the pertinent provisions include:

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[8] *Id*. at 49.

[9] *Id*. at 289-290.

(a) The release of respondents from ALL liabilities, including those based from torts, arising from the death/disappearance of the crew members as a result of sinking of the vessel;

(b) The Settlement Agreement may be pleaded as an ABSOLUTE and FINAL bar to any suit which may be filed by petitioners; and

(c) The commitment by the petitioners that they will not file any claim or suit against respondents in ANY jurisdiction.[10]

Petitioners allegedly demanded in writing further compensation in connection with the sinking of the vessel and threatened that an action arising from tort would be commenced in Panama should their demand be unheeded. Hence, on February 26, 1999, respondents filed before the Regional Trial Court (RTC) of Manila, Branch 46, a Petition for Declaratory Relief and Approval of the Compromise/Settlement Agreement against petitioners. On July 9, 1999, petitioners filed the complaint for damages against respondents before the Admiralty Court of Panama. On September 28, 2000, respondent converted the petition for declaratory relief into an ordinary civil action for breach of contract and damages and prayed for the approval of the settlement agreement.[11]

On August 23, 2004, the trial court issued an order confirming the validity of the settlement agreement, declaring that the petitioners breached the material provisions of the settlement agreement, and approved such settlement agreement. The Supreme Court of Panama, meanwhile, dismissed petitioners' case for lack of jurisdiction based on *forum non conveniens*.[12]

On July 18, 2002, the Labor Arbiter (LA) dismissed the complaint on the grounds of lack of jurisdiction over the persons of the respondents and prescription of action. According to the LA, summonses cannot be validly served upon the respondents being foreign corporations and not having transacted

[10] *Id.* at 335.

[11] *Id.* at 290.

[12] *Id.* at 290-291.

business in the Philippines.[13] In this case, the action for damages is an action *in personam*, wherein jurisdiction over their person is necessary for the LA to validly try and decide their case. However, since they are non-residents, personal service of summonses within the Philippines is essential for the acquisition of jurisdiction over their persons.

Moreover, the LA found that the action filed by petitioners has already prescribed. The Labor Code provides that all money claims arising from employer- employee relationship accruing during the effectivity of this Code shall be filed within three years from the time the cause of action accrued. Here, the sinking of MV Sea Prospect occurred on August 26, 1998, they have three years to file their claim from such date. They filed their complaint on April 17, 2002 or more than three years therefrom.

However, the LA referred the case back to the Maritime Court of Panama where trial on the merits could be had and where any judgment in favor of petitioners could be sufficiently satisfied from the letter of guarantee issued by respondents. It held that contrary to the decision of the Supreme Court of Panama, the Maritime Court of Panama is the forum in which the action may be most appropriately brought, considering the best interest of the parties.

The petitioners appealed to the National Labor Relations Commission (NLRC) but it was dismissed through a Resolution[14] dated February 4, 2004.

Upon the filing of the Motion for Reconsideration, the NLRC issued a Resolution[15] dated December 28, 2004 setting aside the earlier Resolution and directing the LA to serve summons to Magsaysay at its business address given to the Philippine Overseas Employment Administration (POEA) so that

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[13] *Id*. at 68-69.

[14] Penned by Presiding Commissioner Roy V. Señeres, with Commissioner Romeo L. Go, concurring; *id*. at 107-109.

[15] Penned by Presiding Commissioner Roy V. Señeres, with Commissioners Ernesto S. Dinopol and Romeo L. Go, concurring; *id*. at 139-141.

jurisdiction may be acquired over the persons of the respondents and proper proceedings can be held. The records were then remanded to the LA of origin for immediate action.[16]

Pursuant to this, the LA issued another Decision[17] dated September 30, 2008 dismissing the complaint due to the execution of individual compromise agreements by petitioners waiving their rights against respondents. The LA had been aware of the fact that the trial court as well as the CA had affirmed the validity of the compromise agreements. Moreover, the petitioners received their full compensation under the contract and it was not found that the amount received were unconscionable and grossly disproportionate. It also did not appear that petitioners were defrauded or tricked into signing the same.[18]

Lastly, the LA found that the claim had already prescribed.[19]

Aggrieved, petitioners filed their appeal to the NLRC.

In a Decision[20] dated June 30, 2009, the NLRC dismissed the appeal saying that the claim, even if based on tort was already included in the quitclaims executed in favor of the respondents. It also held that prescription has already set in.[21]

Still aggrieved, petitioners filed a Petition for *Certiorari* to the CA which was dismissed in a Decision[22] dated July 20, 2010 reiterating the ruling of the LA and NLRC that the complaint for damages was filed out of time and that the claim

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[16] *Id.* at 140.

[17] Penned by Labor Arbiter Dominador B. Medroso, Jr.; *id*. at 201-207.

[18] *Id*. at 205-206.

[19] *Id*. at 205.

[20] Penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Perlita B. Velasco and Romeo L. Go, concurring; *id*. at 222-227.

[21] *Id*. at 226.

[22] *Supra* note 2.

filed with the Admiralty Court of Panama did not toll the prescriptive period for filing a claim here in the Philippines.[23]

Moreover, it was decided that the Settlement Agreement, Receipt and General Receipt and Release of Rights as well as the affidavits and certifications signed by the petitioners released the respondents from all liabilities, including those based on tort, arising from the death/disappearance of the crew members as a result of the sinking of the vessel. The settlement agreement may be pleaded as an absolute and final bar to any suit. Also, petitioners committed themselves not to file any claim against respondents in any jurisdiction.[24]

Undaunted, petitioners filed a Motion for Reconsideration which was denied via a Resolution[25] dated October 26, 2010.

Hence, this petition.

ISSUES

The issues raised by petitioners are the following:

1. Whether petitioners' cause of action has prescribed; and
2. Whether the settlement agreement, receipt and general receipt and release of rights barred petitioners from filing the complaint.

OUR RULING

The Labor Arbiter has no jurisdiction over tort cases

Before going into the issues raised by the parties, it is necessary to first settle whether the claim for damages based on tort filed by petitioners before the LA was proper.

The Labor Code provides that:

Art. 224. [217] *Jurisdiction of Labor Arbiters and the Commission.* – x x x

[23] *Rollo*, p. 293.

[24] *Id.*

[25] *Supra* note 3.

x x x x x x x x x

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

x x x x x x x x x

Similarly, Section 10 of Republic Act No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995 provides:

Sec. 10. MONEY CLAIMS. - Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

In deciding whether a case arises out of employer-employee relations, the Court formulated the "reasonable causal connection rule", wherein if there is a reasonable connection between the claim asserted and the employer-employee relations, then the case is within the jurisdiction of the labor courts.[26]

In this case, petitioners' claim for damages is grounded on respondents' gross negligence which caused the sinking of the vessel and the untimely demise of their loved ones.[27] Based on this, the subject matter of the complaint is one of claim for damages arising from quasi-delict, which is within the ambit of the regular court's jurisdiction.

According to Article 2176 of the New Civil Code, "Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called quasi-delict."

Thus, to sustain a claim liability under quasi-delict, the following requisites must concur: (a) damages suffered by the

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[26] *Indophil Textile Mills, Inc. v. Adviento*, 740 Phil. 336, 346 (2014).

[27] *Rollo*, pp. 13-14.

plaintiff; (b) fault or negligence of the defendant, or some other person for whose acts he must respond; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.[28]

Here, petitioners argue that respondents are duty bound to exercise due diligence required by law in order to ensure the safety of the crew and all the passengers therein. It was further averred that the negligence on the part of the respondents is quite apparent when they allowed the vessel to load and transport wet cargo. For failure therefore to exercise extra ordinary diligence required of them, the respondents must be held liable for damages to the surviving heirs of the deceased crew members.[29] Notwithstanding the contractual relation between the parties, the act of respondents is a quasi-delict and not a mere breach of contract.

Where the resolution of the dispute requires expertise, not in labor management relations nor in wage structures and other terms and conditions of employment, but rather in the application of the general civil law, such claim falls outside the area of competence or expertise ordinarily ascribed to the LA and the NLRC.[30]

Therefore, the LA has no jurisdiction over the case in the first place; it should have been filed to the proper trial court.

The Settlement Agreements signed by petitioners were valid.

Notwithstanding the lack of jurisdiction of the LA to take cognizance of the case, petitioners still cannot file the complaint with the trial court because the Settlement Agreement signed by them was valid.

It is true that quitclaims and waivers are oftentimes frowned upon and are considered as ineffective in barring recovery for

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[28] *Indophil Textile Mills, Inc. v. Adviento*, *supra* at 350.

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

[30] *Id.*

the full measure of the worker's rights and that acceptance of the benefits therefrom does not amount to estoppel.[31] The reason is plain. The employer and employee, obviously, do not stand on the same footing.[32] However, not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of the settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.[33]

In this case, it should be noted that when petitioners signed the Settlement Agreements, they did it with their counsel of choice. It could be said that they brought their counsel along to make sure that they would understand the contents of the agreements and that they are not tricked into signing the same. A lawyer would know whether the agreement is unreasonable and one-sided on its face.

Second, the agreement provides for the "release of respondents from all liabilities including those based from torts, arising from the death/disappearance of the crewmembers as a result of the sinking of the vessel."[34] Hence, even claims arising from quasi-delict would be barred as shown in the blanket waiver of right to sue.

Moreover, petitioners failed to substantiate their claim that they received less of what they are really entitled to based on

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[31] *Galicia v. NLRC*, 342 Phil. 342, 348 (1997).

[32] *Lopez Sugar Corp. v. Federation of Free Workers,* 267 Phil. 212, 227 (1990).

[33] *Periquet v. NLRC*, 264 Phil. 1115, 1122 (1990).

[34] *Rollo*, p. 340.

said Settlement Agreements. They wanted the Court to believe that since their cause of action is for damages and what they received in accordance with the Settlement Agreement was only those under the POEA Standard Employment Contract and the overriding CBA, then they are not barred from filing the instant complaint. Petitioners are misled. As discussed above, the Settlement Agreement signed by petitioners are comprehensive enough to include even causes of action arising from quasi-delict.

Having settled that petitioners may no longer pursue their claim for quasi- delict based on the grounds discussed above, it is not necessary to consider herein the issue on prescription of action.

WHEREFORE, the instant petition is **DENIED**. The Decision dated July 20, 2010 and Resolution dated October 26, 2010 of the Court of Appeals in CA- G.R. SP No. 112551 are **AFFIRMED**.

SO ORDERED.

Bersamin, C.J. (Chairperson), Jardeleza,[*] and *Gesmundo, JJ.,* concur.

Del Castillo, J., on official leave.

FIRST DIVISION

[G.R. No. 209072. July 24, 2019]

ARLENE A. CUARTOCRUZ, *petitioner, vs.* **ACTIVE WORKS, INC., and MA. ISABEL E. HERMOSA, Branch Manager,** *respondents.*

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[*] Acting Working Chairperson of the First Division.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYMENT CONTRACT; WHERE THE FOREIGN LAW THAT GOVERNS THE VARIOUS ASPECT OF EMPLOYMENT WAS NOT PROVED, THE PRESUMPTION THAT SAID FOREIGN LAW IS THE SAME AS OURS APPLIES.— Philippine law applies in this case. Although the employment contract is punctuated with provisions referring to Hong Kong law as the applicable law that governs the various aspects of employment, Hong Kong law was not proved. Indeed, a contract freely entered into is considered the law between the parties who can establish stipulations, clauses, terms and conditions as they may deem convenient, including the laws which they wish to govern their respective obligations, as long as they are not contrary to law, morals, good customs, public order or public policy. It is hornbook principle, however, that the party invoking the application of a foreign law has the burden of proving the law. The foreign law is treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of it. He is presumed to know only domestic or forum law. Here, respondent did not prove the pertinent Hong Kong law that governs the contract of employment. Thus, the international law doctrine of presumed-identity approach or processual presumption applies. Where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours. Consequently, we apply Philippine labor laws in determining the issues in this case.

2. ID.; ID.; TERMINATION OF EMPLOYMENT; RESPONDENTS FAILED TO PROVE THAT THERE WAS JUST CAUSE FOR THE TERMINATION OF PETITIONER'S EMPLOYMENT.—The grounds cited for the termination of petitioner's employment contract are considered just causes under Article 282 of the Labor Code, *but only if respondents were able to prove them.* The burden of proving that there is just cause for termination is on the employer, who must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause. Failure to show that there was valid or just cause for termination would necessarily mean that the dismissal was illegal. Here, no evidence

was presented to substantiate the employer's accusations. There was no showing of particular instances when petitioner supposedly disobeyed her employer and refused to take care of his baby. With respect to petitioner's alleged misrepresentation that she was single when in fact she was a single parent, there is also no showing how this affected her work as a domestic helper. In fact, being a mother herself puts petitioner in a better position to care for her employer's child. Where there is no showing of a clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal.

3. ID.; ID.; ID.; PETITIONER WAS LIKEWISE NOT AFFORDED PROCEDURAL DUE PROCESS; PETITIONER WAS ILLEGALLY DISMISSED ON BOTH SUBSTANTIVE AND PROCEDURAL GROUNDS.— Petitioner was likewise not afforded procedural due process. Procedural due process requires the employer to give the concerned employee at least two notices before terminating his employment. The first is the notice which apprises the employee of the particular acts or omissions for which his dismissal is being sought along with the opportunity for the employee to air his side, while the second is the subsequent notice of the employer's decision to dismiss him. In this case, the August 11, 2007 warning letter would have very well served as the first notice that satisfies the above requirement. However, while the warning letter states that it will serve as notice of termination effective September 11, 2007 in case petitioner failed to improve her work performance, petitioner's employment was terminated much earlier and without further advice. Worse, the grounds stated in the August 16, 2007 termination letter were markedly different from the ground stated in the warning letter. Specifically, while the warning letter complained of petitioner's inattentiveness, the termination letter spoke of intentional acts allegedly committed by petitioner—*i.e.,* disobedience, misrepresentation and refusal to do her job. It appears that petitioner's employer merely devised the reasons of termination to suit the requirements of Hong Kong law. x x x The termination letter expressed concerns that petitioner claimed she had never been confronted with. She was left in the dark as regards the real reason for the termination of her employment, and was not given sufficient opportunity to rectify her shortcomings or explain her side. Equally repulsive is the fact that petitioner's employer

did not furnish her a copy of the August 16, 2007 termination letter, which was submitted to the Immigration Department of Wanchai, Hong Kong. Petitioner alleged that she learned of the termination of her employment the following day, and that she was able to get a copy of the termination letter only with the help of Helpers for Domestic Helpers, an organization of Filipino helpers in Hong Kong. The provisions in the employment contract and the employer's conduct are patently inconsistent with the right of security of tenure guaranteed to local or overseas Filipino workers under the Constitution and the Labor Code. Security of tenure guarantees workers substantive and procedural due process before they are dismissed from work. It is a right which cannot be denied on mere speculation of any unclear and nebulous basis. Undeniably, the NLRC properly ruled that petitioner was illegally dismissed on both substantive and procedural grounds.

4. **ID.; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (RA 8042); THE EMPLOYER AND THE RECRUITMENT OR PLACEMENT AGENCY ARE JOINTLY LIABLE FOR MONEY CLAIMS ARISING FROM THE EMPLOYMENT RELATIONSHIP OR ANY CONTRACT INVOLVING OVERSEAS FILIPINO WORKERS.—**Respondents cannot escape liability from petitioner's money claims. Section 10 of RA 8042 provides that the employer and the recruitment or placement agency are jointly liable for money claims arising from the employment relationship or any contract involving overseas Filipino workers. If the recruitment or placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarity liable with the corporation or partnership for the aforesaid claims and damages. In providing for the joint and solidary liability of private recruitment agencies with their foreign principals, RA 8042 precisely affords OFWs with a recourse and assures them of immediate and sufficient payment of what is due them.

5. **ID.; ID.; ID.; MONETARY AWARDS TO AN ILLEGALLY DISMISSED OVERSEAS FILIPINO WORKER, ENUMERATED.—** Petitioner is entitled to: 1) unpaid salaries for 14 days in the amount of HK$ 1,586.67; 2) salaries for the entire unexpired portion of her employment contract consisting of one year, 11 months and 16 days at the rate of HK$3,400.00

per month; and 3) attorney's fees equivalent to 10% of the total monetary award. These amounts shall then earn 6% interest *per annum* from the finality of this Decision until full payment.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Enriquez Capin & Gaugano Law Offices for respondents.

D E C I S I O N

JARDELEZA,[*] *J.*:

In this petition for review, we reiterate that any doubt concerning the rights of labor should be resolved in its favor pursuant to the social justice policy espoused by the Constitution.[1] Moreover, the proviso in Section 10, Republic Act No. (RA) 8042[2] which prescribes the award of "salaries for the unexpired portion of [the] employment contract or for three (3) months for every year of the unexpired term, whichever is less" to illegally-dismissed overseas workers has been declared unconstitutional by the Court as early as 2009,[3] and thus should no longer be a source of confusion by litigants and the courts.

On June 4, 2007, Arlene A. Cuartocruz (petitioner) and Cheng Chi Ho,[4] a Hong Kong national, entered into a contract of employment whereby petitioner shall work as the latter's domestic helper for a period of two years. Petitioner was tasked to do household chores and baby-sitting, among others, for a

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[*] Designated as Acting Working Chairperson of the First Division per Special Order No. 2680 dated July 12, 2019.

[1] *Marcopper Mining Corporation v. NLRC,* G.R. No. 103525, March 29, 1996, 255 SCRA 322.

[2] Migrant Workers and Overseas Filipinos Act of 1995.

[3] In the case of *Serrano v. Gallant Maritime Services, Inc.,* G.R. No. 167614, March 24, 2009, 582 SCRA 254.

[4] Also referred to as "Chi Ho Heng" in some parts of the *rollo.*

monthly salary of HK$3,400.00 and other emoluments and benefits provided under the contract. Respondent Active Works, Inc. (AWI), a Philippine corporation engaged in the recruitment of domestic helpers in Hong Kong, is petitioner's agency, and respondent Ma. Isabel Hermosa is its Branch Manager.[5]

On August 3, 2007, petitioner arrived in Hong Kong. The following day, she proceeded to the residence of her employer.[6]

On August 11, 2007, petitioner received a warning letter from her employer,[7] stating that she is required to improve her attentiveness in performing her work within one month, failing which the letter shall serve as a written notice of the termination of her employment contract effective September 11, 2007. On the same day, petitioner wrote a reply, apologizing for giving false information by stating in her bio-data that she is single when in fact she is a single parent. She also asked for a chance to improve so she can continue with her work.[8]

However, in a letter dated August 16, 2007, Cheng Chi Ho informed the Immigration Department of Wangchai, Hong Kong that he is terminating the contract with petitioner effective immediately for the following reasons: "disobey order *(sic),* unmatch the contract which she submit before *(sic),* [and] refuse to care my baby *(sic).*"[9]

Petitioner filed a case against her employer before the Minor Employment Claims Adjudication Board, but it was eventually

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[5] *Rollo,* p. 107.

[6] *Id.*

[7] *Rollo,* p. 82. The warning letter pertinently states: "This letter serves as a warning letter to you, we require you to improve your attentiveness on your performance within one month starting from this date. If no improvement was shown by then, this letter will serves *(sic)* as a written notice to you that the captioned contract will be terminated with immediate effect on 11 September, 2007. You will not be entitled to payment of salary in lieu of the notice period upon this warning acknowledgment."

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

[9] *Id.* at 85.

dismissed and petitioner was repatriated at the instance of AWI.[10] Petitioner alleged that while in Manila, AWI offered her ₱15,000.00 as a settlement fee but she declined it, believing that she is entitled to a higher amount.[11]

Consequently, petitioner filed a complaint before the Labor Arbiter (LA) for illegal dismissal, payment of unpaid salaries and salaries corresponding to the unexpired portion of the contract of employment, reimbursement of placement fee and other fees incident to petitioner's deployment to Hong Kong, and moral and exemplary damages.[12] Petitioner denied committing the acts imputed to her by Cheng Chi Ho, and claimed that those were baseless and fabricated. Further, at no time was her attention called with respect to those acts that she allegedly committed.[13]

On June 16, 2008, the Executive LA (ELA) rendered a Decision[14] finding the termination of petitioner's employment contract without notice as valid and legal.[15] The ELA held that petitioner was already warned by her employer to improve her work, yet she did not show improvement in her work performance and attitude. She also misrepresented herself to be single, but later on admitted that she was separated with a child. This information does not match with the information stated in her employment contract and constitutes dishonesty on her part. Moreover, the termination of her employment contract was in accordance with Hong Kong's Employment Ordinance Chapter 57, Section 9 of which states that "[a]n employer may terminate a contract of employment without notice or payment in lieu x x x if an employee, in relation to his employment x x x wilfully disobeys a lawful and reasonable order; x x x misconducts himself

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[10] *Id.* at 30.

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

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

[13] *Id.* at 56.

[14] *Id.* at 106-113.

[15] *Id.* at 112.

such conduct being inconsistent with the due and faithful discharge of his duties; x x x is guilty of fraud or dishonesty."[16] This provision being part of petitioner's employment contract, it must be respected as the law between the parties.

With regard to money claims, the ELA held that petitioner is not entitled to salaries corresponding to the unexpired portion of her contract since she was dismissed for cause. However, she is entitled to be paid salaries for the six days that she has rendered service to her employer, or the total amount of HK$679.98.[17] Since petitioner was dismissed for cause, this amount shall be set off against the repatriation expenses incurred by AWI in the amount of HK$750.00.[18] Petitioner appealed the Decision with the National Labor Relations Commission (NLRC).

On May 29, 2009, the NLRC issued a Resolution[19] nullifying and setting aside the ELA Decision. It held that there is insufficient proof of petitioner's alleged poor work performance. The August 11, 2017 warning letter that petitioner received from her employer did not even specify what work needs improvement. It was only on August 16, 2007, when petitioner's employment contract was terminated, that she was criticized for disobeying orders. Petitioner was not given notice of specific violations that she allegedly committed and a chance to explain her side. She was also denied due process when the warning letter gave her one month to improve her work performance, but she was dismissed five days after.[20] With respect to petitioner's alleged dishonesty in concealing her civil status, jurisprudence has settled that this is a form of dishonesty so trivial that it will not warrant the penalty of dismissal. Consequently, the NLRC found petitioner to have been illegally

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[16] *Id.* at 111.

[17] Computed as HK$3,400.00/month ÷ 30 days x 6 days = HKS679.98.

[18] *Rollo,* pp. 31, 112-113.

[19] *Id.* at 124-129.

[20] *Id.* at 127.

dismissed and awarded her full reimbursement of her placement fee of ₱45,000.00 with 12% interest *per annum* pursuant to RA 8042, reimbursement of ₱2,500.00 medical examination fee, and unpaid salaries equivalent to three months for every year of the unexpired portion of the contract, or a total period of six months.[21]

Respondents filed a motion for reconsideration, but it was denied.[22] Hence, they filed a petition for *certiorari*[23] with the Court of Appeals (CA).

On April 26, 2012, the CA rendered its Decision[24] affirming with modification the NLRC Resolution. It held that AWI cannot evade responsibility for the money claims of overseas Filipino workers (OFWs) whom it deploys abroad by the mere expediency of claiming that its foreign principal is a government agency clothed with immunity from suit, or that such foreign principal's liability must be established first before it, as agent, can be held jointly and solidarily liable. Otherwise, the rule on joint and solidary liability of the agent with the foreign principal would be rendered inutile.[25] Moreover, the contention that Hong Kong law governs petitioner's employment contract lacks merit since respondents failed to prove Hong Kong law. The rule is that where a foreign law is not pleaded, or even if pleaded, is not proved, the presumption is that it is the same as Philippine law. Thus, Philippine law should apply in resolving the issues in the case.[26] Finally, petitioner was not afforded due process. The notice of termination was not properly served on her and did not properly inform her of the grounds for termination. In

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[21] *Id.* at 128.

[22] *Id.* at 130-131.

[23] *Id.* at 132-151.

[24] *Id.* at 28-40; penned by Associate Justice Edgardo T. Lloren, with Associate Justices Zenaida T. Galapate-Laguilles and Maria Elisa Sempio Diy concurring.

[25] *Id.* at 34-35.

[26] *Id.* at 35-36.

fact, petitioner was given one month from the date of the warning letter to improve her work but her employment was terminated just four[27] days thereafter.[28] The CA consequently awarded petitioner three-months' salary, refund of her placement fee with 12% interest *per annum,* and attorney's fees which shall be 10% of the total monetary award.[29]

Petitioner filed a partial motion for reconsideration[30] pertaining to the award of three-months' salary. She pointed out that the CA based this award on Section 10, RA 8042, which provides that "[i]n case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to x x x his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less." However, the cases of *Serrano v. Gallant Maritime Services, Inc.*[31] and *Yap v. Thenamaris Ship's Management*[32] already declared this provision unconstitutional and awarded illegally dismissed overseas workers with salaries equivalent to the entire unexpired portion of their employment contract. Thus, petitioner claims that she is entitled to the award of salaries equivalent to the entire unexpired portion of her unemployment contract.

On July 30, 2013, the CA issued a Resolution[33] denying petitioner's motion for reconsideration. It held that the cases cited by petitioner are not on all fours with the circumstances of this case. Particularly, in those cases there was a unanimous

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[27] Should be five days.

[28] *Rollo,* p. 37.

[29] *Id.* at 39.

[30] *Id.* at 41-48.

[31] *Supra* note 3.

[32] G.R. No. 179532, May 30, 2011, 649 SCRA 369.

[33] *Rollo,* pp. 49-51; penned by Associate Justice Edgardo T. Lloren, with Associate Justices Marie Christine Azcarraga-Jacob and Henri Jean Paul B. Inting (now a Member of this Court) concurring.

finding of illegal dismissal by the LA, NLRC and CA. On the contrary, there is no unanimous finding by the LA and NLRC that petitioner was illegally dismissed. Moreover, petitioner rendered service for only six days. To award the monetary equivalent of the entire unexpired portion of her contract would be inequitable considering that she gave false information in her contract.[34]

Hence, this petition which raises the sole issue of whether or not the CA erred in applying the provision in Section 10, RA 8042, which prescribes the award of salaries equivalent to the "unexpired portion of [the] employment contract or x x x three (3) months for every year of the unexpired term, whichever is less" to illegally dismissed overseas employees.

At the outset, it is imperative that we set the parameters by which the review of this case is being undertaken.

First, even if petitioner raises only one issue in this case, which is a question of law, we deem it necessary to review other issues that have not been settled as a result of the conflicting rulings of the tribunals *a quo*. After all, it is settled that an appeal throws the entire case open for review. The Court has the authority to review matters not specifically raised or assigned as error by the parties if their consideration is *necessary in arriving at a just resolution of the case.*[35]

Second, while the general rule is that the jurisdiction of the Court under Rule 45, Section 1 of the Rules of Court is limited to the review of errors of law committed by the appellate court, the Court may delve into the records and examine the facts for itself when the factual findings of the LA, NLRC and the CA are conflicting. Such is the case here. The ELA held that petitioner's employment contract was validly terminated, and awarded her compensation equivalent to the six days that she worked with her employer. The NLRC differed, and found neither

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[34] *Id.* at 50.

[35] *Barcelona v. Lim,* G.R. No. 189171, June 3, 2014, 724 SCRA 433, 461. Emphasis supplied; citation omitted.

just cause for the termination of petitioner's employment nor observance of procedural due process. Finally, the CA is convinced of the just cause for the termination of petitioner's employment, but not the observance of procedural due process. These conflicting factual findings are not binding on the Court, and the Court retains the authority to pass upon the evidence presented and draw conclusions therefrom.[36]

Finally, Philippine law applies in this case. Although the employment contract is punctuated with provisions referring to Hong Kong law as the applicable law that governs the various aspects of employment, Hong Kong law was not proved.

Indeed, a contract freely entered into is considered the law between the parties who can establish stipulations, clauses, terms and conditions as they may deem convenient, including the laws which they wish to govern their respective obligations, as long as they are not contrary to law, morals, good customs, public order or public policy. It is hornbook principle, however, that the party invoking the application of a foreign law has the burden of proving the law. The foreign law is treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of it. He is presumed to know only domestic or forum law.[37]

Here, respondent did not prove the pertinent Hong Kong law that governs the contract of employment. Thus, the international law doctrine of presumed-identity approach or processual presumption applies. Where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours. Consequently, we apply Philippine labor laws in determining the issues in this case.[38]

We grant the petition.

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[36] *Paredes v. Feed the Children Philippines, Inc.,* G.R. No. 184397, September 9, 2015, 770 SCRA 203, 216-217.

[37] *ATCI Overseas Corporation v. Echin,* G.R. No. 178551, October 11, 2010, 632 SCRA 528, 534. Citation omitted.

[38] *Id.* at 534-535. Citation omitted.

I.

Under Philippine law, workers are entitled to substantive and procedural due process before the termination of their employment. They may not be removed from employment without a valid or just cause as determined by law, and without going through the proper procedure.[39] The purpose of these two-pronged qualifications is to protect the working class from the employer's arbitrary and unreasonable exercise of its right to dismiss.[40]

In this case, respondents failed to prove by substantial evidence that there was just or authorized cause for the termination of petitioner's employment. About a week into her job, or on August 11, 2007, petitioner received a warning letter from her employer requiring her "to improve [her] attentiveness on [her] performance within one month x x x" failing which the letter shall serve "as a written notice x x x that the x x x contract will be terminated with immediate effect on 11 September, 2007."[41] Nonetheless, after five days, or on August 16, 2007, petitioner's contract was terminated for the following reasons: "(1) disobey order *(sic);* (2) unmatch the contract which she submit before *(sic);* and (3) refuse to care my baby *(sic)*."[42]

The grounds cited for the termination of petitioner's employment contract are considered just causes under Article 282 of the Labor Code,[43] *but only if respondents were able to*

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[39] *Sameer Overseas Placement Agency, Inc. v. Cabiles,* G.R. No. 170139, August 5, 2014, 732 SCRA 22, 42.

[40] *Industrial Personnel & Management Services, Inc. v. De Vera,* G.R. No. 205703, March 7, 2016, 785 SCRA 562, 587. Citation omitted.

[41] *Rollo,* p. 82.

[42] *Id.* at 111.

[43] LABOR CODE, Art. 282. *Termination by employer.* — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

prove them. The burden of proving that there is just cause for termination is on the employer, who must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause. Failure to show that there was valid or just cause for termination would necessarily mean that the dismissal was illegal.[44]

Here, no evidence was presented to substantiate the employer's accusations. There was no showing of particular instances when petitioner supposedly disobeyed her employer and refused to take care of his baby. With respect to petitioner's alleged misrepresentation that she was single when in fact she was a single parent, there is also no showing how this affected her work as a domestic helper. In fact, being a mother herself puts petitioner in a better position to care for her employer's child. Where there is no showing of a clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal.[45]

Petitioner was likewise not afforded procedural due process.

Procedural due process requires the employer to give the concerned employee at least two notices before terminating his employment. The first is the notice which apprises the employee of the particular acts or omissions for which his dismissal is being sought along with the opportunity for the employee to air his side, while the second is the subsequent notice of the employer's decision to dismiss him.[46]

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
(e) Other causes analogous to the foregoing.

[44] *Sameer Overseas Placement Agency, Inc. v. Cabiles, supra* note 39 at 45. Citations omitted.

[45] *Asian International Manpower Services, Inc. v. Court of Appeals,* G.R. No. 169652, October 9, 2006, 504 SCRA 103, 109. Citation omitted.

[46] *Eastern Overseas Employment Center, Inc. v. Bea,* G.R. No. 143023, November 29, 2005, 476 SCRA 384, 390. Citations-omitted.

In this case, the August 11, 2007 warning letter would have very well served as the first notice that satisfies the above requirement. However, while the warning letter states that it will serve as notice of termination effective September 11, 2007 in case petitioner failed to improve her work performance, petitioner's employment was terminated much earlier and without further advice. Worse, the grounds stated in the August 16, 2007 termination letter were markedly different from the ground stated in the warning letter. Specifically, while the warning letter complained of petitioner's inattentiveness, the termination letter spoke of intentional acts allegedly committed by petitioner—*i.e.,* disobedience, misrepresentation and refusal to do her job. It appears that petitioner's employer merely devised the reasons of termination to suit the requirements of Hong Kong law. The employment contract provides:

> 10. Either party may terminate this contract by giving one month's notice in writing or one month wages in lieu of notice.
>
> 11. Notwithstanding Clause 10, either party may in writing terminate this contract without notice or payment in lieu of the circumstances permitted by the Employment Ordinance, Chapter 57.[47]

On the other hand, Employment Ordinance, Chapter 57 provides:

> **9. Termination of contract without notice by employer** (1) An employer may terminate a contract of employment without notice or payment in lieu— x x x
>
> *(a)* if an employee, in relation to his employment—
>
> (i) wilfully disobeys a lawful and reasonable order;
>
> (ii) misconducts himself such conduct being inconsistent with the due and faithful discharge of his duties;
>
> (iii) is guilty of fraud or dishonesty; or
>
> (iv) is habitually neglectful in his duties; x x x[48] (Emphasis and italics in the original.)

The termination letter expressed concerns that petitioner claimed she had never been confronted with.[49] She was left in

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[47] *Rollo*, p. 61-A.

[48] *Id.* at 99.

[49] *Id.* at 56.

the dark as regards the real reason for the termination of her employment, and was not given sufficient opportunity to rectify her shortcomings or explain her side.

Equally repulsive is the fact that petitioner's employer did not furnish her a copy of the August 16, 2007 termination letter,[50] which was submitted to the Immigration Department of Wanchai, Hong Kong. Petitioner alleged that she learned of the termination of her employment the following day, and that she was able to get a copy of the termination letter only with the help of Helpers for Domestic Helpers, an organization of Filipino helpers in Hong Kong.[51]

The provisions in the employment contract and the employer's conduct are patently inconsistent with the right of security of tenure guaranteed to local or overseas Filipino workers under the Constitution[52] and the Labor Code.[53] Security of tenure guarantees workers substantive and procedural due process before they are dismissed from work.[54] It is a right which cannot be denied on mere speculation of any unclear and nebulous basis.[55] Undeniably, the NLRC properly ruled that petitioner was illegally dismissed on both substantive and procedural grounds.

II.

Respondents cannot escape liability from petitioner's money claims. Section 10 of RA 8042 provides that the employer and the recruitment or placement agency are jointly liable for money claims arising from the employment relationship or any contract involving overseas Filipino workers. If the recruitment or

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[50] *Id.* at 85.

[51] *Id.* at 56.

[52] CONSTITUTION, Art. XIII, Sec. 3.

[53] LABOR CODE, Art. 3.

[54] *Dagasdas v. Grand Placement and General Services Corporation,* G.R. No. 205727, January 18, 2017, 814 SCRA 529, 540-541.

[55] *Industrial Personnel & Management Services, Inc. v. De Vera,* G.R. No. 205703, March 7, 2016, 785 SCRA 562, 586.

placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarity liable with the corporation or partnership for the aforesaid claims and damages. In providing for the joint and solidary liability of private recruitment agencies with their foreign principals, RA 8042 precisely affords OFWs with a recourse and assures them of immediate and sufficient payment of what is due them.[56]

We now rule on the appropriate monetary award.

First, we note that both the NLRC and CA omitted to compute unpaid wages for services rendered by petitioner. The ELA, on the other hand, awarded unpaid wages in the sum of HK$679.98,[57] relying on respondents' allegation that petitioner worked for only six days.[58] The ELA's computation is erroneous.

Petitioner's employment commenced on August 3, 2007, the day she arrived in Hong Kong, as provided by her employment contract,[59] and ended on August 16, 2007, when her employer unjustly terminated her employment contract. In total, petitioner is considered to have worked for 14 days.

In her position paper, petitioner alleged that on August 6, 2007, she was sent by her employer to a recruitment agency in Hong Kong supposedly for retraining, and returned on August 12, 2007. However, no retraining was conducted.[60] We hold that the period that petitioner was away from her workplace pursuant to her employer's instruction should be considered as days worked for the employer. In the first place, retraining is not provided for in the employment contract. Petitioner was

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[56] *ATCI Overseas Corporation v. Echin, supra* note 37 at 533.

[57] Computed as HK$3,400.00/month ÷ 30 days x 6 days = HK$679.98.

[58] *Rollo,* p. 66.

[59] The employment contract provides

2. (A)+ The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on the date on which the Helper arrives in Hong Kong. (*Id.* at 61.)

[60] *Id.* at 55.

even oblivious of the reason why she had to undergo retraining.[61] Moreover, petitioner was ready, willing, and able to work, but her employer prevented her from doing so by unreasonably sending her away from her workplace. The employer's actions should not be taken to prejudice petitioner. It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence or, in the interpretation of agreements and writings, should be resolved in the former's favor.[62]

Consequently, petitioner's salary for the 14-day period she is deemed to have worked is computed as follows:

HK$3,400.00 per month/30 x 14 days = HK$1,586.67

Finally, as regards the issue of how much salary petitioner is entitled based on the unexpired portion of her contract, the NLRC awarded petitioner six-months' salary while the CA reduced this amount to three months, pursuant to Section 10, RA 8042, which provides:

> Sec. 10. *Money Claims.* –
>
> x x x x x x x x x
>
> In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) *per annum,* plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.
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> x x x x x x x x x

The proviso "for three months for every year of the unexpired term [of the employment contract], whichever is less" has been declared unconstitutional by this Court for violating the equal

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[61] In her position paper, petitioner alleged that she asked the recruitment agency why she needed retraining, but the agency told her to just wait and did not exert any effort to retrain her. *(Id.)*

[62] LABOR CODE, Art. 4; *C.F. Sharp Crew Management, Inc. v. Legal Heirs of the Late Godofredo Repiso,* G.R. No. 190534, February 10, 2016, 783 SCRA 516.

protection clause and substantive due process.[63] In *Serrano v. Gallant Maritime Services, Inc.,*[64] we explained that the said clause contains a suspect classification in that, in the computation of the monetary benefits of fixed-term employees who are illegally discharged, it imposes a three-month cap on the claim of OFWs with an unexpired portion of one year or more in their contracts, but none on the claims of other OFWs or local workers with fixed-term employment. The subject clause singles out one classification of OFWs and burdens it with a peculiar disadvantage.[65] Moreover, there is no compelling state interest that the subject clause may possibly serve.

Thus, following *Serrano,* we rule that petitioner is entitled to her monthly salary of HK$3,400.00, or its Philippine peso equivalent, for the entire unexpired portion of her employment contract.

We reverse the CA's award of placement fee for being unsubstantiated.

WHEREFORE, the petition is **GRANTED.** The April 26, 2012 Decision and July 30, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 03292 are **AFFIRMED** with **MODIFICATION.** Petitioner is entitled to: 1) unpaid salaries for 14 days in the amount of HK$ 1,586.67; 2) salaries for the entire unexpired portion of her employment contract consisting of one year, 11 months and 16 days at the rate of HK$3,400.00 per month; and 3) attorney's fees equivalent to 10% of the total monetary award. These amounts shall then earn 6% interest *per annum* from the finality of this Decision until full payment.

The case is **REMANDED** to the Labor Arbiter for the computation of the exact amounts due to petitioner.

SO ORDERED.

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

Del Castillo (*Working Chairperson*), *J.,* on official leave.

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[63] *Sameer Overseas Placement Agency, Inc. v. Cabiles, supra* note 39 at 51.

[64] *Supra* note 3.

[65] *Id.* at 295.

THIRD DIVISION

[G.R. No. 209274. July 24, 2019]

THE HONORABLE OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **ANGELINE A. ROJAS,** *respondent.*

[G.R. Nos. 209296-97. July 24, 2019]

JOSE PEPITO M. AMORES, M.D., *petitioner, vs.* **ANGELINE A. ROJAS and ALBILIO C. CANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE OMBUDSMAN, RESPECTED; EXCEPTIONS. — Since the Court is not ordinarily a trier of facts, it must accept as binding the factual findings of the lower tribunal that was afforded a prior opportunity to adjudicate the case under review. In administrative cases initially brought before the Ombudsman, the findings of fact of that agency are usually afforded great weight and respect, and, when supported by substantial evidence, are accepted as conclusive by the courts. It is relevant to state that substantial evidence is more than a mere scintilla. x x x Jurisprudence, however, abounds with exceptions to the rule that the Court is not a trier of facts. These were enumerated in *De Castro v. Field Investigation Office*, *viz*. (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the [CA] went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the

findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the [CA] manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. In this case, since the Ombudsman and CA differed as to their appreciation of the agreement between Lung Center of the Philippines (LCP) and Philippine Veterans Bank (PVB), a review of the facts is in order.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICIALS; MISCONDUCT; SIMPLE MISCONDUCT AND GRAVE MISCONDUCT. — Misconduct has generally been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." It is an offense performed in connection with official duties and implies deliberate or intentional wrongdoing. As an administrative offense, it may be classified as either simple or grave. For an act to constitute grave misconduct and carry with it the penalty of dismissal from the service, the elements of corruption, flagrant disregard of an established rule, or willful intent to violate the law must be proved by substantial evidence. Otherwise, if none of these elements are present, the act amounts only to simple misconduct. At this juncture, it is apropos to state that corruption, as an element of grave misconduct, exists when a public official or employee unlawfully or wrongfully uses his or her position to serve personal interests. On the other hand, there is flagrant disregard of an established rule or, analogously, willful intent to violate the law when the public official or employee concerned, through culpable acts or omission, clearly manifests a pernicious tendency to ignore the law or rules.

3. ID.; ID.; ID.; ID.; SIMPLE MISCONDUCT COMMITTED IN CASE AT BAR. — The elements of grave misconduct do not obtain in this case. *First*, nothing on the record tends to show that LCP's placement and roll-over of the realigned funds was tainted with any sort of corrupt motive. x x x *Second*, neither can be said that LCP placed its funds in PVB in flagrant disregard of an established rule or with willful intent to violate the law. x x x Nevertheless, viewing the totality of the circumstances surrounding the investment of LCP's funds, the Court cannot completely absolve Cano and Rojas. There is no doubt that Melendres, Cano, and Rojas handled LCP's funds in a manner

that was not authorized by the hospital's Board of Trustees. x x x Moreover, there is no indication on record of any agreement setting forth the details of PVB's treatment of realigned funds, or the distribution of profits between the hospital and the bank. These, taken together, show that LCP's funds were handled with negligence, contrary to the standard expected of public officers. It is worth reiterating that public officers must exercise ordinary care and prudence when dealing with public funds. "Public funds, after all, are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste." Further, Cano and Rojas cannot escape liability on the ground that they were simply acting pursuant to the orders of their superior, Melendres. At the relevant time, Cano and Rojas occupied positions that were not merely clerical, but required the use of discretion and independent judgment. The record reveals that they, along with Melendres, worked side by side to bring about the placement of LCP's funds in PVB. x x x Taking the foregoing into consideration, Cano and Rojas are liable for simple misconduct.

4. ID.; ID.; ID.; ID.; ID.; PENALTY. — Since simple misconduct is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and because no aggravating or mitigating circumstances apply to Cano or Rojas, a three (3)-month suspension without pay is the appropriate penalty in this case. This is consistent with the Court's ruling in G.R. No. 194346, where Melendres was also held liable for simple misconduct, and was meted out with the same penalty for his involvement in the act complained of herein.

APPEARANCES OF COUNSEL

Baterina Baterina Casals Lozada & Tiblani for petitioner Jose Pepito M. Amores.

Michael Millares for respondent Albinio Cano.

Vladimir Viktor S. Reyes for respondent Angeline A. Rojas.

D E C I S I O N

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

These consolidated petitions for review filed by the Office of the Ombudsman[1] and Jose M. Amores[2] (Amores) challenge the March 26, 2013 Decision[3] and September 25, 2013 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP Nos. 113649 and 114495, through which the herein respondents, Angeline A. Rojas (Rojas) and Albilio C. Cano (Cano), were absolved of the charge of grave misconduct.

The Factual Antecedents

After a fire gutted the Lung Center of the Philippines (LCP), the Department of Health (DOH) realigned ₱73,258,377.00 for the hospital's rehabilitation. The realignment was approved by the Department of Budget and Management (DBM), and covered by Special Allotment Release Order (SARO) No. BMB-B-00-0192.[5]

On January 12, 2002, Cano, who was then LCP's Ancillary Department Manager, along with Fernando Melendres (Melendres), the hospital's Executive Director, wrote a letter[6] addressed to the Branch Manager of Land Bank of the Philippines West Triangle Branch, requesting the issuance of a manager's check covering the amount of the realigned funds.

Melendres then wrote another letter,[7] this time addressed to the Office of the Government Corporate Counsel (OGCC),

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[1] *Rollo* (G.R. No. 209274), pp. 9-29.

[2] *Rollo* (G.R. Nos. 209296-97), pp. 31-59.

[3] *Id*. at 15-29. The assailed decision was penned by Associate Justice Francisco P. Acosta, with Associate Justices Fernanda Lampas Peralta and Angelita A. Gacutan concurring.

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

[5] *Id*. at 16.

[6] *Id.* at 182.

[7] *Id*. at 183.

attaching thereto a draft Investment Management Agreement (IMA) between LCP and the Philippine Veterans Bank (PVB). He requested an evaluation of the IMA, where the realigned funds would be deposited pending their utilization. However, without waiting for the OGCC's reply, LCP, through Melendres and Cano, sent the realigned funds to PVB with instructions to place the same under an IMA. The funds were consequently deposited with the bank for an initial period of 30 days, during which they earned interest at the rate of 7.25%.[8] After the period lapsed, LCP requested that the bank roll over a portion of the funds for another 30 days, albeit at a different interest rate.[9] The hospital repeatedly had the funds roll over under similar schemes on several occasions thereafter.[10] Notably, Rojas, who was then LCP's Budget and Accounting Division Chief and concurrently its Chief of Finance Services,[11] signed the roll-over requests.

Meanwhile, through a letter[12] dated May 3, 2002, the OGCC responded to Melendres's inquiry regarding the IMA. Without giving definitive advice as to whether LCP should place its funds in PVB, the OGCC requested that Melendres submit certain documents, stating that no conclusion could be reached on the basis of the attached IMA contract alone.

Despite receipt of the OGCC's response, LCP, through Melendres, Cano, and Rojas, continued to roll over the realigned funds.[13]

Through a letter[14] dated June 5, 2002, PVB requested Melendres to submit the following: (1) the document embodying

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[8] *Id*. at 190.

[9] *Id*. at 197.

[10] *Id*. at 141.

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

[12] *Id*. at 201-203.

[13] *Id*. at 42.

[14] *Id*. at 211.

the signed IMA; (2) an LCP board resolution authorizing the opening of said IMA; (3) an LCP board resolution authorizing a hospital representative to transact business with PVB relative to the IMA; and (4) signature specimens of the LCP's authorized representative. Melendres then referred the letter to the hospital's Cash Division with the following note:

> In view of the inability of the Board of Trustees to convene for the past few months, we could not immediately satisfy the requirements of PVB. Transfer our deposits to DBP PHC instead.[15]

On October 22, 2002, Amores, LCP's Deputy Director for Hospital Support Services, filed a complaint before the Ombudsman, alleging that Melendres, Cano, and Rojas, along with certain PVB officers, conspired to misappropriate the funds that were realigned for the hospital's rehabilitation. He also averred that they engaged in a scheme to conceal the anomaly, as the invested amount was not disclosed on the hospital's balance sheet. In addition, pointing to the OGCC's legal opinion, Amores maintained that the IMA was grossly disadvantageous to the government. This notwithstanding, he continued, Melendres, Cano, and Rojas repeatedly requested the roll-over of the realigned funds.[16]

The Ombudsman's Ruling

On April 30, 2007, the Ombudsman rendered a Decision[17] absolving the PVB officers, but finding Melendres, Cano, and Rojas guilty of grave misconduct, and accordingly ordering their dismissal from the service. The decision relevantly reads:

> Respondents Cano, Rojas and Melendres, however, cannot feign innocence. It was clear from the correspondence of the respondents with PVB officials that they intended to enter into an IMA. They jointly signed the orders to "roll-over" the funds deposited with PVB. This would not have been necessary if the funds were simply deposited in savings or current account in the name of LCP.

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[15] *Id.*

[16] *Id.* at 142-143.

[17] *Id.* at 139-152.

Respondents Cano, Rojas and Melendres cannot also say that the Board Resolution allegedly issued by the LCP board on January 20, 2002 authorized them to invest the funds of [LCP] since the deposit of the funds with PVB was made prior to said date.[18]

The Ombudsman therefore disposed of the case, *viz.*:

WHEREFORE, respondents Chona Victoria Reyes-Guray and Ma. Milagros Campomaes-Yuhico are ABSOLVED of the administrative charge of Grave Misconduct. The instant complaint against them is hereby DISMISSED, with the admonition that they should be more circumspect in their actions as bank personnel to avoid the appearance of impropriety in their business dealings.

Respondents FERNANDO A. MELENDRES, ALBILIO C. CANO and ANGELINE A. ROJAS are hereby found GUILTY of GRAVE MISCONDUCT and are hereby meted the penalty of DISMISSAL FROM THE SERVICE with all its accessory penalties, pursuant to Section 52, Rule IV, Uniform Rules on Administrative Cases (CSC Resolution No. 991936), dated August 31, 1999.

The Honorable Francisco Duque, Secretary of the Department of Health, is hereby directed to implement this decision in accordance with law and rules, and to forthwith inform this Office of the action taken.

SO RESOLVED.[19] (Emphasis in the original)

Aggrieved, Melendres, Cano, and Rojas filed separate appeals before the CA.

The CA's Ruling

On March 26, 2013, the CA promulgated the herein assailed decision, reversing the Ombudsman's ruling, and dismissing Amores's complaint for lack of merit. The appellate court found that Melendres, Cano, and Rojas were not motivated by ill will in depositing the realigned funds with the PVB. Absent a showing of bad faith on their part, it was ruled that Amores failed to prove deliberate intent to misappropriate said funds.[20] Further,

[18] *Id.* at 150.

[19] *Id.* at 150-151.

[20] *Id.* at 20.

the CA held that the act of entering into the IMA was sanctioned by an LCP board resolution that authorized the investment of the hospital's unutilized funds with the PVB.[21] Lastly, anent the claim that the scheme was not disclosed on the hospital's balance sheet, the CA noted that the amount invested was listed under the sub-heading "Other Assets Miscellaneous & Deferred Charges," found on the second page of said balance sheet.[22] The *fallo* of the appellate court's decision reads:

> **WHEREFORE,** premises considered, the Decision dated April 30, 2007 and the Order dated 24 August 2009 of Respondent Ombudsman are hereby **REVERSED** and **SET ASIDE.** The Complaint filed by complainant Jose Pepito Amores is hereby **DISMISSED** for want of merit.
>
> **SO ORDERED.**[23]

Dissatisfied with the foregoing disquisition, Amores challenged via a Rule 45 petition the CA's decision insofar as Cano and Rojas were absolved, while the Ombudsman chose to assail only Rojas's exoneration.

Hence, these consolidated petitions.

According to Amores and the Ombudsman, Cano and Rojas should be held liable for grave misconduct. First, it was pointed out that SARO No. BMB-B-00-0192 sanctioned neither the investment of the LCP's funds nor the roll over thereof. All that was authorized was the realignment of ₱73,258,377.00 from the DOH's "Maintenance and Other Operating Expenses savings" to its "Building and Structures Outlay."[24] Second, Amores and the Ombudsman maintain that the CA erred in relying on the LCP board resolution that allegedly allowed the hospital to enter into an IMA. Contrary to the appellate court's findings, they argue that said resolution clearly stated that the realigned funds should only be invested in treasury bills or

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

[22] *Id*. at 25-26.

[23] *Id*. at 28.

[24] *Id*. at 49.

deposited with authorized government banks, not placed in an IMA.[25] Third, Amores and the Ombudsman submit that bad faith on the part of Cano and Rojas is evident since the IMA was entered into before receipt of the OGCC's opinion on the matter. Moreover, the fact that the funds were rolled over each time the IMA expired further shows ill motive, as this was done in blatant disregard of the OGCC's advice.[26] Lastly, Amores claims that Rojas attempted to conceal the investment by making it appear on LCP's balance sheet that the hospital only had ₱7,800.00 in investments during the period pertinent to this case.[27] For these reasons, Amores and the Ombudsman argue that the CA's decision should be revisited.

The Issue

Whether or not the CA erred in dismissing the charges against Cano and Rojas[28]

The Court's Ruling

The petition is partly meritorious.

Since the Court is not ordinarily a trier of facts,[29] it must accept as binding the factual findings of the lower tribunal that was afforded a prior opportunity to adjudicate the case under review. In administrative cases initially brought before the Ombudsman, the findings of fact of that agency are usually afforded great weight and respect, and, when supported by substantial evidence, are accepted as conclusive by the courts.[30] It is relevant to state that substantial evidence is more than a mere scintilla. Where the complaint charges grave misconduct, "[t]he standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for

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[25] *Id*.

[26] *Id*.

[27] *Id*. at 50.

[28] *Id*. at 46.

[29] *Carbonell v. Carbonell-Mendes*, 762 Phil. 529, 536 (2015).

[30] *Miro v. Vda. de Erederos, et al*., 721 Phil. 772, 784 (2013).

the misconduct complained of, even if such evidence might not be overwhelming or even preponderant."[31]

Jurisprudence, however, abounds with exceptions to the rule that the Court is not a trier of facts. These were enumerated in *De Castro v. Field Investigation Office*,[32] *viz.*:

> (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the [CA] went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the [CA] manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[33] (Citation omitted)

In this case, since the Ombudsman and CA differed as to their appreciation of the agreement between LCP and PVB, a review of the facts is in order. For its part, the Ombudsman found that the hospital and the bank entered into an IMA, or that they at least intended to,[34] while the CA ruled that the realigned funds were simply placed in a "special savings deposit account."[35] There is a need to determine the nature of the arrangement between LCP and PVB because of a Board Resolution dated January 30, 2002, enacted by the hospital's

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[31] *The Office of the Ombudsman v. P/Supt. Brillantes, et al.,* 796 Phil. 162, 173 (2016).

[32] 810 Phil. 31 (2017).

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

[34] *Rollo* (G.R. No. 209274), p. 61.

[35] *Id*. at 41.

Board of Trustees, sanctioning the deposit of savings and other funds with certain government banks, *viz.*:

> NOW, THEREFORE, RESOLVED, that pending utilization, the savings and other funds of LCP be invested in treasury bills or deposited with the LBP, DBP, PNB or PVB, whichever of the aforementioned banks shall offer the highest yield or interest income for LCP[.][36]

After a meticulous scrutiny of the record, the Court finds that the realigned funds were not deposited in accordance with the terms of the above-quoted board resolution. As aptly observed by the Ombudsman,[37] the various correspondences between the LCP officials and PVB representatives disclose that the hospital's funds were never placed in a regular savings or current account. In fact, Melendres and Cano, in the very first letter they sent to the bank, already gave instructions to deposit the funds in an IMA. In response, PVB spelled out the particulars of the investment, such as its term and interest rate. Verily, it is undisputed that LCP's investment earned the interest so stipulated. Further, Rojas, on multiple occasions, requested the roll-over of the realigned funds each time the purported agreement between the hospital and the bank expired. These findings are inconsistent with the conclusion that the funds were simply deposited with PVB. Certainly, there would be no need to ask for roll-overs or to fix a term for the investment if the hospital deposited its funds in a regular savings account, as authorized by the January 30, 2002 Board Resolution. Thus, regardless of whether LCP and PVB entered into an IMA or "special savings deposit account," it cannot be said that the same was sanctioned by the hospital's Board of Trustees.

Hence, the Court must now resolve whether Cano and Rojas may be held administratively liable based on the following established facts:

1. LCP, through Melendres and Cano, placed ₱73,258,377.00 in PVB despite SARO No. BMB-B-00-0192 stating that the amount was to be transferred

[36] *Id*. at 38.

[37] *Id*. at 61.

from the DOH's savings under its "Maintenance and Other Operating Expenses" to its "Building and Structures Outlay";

2. The realigned funds were rolled over several times, pursuant to requests signed by Rojas, noted by Cano, and approved by Melendres; and

3. The January 30, 2002 Board Resolution of the LCP's Board of Trustees did not sanction the placement of the hospital's funds in an IMA or in a "special savings deposit account."

Misconduct has generally been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[38] It is an offense performed in connection with official duties and implies deliberate or intentional wrongdoing.[39] As an administrative offense, it may be classified as either simple or grave.[40] For an act to constitute grave misconduct and carry with it the penalty of dismissal from the service, the elements of corruption, flagrant disregard of an established rule, or willful intent to violate the law must be proved by substantial evidence.[41] Otherwise, if none of these elements are present, the act amounts only to simple misconduct.[42]

At this juncture, it is apropos to state that corruption, as an element of grave misconduct, exists when a public official or employee unlawfully or wrongfully uses his or her position to serve personal interests.[43] On the other hand, there is flagrant disregard of an established rule or, analogously, willful intent

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[38] *Office of the Ombudsman-Visayas, et al. v. Castro*, 759 Phil. 68, 78 (2015).

[39] *Office of the Ombudsman, et al. v. PS/Supt. Espina*, 807 Phil. 529, 541 (2017).

[40] *Id*.

[41] *De Guzman v. Office of the Ombudsman*, 846 SCRA 531, 553 (2017).

[42] *Supra* note 39.

[43] *Fajardo v. Corral*, 813 Phil. 149, 158 (2017).

to violate the law when the public official or employee concerned, through culpable acts or omission, clearly manifests a pernicious tendency to ignore the law or rules.[44]

The elements of grave misconduct do not obtain in this case.

First, nothing on the record tends to show that LCP's placement and roll-over of the realigned funds was tainted with any sort of corrupt motive.

For one, it was neither alleged nor proved that Melendres and Cano were moved by a desire to further their own personal interests in placing the realigned funds in PVB. The same can be said of Rojas as regards the several roll over requests she signed. To be sure, the record is bereft of any indication that Cano and Rojas intended to benefit, or that they actually benefited, from their acts. In fact, it is undeniable that the realigned funds were eventually put to their intended use, which was LCP's rehabilitation. Moreover, as correctly pointed out by the CA,[45] the lack of corrupt intent is buttressed by the fact that the OGCC was consulted. If Melendres, Cano, and Rojas indeed planned to wrongfully use their high-ranking positions in LCP for an iniquitous purpose, they would not have made their intentions known to another government agency.

Further, the claim that Rojas attempted to conceal LCP's investment is belied by the CA's finding[46] that the placement of the realigned funds was reported under the heading "Other Assets, Miscellaneous & Deferred Charges," found on the second page of the hospital's balance sheet.

These settled facts negate any suspicion of corruption on the part of Cano and Rojas.

Second, neither can be said that LCP placed its funds in PVB in flagrant disregard of an established rule or with willful intent to violate the law.

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[44] *Field Investigation Office of the Office of the Ombudsman v. Castillo*, 794 Phil. 53, 62-63 (2016).

[45] *Rollo* (G.R. Nos. 209296-97), p. 82.

[46] *Id*. at 83.

To be sure, neither SARO No. BMB-B-00-0192 nor the January 30, 2002 Board Resolution sanctioned the placement of ₱73,258,377.00 in an IMA or a "special savings deposit account." The purpose of the SARO was to realign said amount from the DOH's "Maintenance and Other Operating Expenses" to its "Building and Structures Outlay,"[47] while the resolution authorized the investment of LCP's funds in treasury bills or the deposit thereof in authorized government banks.[48]

However, the SARO and board resolution are not law or rules, as contemplated by the elements of grave misconduct. A SARO has been defined as "[a] specific authority issued to identified agencies to incur obligations not exceeding a given amount during a specified period for the purpose indicated."[49] It is an issuance approved by the DBM that evinces the existence of an obligation.[50] On the other hand, a board resolution is the means through which a corporation delegates its "corporate powers or functions to a representative, subject to limitations under the law and the corporation's articles of incorporation."[51] Hence, despite there being no mention of an IMA or "special savings deposit account" in the SARO and board resolution, the Court, pursuant to the foregoing definitions, cannot conclude that Cano and Rojas acted in flagrant disregard of established rules or with willful intent to violate the law.

Thus, Cano and Rojas cannot be held liable for grave misconduct.

Nevertheless, viewing the totality of the circumstances surrounding the investment of LCP's funds, the Court cannot completely absolve Cano and Rojas.

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[47] *Id.* at 181.

[48] *Id.* at 252.

[49] *Belgica, et al. v Hon. Exec. Sec. Ochoa, Jr., et al.,* 721 Phil. 416, 577-578 (2013).

[50] *Id.* at 578.

[51] *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas, et al.*, 776 Phil. 401, 441 (2016).

There is no doubt that Melendres, Cano, and Rojas handled LCP's funds in a manner that was not authorized by the hospital's Board of Trustees. They were unable to present: (1) a specific authority allowing them to place the amount of ₱73,258,377.00 in either an IMA or a "special savings deposit account;" or (2) anything that sanctioned the roll-over of that amount in case the funds were placed in a limited-term investment. Moreover, there is no indication on record of any agreement setting forth the details of PVB's treatment of realigned funds, or the distribution of profits between the hospital and the bank. These, taken together, show that LCP's funds were handled with negligence, contrary to the standard expected of public officers. It is worth reiterating that public officers must exercise ordinary care and prudence when dealing with public funds.[52] "Public funds, after all, are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste."[53]

Further, Cano and Rojas cannot escape liability on the ground that they were simply acting pursuant to the orders of their superior, Melendres. At the relevant time, Cano and Rojas occupied positions that were not merely clerical, but required the use of discretion and independent judgment. The record reveals that they, along with Melendres, worked side by side to bring about the placement of LCP's funds in PVB. Surely, Cano and Rojas cannot just shift the blame to their superior. As Administrative and Ancillary Department Manager and Chief of Finance Services, respectively, they were charged with ensuring that LCP's funds were dealt with in a lawful manner, and pursuant to the orders of the hospital's Board of Trustees. It cannot be gainsaid that Cano and Rojas, because of their positions, shared a responsibility with Melendres to see to it that they possessed the proper authority to invest the realigned funds.

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[52] *Josie Castillo-Co v. Sandiganbayan, (Second Division) and People of the Philippines,* G.R. No. 184766, August 15, 2018.

[53] *Id.*

Taking the foregoing into consideration, Cano and Rojas are liable for simple misconduct. The unsettlingly negligent manner with which LCP's funds were handled, coupled with the failure to establish the elements that qualify the offense as grave, support this conclusion.

Since simple misconduct is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and because no aggravating or mitigating circumstances apply to Cano or Rojas, a three (3)-month suspension without pay is the appropriate penalty in this case.[54] This is consistent with the Court's ruling in G.R. No. 194346,[55] where Melendres was also held liable for simple misconduct, and was meted out with the same penalty for his involvement in the act complained of herein.

WHEREFORE, the March 26, 2013 Decision and September 25, 2013 Resolution of the Court of Appeals in CA-G.R. SP Nos. 113649 and 114495 are **REVERSED** and **SET ASIDE**. Respondents Angeline A. Rojas and Albilio C. Cano are hereby found **GUILTY** of simple misconduct and thus **SUSPENDED** from the service for three (3) months without pay. In case the penalty of suspension can no longer be meted out, they shall be **FINED** with an amount equivalent to three (3) months of their latest respective salaries.

SO ORDERED.

Bersamin,[*] *C.J., Leonen* (*Acting Chairperson*), *Hernando,* and *Inting, JJ.,* concur.

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[54] *Seville v. Commission on Audit*, 699 Phil. 27, 33 (2012).

[55] *Fernando A. Melendres v. Ombudsman Ma. Merceditas N. Gutierrez and Jose Pepito M. Amores, M.D.,* G.R. No. 194346, June 18, 2018.

[*] Designated additional Member, per raffle dated September 27, 2017.

FIRST DIVISION

[G.R. No. 211044. July 24, 2019]

JACQUES A. DUPASQUIER and CARLOS S. RUFINO for themselves and on behalf of THE NET GROUP, composed of 19-1 REALTY CORPORATION, 18-2 PROPERTY HOLDINGS, INC., 6-3 PROPERTY HOLDINGS INC., ADD LAND, INC., REMEDIOS A. DUPASQUIER, PIERRE DUPASQUIER, ANNA MARIE MORRONGIELLO, DELRUF REALTY & DEVELOPMENT, INC., VAR BUILDINGS, INC., MARILEX REALTY, ARESAR REALTY, SUNVAR, INC., MACARIO S. RUFINO, REMIGIO TAN, JR., MA. AUXILIO R. PRIETO, MA. PAZ R. TANJANCO, RAMON D. RUFINO, PAOLO R. PRIETO, VICENTE L. RUFINO, THERESA P. VALDES, ALEXANDRA P. ROMUALDEZ, TERESA R. TAN, JAVIER VICENTE RUFINO, CARLO D. RUFINO, LUIS CARLO R. LAUREL, MA. ASUNCION L. UICHICO, MA. PAZ FARAH L. IMPERIAL, MA. ISABEL L. BARANDIARAN, ALFREDO PARUNGAO, and ALOYSIUS B. COLAYCO, *petitioners, vs.* **ASCENDAS (PHILIPPINES) CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; INTERPRETATION OF; LITERAL MEANING OF THE STIPULATIONS SHALL PREVAIL IF THERE IS NO DOUBT AS TO THE INTENTION OF THE CONTRACTING PARTIES.— Article 1370 of the Civil Code on the interpretation of contracts mandates that the literal meaning of the stipulations shall prevail if the contract's terms are clear and leave no doubt as to the intention of the contracting parties. If, however, the words of the contract are contrary to the evident intention of the parties, the intention of the parties shall be controlling. x x x [I]n interpreting a contract, the primary function of the court is to determine whether its wordings are

clear and unambiguous. If so, the court is bound to apply the literal meaning of the contract because the manifest intention of the parties is apparent. If the wordings, however, are ambiguous and may lead to different interpretations, the court should determine the actual intention of the contracting parties.

2. **ID.; ID.; ID.; ID.; THE MANIFEST INTENTION OF THE CONTRACTING PARTIES IN RELATION TO THE SUBJECT MEMORANDUM OF UNDERSTANDING (MOU) SHALL HAVE THE EFFECT OF MAKING ALL ITS PROVISIONS, EXCEPT CLAUSE 14(E) ON CONFIDENTIALITY, INEFFECTUAL.—** It must be remembered that arbitration is a matter of contract and the parties cannot be obliged to submit any dispute to arbitration, in the absence of their consent to submit thereto. The parties may lay their rights and liabilities in relation to the parties' resort to arbitration in the contract. As any other agreements, the parties have freedom to establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order and public policy. The parties may, therefore, agree as to the submission of the disputes to arbitration, the forum of arbitration, the subject of arbitration and the termination of their arbitration agreement. x x x Using the guidelines for interpreting a contract, the literal meaning of Clause 14(e) of the MOU is that the lapse of the MOU shall have an effect of making all its provisions, except Clause 14(e) on Confidentiality, ineffectual. The MOU itself provides that its "Closing Date" shall be two calendar weeks after the signing of the MOA, but not later than March 31, 2007. Since no MOA was signed by the parties, the MOU lapsed on March 31, 2007 by operation of the provisions of the MOU. Reading Clause 14(e) in relation to the MOU's definition of "Closing Date", the MOU's provisions, including the Arbitration Clause, shall be of no effect as of March 31, 2007. This is the manifest intent of the contracting parties.

3. **ID.; ID.; ID.; ID.; ID.; SINCE THE ARBITRATION CLAUSE IS NOT ONE MENTIONED AS AN ITEM TO SURVIVE UPON THE TERMINATION OR LAPSE OF THE MOU, THE ONLY CONCLUSION IS THAT SAID PROVISION HAS BEEN DELIBERATELY INCLUDED TO BE TIME-LIMITED; THIS RULING SHOULD NOT BE UNDERSTOOD AS ABANDONING THE DOCTRINE OF**

SEPARABILITY, BUT MERELY GIVING WAY TO THE MANIFEST INTENTION OF THE PARTIES.— The language used in the subject service agreement of *Radiation Oncology* is somehow identical with the MOU of the present case. In both cases, the parties incorporated a time-limit to the agreement which gave rise to the eventual ineffectivity of the contract and its provision. In no uncertain way that this time-limit refers to the non-signing of extension or substitute contract before the expiration of a date certain. It is thus wise to rule that the parties intended that the happening of the date certain would give no effect to all parts of the MOU, including the Arbitration Clause. This ruling, however, should not be understood as abandoning the doctrine of separability, but merely giving way to the manifest intention of the contracting parties. Moreover, the parties agreed to exempt the Confidentiality Clause in the effects of the Closing Date is an indication of their intent. To our mind, this exception bolsters the manifest intent of the parties to terminate the Arbitration Clause. The parties expressly specified the provision of the contract that is not time-limited. Since the Arbitration Clause is not one mentioned as an item to survive upon the termination or lapse of the MOU, the only conclusion is that said provision has been deliberately included to be time-limited. There is more reason for us to conclude that the parties manifested that the Arbitration Clause should cease to effect simply because they incorporated a phrase which would not be affected by the lapse of the period. If the parties intended the Arbitration Clause to survive, there is no reason why they would not have so stated it expressly.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; DEFINED; REQUISITES.— Declaratory relief is defined as an action by a person interested under a deed, will, contract, or other written instrument whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question or construction or validity arising, and for a declaration of his rights or duties, thereunder. The requisites of an action for declaratory relief are: (i) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (ii) the terms of said documents

and the validity thereof are doubtful and require judicial construction; (iii) there must have been no breach or the "ripening seeds" of one between persons whose interests are adverse; (iv) there must be an actual controversy or the "ripening seeds" of one between persons whose interests are adverse; (v) the issue must be ripe for judicial determination; and (vi) adequate relief is not available through other means or other forms of action or proceeding.

5. **ID.; ID.; ID.; THE REGIONAL TRIAL COURT (RTC) HAS JURISDICTION TO HEAR PETITIONS FOR DECLARATORY RELIEF; THE ALLEGATIONS IN THE PETITION SUBJECT OF THIS CASE PROPERLY FALL WITHIN THE RTC'S JURISDICTION.—** Rule 63 vests with the RTC the jurisdiction to hear petitions for declaratory relief. The question now for our determination is whether the allegations in the initiatory pleading and the character of the reliefs prayed for contemplate an action for declaratory relief. It also requires us to resolve whether the initiatory pleading connotes a breach of contract which removed the subject matter from the jurisdiction of the RTC over declaratory relief. It is imperative, therefore, to examine the pertinent allegations in the petition[.] x x x It is apparent in the petition that The Net Group is merely seeking for the interpretation of the MOU on two counts: (i) the applicability of the Arbitration Clause *vis-a-vis* the Effectivity Clause; and (ii) the nature of the Due Diligence L/C - whether The Net Group may automatically appropriate it under the tenor of the MOU. There is nothing in the petition which connotes breach of contract. In so far as the wordings of the petition are concerned, its allegations properly fall within the RTC's jurisdiction over a petition for declaratory relief.

6. **ID.; ID.; ID.; INTERPRETATION OF CLAUSE 5 IN RELATION TO CLAUSE 4 OF THE SUBJECT MOU REVEALED THAT THE PURPOSE OF THE DUE DILIGENCE (L/C) IS TO SERVE AS A REMUNERATION TO PETITIONERS FOR THE EXPENSES IT INCURRED WHEN IT OPENED ITS BUSINESS TO RESPONDENT'S AUDIT SHOULD THE LATTER OPT OUT BY NOT SIGNING THE MEMORANDUM OF AGREEMENT (MOA).—** A reading of Clause 5 the MOU allows two interpretations: (i) The Net Group will only be entitled to draw on the Due Diligence L/C should Ascendas fail or refuse to

sign the MOA without any justifiable reason: in which case the Due Diligence L/C serves as a penalty for Ascendas' breach; and (ii) Ascendas has the option not to sign the MOA, regardless of its reasons, provided that The Net Group will be allowed to draw on the Due Diligence L/C, in which case Ascendas is not in breach but is merely exercising its option to perform another prestation by paying the Due Diligence L/C instead of proceeding with the execution of the MOA. If Clause 5 will be read together with Clause 4 and the Transaction Timeline, the actual intention of the parties will be revealed. Clause 4 of the MOU states the purpose for which the Due Diligence L/C: this serves as remuneration for The Net Group for allowing Ascendas to audit its business records. x x x The Due Diligence L/C under Section 5(a) serves as an "exit" clause which allows the parties to terminate the deal. In mergers and acquisitions, this concept is commonly referred to as break-up or walk-away fees, if it is the seller who terminated the deal, or reverse break-up fees, if it is the buyer who failed to proceed with the agreement. The clause on break-up fees allows the buyer to recoup some of its expenses if the seller walks away or terminates the deal because of change in circumstances or the desire to accept a better offer from another buyer. On the other hand, the reciprocal clause, or the clause on reverse break-up fees, protects the seller by covering the latter's expenses should the buyer walk away or default on a preliminary obligation or condition to closing. To our mind, the RTC's interpretation is thus, more in consonance with the parties' intention as to the real nature of the Due Diligence L/C. It is a remuneration to The Net Group for the expenses it incurred when it opened its business to Ascendas' audit should the latter opt out by not signing the MOA.

7. ID.; CIVIL PROCEDURE; SUMMARY JUDGMENT, PROPER IN CASE AT BAR.— [W]e agree with the RTC that the conflict between the parties may be addressed in a summary judgment pursuant to Rule 35 of the Rules of Court[.] x x x Under this provision, a summary judgment may be used to expedite the proceedings and to avoid useless delays, when the pleadings, depositions, affidavits or admissions on file show that there exists no genuine question or issue of fact in the case, and the moving party is entitled to a judgment as a matter of law. Here, the parties merely presented issues as to the interpretation of the MOU. There was therefore no genuine question or issue of fact that must be resolved using the

presentation of evidence. At most, the Court may rule on the interpretation of the contract by simply reviewing its terms.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioners.
Jimenez Bello Valdez Caluya & Fernandez (JGLAW) for respondent.

D E C I S I O N

JARDELEZA,[*] *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated April 3, 2012 and Resolution[3] dated January 27, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 90835. The CA set aside the Order[4] dated December 14, 2007 of Branch 59 of the Regional Trial Court (RTC) in Makati City, in Civil Case No. 07-860, which declared, on summary judgment, that petitioners cannot be compelled to arbitrate and petitioners are entitled to the Due Diligence L/C in the amount of US$1,000,000.00.

Petitioners Jacques A. Dupasquier and Carlos S. Rufino, for themselves and on behalf of The Net Group, composed of 19-1 Realty Corporation, 18-2 Property Holdings, Inc., 6-3 Property Holdings, Inc., Add Land, Inc., Remedios A. Dupasquier, Pierre

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[*] Designated as Acting Working Chairperson of the First Division per Special Order No. 2680 dated July 12, 2019.

[1] *Rollo*, pp. 3-44-A.

[2] *Id.* at 87-109. Penned by Associate Justice Rosmari D. Carandang (now a Member of this Court), concurred in by Associate Justices Ricardo R. Rosario and Danton Q. Bueser.

[3] *Id.* at 111-141. Penned by Associate Justice Rosmari D. Carandang, concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion; dissented by Associate Justices Ricardo R. Rosario and Danton Q. Bueser.

[4] *Id.* at 348-356.

Dupasquier, Anna Marie Morrongiello, Delruf Realty & Development, Inc., VAR Buildings, Inc., Marilex Realty, Aresar Realty, Sunvar, Inc., Macario S. Rufino, Remigio Tan, Jr., Ma. Auxilio R. Prieto, Ma. Paz R. Tanjanco, Ramon D. Rufino, Paolo R. Prieto, Vicente L. Rufino, Theresa P. Valdes, Alexandra P. Romualdez, Teresa R. Tan, Javier Vicente Rufino, Carlo D. Rufino, Luis Carlo R. Laurel, Ma. Asuncion L. Uichico, Ma. Paz Farah L. Imperial, Ma. Isabel L. Barandiaran, Alfredo Parungao, and Aloysius B. Colayco (collectively referred to as The Net Group) are corporations and individuals who grouped together to engage in business as developer and operator of Philippine Economic Zone Authority (PEZA)-accredited office buildings.[5]

Ascendas (Philippines) Corporation (Ascendas) is a corporation duly organized and existing under Philippine laws.[6] It is engaged in the real estate industry, providing business space solutions in Singapore, Philippines, and other Asian countries.[7]

On January 18, 2007, The Net Group and Ascendas entered into a Memorandum of Understanding (MOU),[8] wherein the parties agreed in principle to Ascendas' acquisition of the entire issued and outstanding shares of stock of the Net Corporations. The parties agreed that the details of the contractual framework of their transaction will be contained in the Definitive Agreements to be executed by the parties subsequent to the signing of the MOU.[9] The parties stipulated that the Closing Date of the MOU shall be defined as "two calendar weeks after the signing of the Memorandum of Agreement (MOA) but not later than March 31, 2017."[10] The MOA is defined as the

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[5] *Id.* at 3, 88.

[6] *Id.* at 170.

[7] *Id.* at 88.

[8] *Id.* at 170-202.

[9] *Id.* at 170, 173.

[10] *Id.* at 172.

Memorandum of Agreement to be signed by the parties on or before March 15, 2007, or such other date as may be subsequently agreed upon by the parties in writing, and which, when signed, will supersede the MOU.[11]

By way of security for full compliance with the provisions of the MOU, the parties stipulated in Clause 5 that:

a. Within five (5) business days upon signing of this MOU, Ascendas shall deliver to The Net Group the Due Diligence L/C in the amount of US$1,000,000.00, in the form acceptable to The Net Group, to be issued by a reputable bank duly licensed to conduct business within the Philippines and acceptable to The Net Group.

   i. If Ascendas fails or refuses to sign the MOA without any justifiable reason, including but not limited to an instance when: (1) it is given a Due Diligence report showing no Relevant Findings; or (2) in case there are Relevant Findings in the Due Diligence report and The Net Group issues a certification that it shall cure and/or remedy all such Relevant Findings in accordance with Clause 4(b) and/or as agreed upon by the Parties, then The Net Group shall be authorized to draw upon the Due Diligence L/C upon signing of the MOA or on March 31, 2007, whichever comes earlier: provided, however, that The Net Group submits a certification to the issuing bank that it is willing to execute the MOA upon submission by Ascendas to The Net Group of the Transaction Price L/C, without need of presenting or submitting a copy of the MOA to the said issuing bank. The amount so drawn by The Net Group shall serve as liquidated damages in its favor.

   ii. If The Net Group fails or refuses to execute the MOA by March 31, 2007 without any justifiable reason, then The Net Group shall not be authorized to draw down on the Due Diligence L/C and will be considered in breach of this MOU.

   iii. If the MOA is executed by the Parties on or before March 15, 2007, The Net Group shall be authorized to draw upon

[11] *Id.* at 175.

> the Due Diligence L/C on the date of signing of the MOA and the amount so drawn shall form part of the Transaction Price.[12]

The MOU likewise provided an Arbitration clause, as part of Clause 14 entitled "Miscellaneous Provision," which reads:

> i. ***Arbitration.*** In case of any dispute arising out of or in connection with this MOU, the Parties agree to negotiate in good faith within a period of thirty (30) days after written notice by one Party to the other Party of the existence of such dispute, failing which the said dispute shall be referred to and finally resolved by arbitration under the Rules of the United Nations Commission of International Trade Law, which Rules are deemed to be incorporated by reference into this Clause. The arbitration shall be held in Hong Kong. The language to be used in the arbitration shall be English.[13] (Emphasis in the original.)

Likewise in Clause 14 of the MOU, the parties incorporated the effectivity of the MOU in the following manner:

> 1. ***Effectivity.*** This MOU shall take effect upon the signing thereof and shall continue to have force and effect unless earlier terminated pursuant to Clause 11 [Execution of Definitive Agreements] or until this is superseded by the execution of the Definitive Agreements. Upon the termination or lapse of this MOU, the MOU shall cease to have any force and effect except for Clause 14(e) [Confidentiality], which shall survive and remain effective and enforceable.[14]

The parties appended, as Annex "C" of the MOU, a Transaction Timeline, to wit:

	Particulars
Day 1	Signing of MOU
No later than Day 5	Delivery of Due Diligence L/C

[12] *Id.* at 186.

[13] *Id.* at 194-195.

[14] *Id.* at 195.

No later than Day 7	Delivery of Ascendas of list of documents subject of Due Diligence
No later than Day 14	Compilation and preparation of The Net Group of requested documents
Day 1 to Day 42	Due Diligence Period Negotiation on MOA Negotiation on Definitive Agreements
No later than Day 45	Presentation of Due Diligence Findings to The Net Group
No later than Day 52	Discussion on Relevant Findings The Net Group to decide whether to remedy or cure Relevant Findings
Day 52 to 97	The Net Group to effect remedy or cure to (*sic*) Relevant Findings
Within Day 45 to March 15, 2007	Signing of MOA and Drawdown on Due Diligence L/C
No later than March 31, 2007	Delivery of Transaction Price L/C Signing of Project Development and Management Agreement Signing of Asset Management Agreement Signing of Property Management Agreement Signing of Executive Marketing Agreement Signing of Lease Contract between The Net Group and Ascendas Signing of Deeds of Absolute Sale of Shares of Stock Net One and/or Net Square]

and	Payment of Full Purchase Price of Net One and Net Square and Initial Payment of Net Cube, Net Quad Net Five, if applicable Drawdown on Due Diligence L/C (in case no MOA is signed)
After March 15, 2007 / March 31, 2007	Payment of Balance Payments[15]

In accordance with the MOU and the Transaction Timeline, Ascendas delivered to The Net Group an irrevocable Letter of Credit (L/C) in the amount of US$1,000,000.00 or the Due Diligence L/C specified in the MOU.[16] Thereafter, Ascendas began its due diligence investigation on The Net Group.[17]

During the first quarter of 2007, Ascendas' Mr. Edwin Kung Wee Tack (Mr. Tack) sent an electronic mail to The Net Group's Vice-President, Mr. Raymond Rufino (Mr. Rufino), stating that Ascendas could not execute the MOA by the Closing Date because the projected completion date of the due diligence is after March 31, 2007. Mr. Rufino replied that the request for extension is unwarranted because the remaining items are minor and can be resolved quickly. He, instead, offered to meet with Ascendas' representatives in order to address the outstanding issues so the original timetable could be observed.[18]

By March 31, 2007, the parties were not able to execute a MOA and Definitive Agreements. They did not agree in writing to an extension of the Closing Date or a revision of the Timetable.[19]

The Net Group informed Ascendas that they deemed the MOU as lapsed as of April 1, 2007. The Net Group, however,

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

[16] *Id.* at 10.

[17] *Id.*

[18] *Id.*

[19] *Rollo*, pp. 10-11.

manifested their willingness to continue negotiations with Ascendas on purely voluntary and non-exclusive basis.[20]

In its letters dated June 11, 2007,[21] July 26, 2007[22] and August 28, 2007,[23] Ascendas informed The Net Group of its position that the MOU did not expire. Ascendas also attributed the delay in the execution of the MOA to The Net Group. According to Ascendas, The Net Group committed lapses in providing the information and documentation necessary to complete its due diligence audit, and it failed to provide Ascendas with a credible party nominated for representations and warranties on behalf of the Dupasquier family.

On September 14, 2007, Ascendas wrote another letter to The Net Group specifying that the parties have until September 28, 2007 to resolve the disputes between them, otherwise, Ascendas will refer the dispute to arbitration.[24]

On September 18, 2007, The Net Group filed a petition[25] for declaratory relief with an application for preliminary injunction/temporary restraining order (TRO) before the RTC in Makati City. This was docketed as Civil Case No. 07-860. In its petition, The Net Group alleged that Ascendas' demand to arbitrate is baseless. According to its interpretation of the MOU, the Arbitration Clause would not survive the lapse of the MOU on March 31, 2007 because the parties agreed that only the confidentiality clause will survive the termination or lapse of the MOU. Hence, The Net Group pleaded for a judicial declaration that the arbitration agreement contained in the MOU be declared ineffective and that Ascendas can no longer compel The Net Group to submit to arbitration pursuant to the relevant

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[20] *Id.* at 11.

[21] *Id.* at 222-223.

[22] *Id.* at 224-225.

[23] *Id.* at 226.

[24] *Id.* at 12.

[25] *Id.* at 227-242.

clause.[26] In addition, The Net Group sought for a judicial declaration that it is already entitled to the Due Diligence L/C on the basis of the MOU.[27] The case was raffled to Branch 59 of the RTC in Makati City.[28]

On September 25, 2007, the RTC granted The Net Group's prayer for the issuance of a TRO.[29]

Ascendas filed an urgent omnibus motion to: (a) defer further proceedings, including the hearing of petitioners' application for the issuance of a writ of preliminary injunction pending the resolution of the omnibus motion; (b) dismiss the petition; and (c) reconsider the issuance of the TRO.[30] The RTC denied the omnibus motion and set the hearing for the application of preliminary injunction on October 9 and 10, 2007. Ascendas filed a petition for *certiorari* before the CA, but the CA upheld the RTC's Orders.[31]

On October 17, 2007, Ascendas filed its answer *ex abudanti ad cautelam* with compulsory counterclaim.[32] Ascendas claimed that the petition failed to state a cause of action because petitioners' prayer that they be entitled to the cash equivalent of the Due Diligence L/C requires a determination of whether a breach of the MOU was committed is improper in a petition for declaratory relief. Also, it vehemently argued that the MOU had not lapsed and assuming it had lapsed, the Arbitration Clause therein survived and thus, the condition precedent, which is the referral to arbitration, for filing the claim was not complied with.[33]

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[26] *Id.* at 235-236.

[27] *Id.* at 237.

[28] *Id.* at 12.

[29] *Id.* at 323-325.

[30] *Id.* at 12.

[31] *Id.* at 13.

[32] *Id.* at 357-368.

[33] *Id.* at 364-365.

The Net Group filed a motion for summary judgment[34] with the RTC alleging that Ascendas' defenses were purely legal in nature.

On December 14, 2007, the RTC promulgated its Decision[35] granting The Net Group's motion for summary judgment, the *fallo* reads:

> **WHEREFORE**, premises considered, summary judgment is hereby rendered in favor of the petitioners and against the respondent in the following manner:
>
> a) Declaring that respondent cannot compel petitioners to proceed to arbitration on the basis of said arbitration clause;
>
> b) Declaring that petitioners are entitled to the Due Diligence L/C in the amount of US1,000,000.00;
>
> c) Denying respondent's compulsory counter claim, prayer for attorney's fees and litigation expenses for lack of merit; and
>
> d) Making the injunction permanent.
>
> **SO ORDERED.**[36]

Ascendas then filed a notice of appeal.

In the assailed Decision[37] dated April 3, 2012, the CA unanimously set aside the RTC's Order dated December 14, 2007. It ruled that considering the separability doctrine wherein the Arbitration Clause remains operative despite the termination of the contract, the RTC cannot exercise jurisdiction over the dispute because the parties should have referred the matter to arbitration. It likewise ruled that The Net Group's prayer to be declared entitled to liquidated damages in their petition should have forewarned the RTC that there has been a breach of the MOU, in which case, a petition for declaratory relief is a procedural mistake.

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[34] *Id.* at 387-411.

[35] *Supra* note 4.

[36] *Id.* at 355-356.

[37] *Supra* note 2.

Acting on The Net Group's motion for reconsideration, the members of the CA split their votes: three in favor of the denial of the motion for reconsideration and two dissenting.[38]

Hence, this petition wherein The Net Group poses the following arguments:

THE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS ERROR IN THE ASSAILED DECISION AND RESOLUTION CONSIDERING THAT:

I. THE EXPIRATION OF THE MOU ALSO TERMINATED THE EFFECTIVITY OF THE SUBJECT ARBITRATION CLAUSE;

II. THE PETITION FOR DECLARATORY RELIEF IN CIVIL CASE NO. 07-860 IS PROPER AS THERE WAS NO BREACH OF THE MOU WHICH WAS THE SUBJECT THEREOF; AND

III. THE SUMMARY JUDGMENT IN THE CIVIL CASE NO. 07-860 IS PROPER CONSIDERING THAT THERE WAS NO GENUINE ISSUE OF FACT BEFORE THE RTC.[39] (Emphasis in the original.)

We grant the petition.

I.

The Net Group argues that the Arbitration Clause was time-limited, there being no express reservation as to its continued applicability. It claims that the parties agreed to an express termination date of the MOU including all the provisions thereof, except the Confidentiality Clause 14(e). It alleges that such an agreement is not prohibited by law and the courts are not free to substitute their own discretion.

Ascendas, on the other hand, claims that the CA correctly found that the parties did not intend that the Arbitration Clause would end together with the MOU. Rather, the parties intended to submit to arbitration any dispute arising out of or in connection

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[38] *Supra* note 3.

[39] *Rollo*, pp. 16-17.

with the MOU. It states that the MOU's wordings are broad enough as to cover the issue of whether the MOU had lapsed since it involves the interpretation and application of the provisions of the contract.

Article 1370 of the Civil Code on the interpretation of contracts mandates that the literal meaning of the stipulations shall prevail if the contract's terms are clear and leave no doubt as to the intention of the contracting parties. If, however, the words of the contract are contrary to the evident intention of the parties, the intention of the parties shall be controlling. Thus:

> Art. 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.
>
> If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

The foregoing rule was thoroughly discussed in *Abad v. Goldloop Properties, Inc.*:[40]

> The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: "*[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control"*. This provision is akin to the **"plain meaning rule" applied by Pennsylvania courts, which assumes that the intent of the parties to an instrument is "embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement."** It also resembles the "four corners" rule, a principle which allows courts in some cases to search beneath the semantic surface for clues to meaning. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the

[40] G.R. No. 168108, April 13, 2007, 521 SCRA 131.

contract as a matter of law. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.[41] (Emphasis supplied; italics in the original; citations omitted.)

Thus, in interpreting a contract, the primary function of the court is to determine whether its wordings are clear and unambiguous. If so, the court is bound to apply the literal meaning of the contract because the manifest intention of the parties is apparent. If the wordings, however, are ambiguous and may lead to different interpretations, the court should determine the actual intention of the contracting parties.

In the present case, while there is no doubt that the parties intended that disputes be referred to arbitration, the parties, nonetheless, are in conflict as to whether the Arbitration Clause is time-limited.

A.

It must be remembered that arbitration is a matter of contract and the parties cannot be obliged to submit any dispute to arbitration, in the absence of their consent to submit thereto.[42] The parties may lay their rights and liabilities in relation to the parties' resort to arbitration in the contract. As any other agreements, the parties have freedom to establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order and public policy.[43] The parties may, therefore, agree as to the submission of the disputes to arbitration, the forum of arbitration, the subject of arbitration and the termination of their arbitration agreement.

It is thus proper that a review of the following provisions of Clause 14 of the MOU be conducted to determine the intention of the parties:

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[41] *Id.* at 143-144.

[42] See *Gonzales v. Climax Mining Ltd.*, G.R. No. 161957, January 22, 2007, 152 SCRA 148, 167.

[43] CIVIL CODE, Art. 1306.

i. ***Arbitration.*** In case of any dispute arising out of or in connection with this MOU, the Parties agree to negotiate in good faith within a period of thirty (30) days after written notice by one Party to the other Party of the existence of such dispute, failing which the said dispute shall be referred to and finally resolved by arbitration under the Rules of the United Nations Commission of International Trade Law, which Rules are deemed to be incorporated by reference into this Clause. The arbitration shall be held in Hong Kong. The language to be used in the arbitration shall be English.

x x x x x x x x x

1. ***Effectivity.*** This MOU shall take effect upon the signing thereof and shall continue to have force and effect unless earlier terminated pursuant to Clause 11 [Execution of Definitive Agreements] or until this is superseded by the execution of the Definitive Agreements. Upon the termination or lapse of this MOU, this MOU shall cease to have any force and effect except for Clause 14(e) [Confidentiality], which shall survive and remain effective and enforceable.[44] (Emphasis in the original.)

Using the guidelines for interpreting a contract, the literal meaning of Clause 14(e) of the MOU is that the lapse of the MOU shall have an effect of making all its provisions, except Clause 14(e) on Confidentiality, ineffectual. The MOU itself provides that its "Closing Date" shall be two calendar weeks after the signing of the MOA, but not later than March 31, 2007. Since no MOA was signed by the parties, the MOU lapsed on March 31, 2007 by operation of the provisions of the MOU. Reading Clause 14(e) in relation to the MOU's definition of "Closing Date", the MOU's provisions, including the Arbitration Clause, shall be of no effect as of March 31, 2007. This is the manifest intent of the contracting parties.

B.

The complexity arose with Ascendas' application of the doctrine of separability in the interpretation of the entire MOU.

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[44] *Rollo*, pp. 194-195.

The doctrine of separability or severability enunciates that an arbitration agreement is independent of the main contract. It denotes that the invalidity of the main contract does not affect the validity of the arbitration agreement.[45] Ascendas espouses an argument that the Arbitration Clause remained valid despite the lapse of the MOU.

We have to balance the application of this doctrine with the manifest intention of the contracting parties. To our mind, this doctrine is relevant in the absence of the parties' specific stipulation as to the Arbitration Clause's term of effectivity.

Indeed, We have adopted the doctrine of separability and ruled on its application as recognition that arbitration may serve as an effective alternative mode of settling disputes.

In *Gonzales v. Climax Mining Ltd.*, respondent therein argued that the case should not be brought to arbitration since it was claiming that the contract should be rescinded. There, we held that "the validity of the contract containing the agreement to submit to arbitration does not affect the applicability of the arbitration clause itself."[46]

In *Cargill Philippines, Inc. v. San Fernando Regala Trading, Inc.*,[47] we applied our ruling in Gonzales by elaborating that an "arbitration agreement which forms part of the main contract shall not be regarded as invalid or non-existent just because the main contract is invalid or did not come into existence, since the arbitration agreement shall be treated as a separate agreement independent of the main contract."[48]

Lastly, in *Koppel, Inc. v. Makati Rotary Club Foundation, Inc.*[49] we acknowledged therein petitioner's right to invoke the

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[45] *Gonzales v. Climax Mining Ltd., supra* note 42 at 170.

[46] *Id.* at 173.

[47] G.R. No. 175404, January 31, 2011, 641 SCRA 31.

[48] *Id.* at 47.

[49] G.R. No. 198075, September 4, 2013, 105 SCRA 142.

arbitration clause of its lease contract even if it was assailing the validity of that contract.[50]

A review of those cases, however, reveals that one of the respective parties therein, impugned the validity of the contract or unilaterally invoked the non-existence of the "container contract" or the contract containing the arbitration clause. In stark contrast to the present case, there was no agreement among the parties in the above-mentioned cases to terminate the arbitration clause.

On this point, we note the Rhode Island Supreme Court's ruling in *Radiation Oncology Associates, Inc. v. Roger Williams Hospital*.[51] In that case, the Court resolved the issue of whether the parties intended to submit a dispute concerning the duration of their service agreement to arbitrate. The agreement provided that it shall commence on October 1, 2001 and shall terminate on December 31, 2004. It added that if an extension or substitute contract is not signed by the parties prior to December 31, 2004, the agreement shall be null and of no further effect. The Court held that the parties did not intend to submit dispute to arbitration after the expiration of the service agreement, thus:

> Our review of the services agreement leads us to conclude that the parties did not intend to submit to arbitration disputes over the duration of their services agreement because the terms of their agreement included a date certain for expiration. **The final sentence to paragraph 22(a) of the services agreement reads: "If an extension or substitute contract is not signed by the parties prior to December 31, 2004, this Agreement shall be null and void and of no further effect."** As a matter of contract construction, the strong and specific language of this expiration provision limited the reach of the noticeably nonspecific language of the arbitration clause that "all disputes" arising under the agreement "shall be settled by arbitration." *See Crouch*, 808 A.2d at 1079 (interpreting the broad language of arbitration provisions in a collective bargaining agreement to be superseded by the more explicit provisions of a statute incorporated into the agreement); *accord Antonio Marcaccio, Inc. v. Santurri*, 51 R.I. 440,

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[50] *Id.* at 162.

[51] No. 2005-218-appeal (2006).

442, 155 A. 571, 572 (1931) (applying the rule that more specific contract provisions govern more general ones in a dispute over a broker's commission); *cf.* 11 Samuel Williston, *A Treatise on the Law of Contracts* § 32:15 at 509-10 (Richard A. Lord ed., West Group 4th ed. 1999) (indicating that, when interpreting a contract that contains contradictory clauses, courts will typically give preference to the more specific of the two clauses).

It is true that this Court has voiced a preference in favor of arbitration as a particularly efficacious alternative method of dispute resolution. *See, e.g., Crouch, 808* A.2d at 1078; *Brown v. Amaral*, 460 A.2d 7, 10 (R.I. 1983); School Committee of Pawtucket v. Pawtucket Teachers Alliance, 120 R.I. 810, 815, 390 A.2d 386, 389 (1978). But we do not see our holding today as an affront to that principle, particularly in cases, such as that under review, involving a challenge to the duration of a contract the terms of which include an express expiration date. We observe that federal circuit courts similarly have discounted the import of any "presumption" in favor of arbitration when called upon to determine the arbitrability of duration disputes concerning contracts containing a date certain for expiration. See *Virginia Carolina Tools, Inc.*, 984 F.2d at 118 (holding that an intent to arbitrate a duration dispute could not be inferred from an agreement that contained a nonspecific arbitration clause and an express termination date provision); *National Railroad Passenger Corp. v. Boston and Maine Corp.*, 850 F.2d 756, 763-64 (D.C.Cir.1988) (holding that a party could overcome a broad arbitration clause by showing an unambiguous expiration date); *cf. Municipality of San Juan v. Corporation Para el Fomento Economico de la Ciudad Capital*, 415 F.3d 145, 150 & n. 8 (1st Cir.2005) (distinguishing *Virginia Carolina Tools, Inc.* because, in that case, the contract at issue contained a more specific termination date).[52] (Emphasis supplied; italics in the original.)

The language used in the subject service agreement of *Radiation Oncology* is somehow identical with the MOU of the present case. In both cases, the parties incorporated a time-limit to the agreement which gave rise to the eventual ineffectivity of the contract and its provision. In no uncertain way that this time-limit refers to the non-signing of extension or substitute contract before the expiration of a date certain. It is thus wise

[52] *Id.* at 514-515.

to rule that the parties intended that the happening of the date certain would give no effect to all parts of the MOU, including the Arbitration Clause. This ruling, however, should not be understood as abandoning the doctrine of separability, but merely giving way to the manifest intention of the contracting parties.

Moreover, the parties agreed to exempt the Confidentiality Clause in the effects of the Closing Date is an indication of their intent. To our mind, this exception bolsters the manifest intent of the parties to terminate the Arbitration Clause. The parties expressly specified the provision of the contract that is not time-limited. Since the Arbitration Clause is not one mentioned as an item to survive upon the termination or lapse of the MOU, the only conclusion is that said provision has been deliberately included to be time-limited. There is more reason for us to conclude that the parties manifested that the Arbitration Clause should cease to effect simply because they incorporated a phrase which would not be affected by the lapse of the period. If the parties intended the Arbitration Clause to survive, there is no reason why they would not have so stated it expressly.

To reiterate, where a contract is clear and unambiguous as to the intent of the parties, it is the court's obligation to enforce its wordings accordingly. Thus, the Arbitration Clause of the MOU ceased to have an effect by March 31, 2007 and should not be considered a condition precedent prior to the filing of an appropriate case before our courts.

II.

We now proceed to discuss whether a declaratory relief is a proper recourse of the parties in this case.

Declaratory relief is defined as an action by a person interested under a deed, will, contract, or other written instrument whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question or construction

or validity arising, and for a declaration of his rights or duties, thereunder.[53]

The requisites of an action for declaratory relief are: (i) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (ii) the terms of said documents and the validity thereof are doubtful and require judicial construction; (iii) there must have been no breach or the "ripening seeds" of one between persons whose interests are adverse; (iv) there must be an actual controversy or the "ripening seeds" of one between persons whose interests are adverse; (v) the issue must be ripe for judicial determination; and (vi) adequate relief is not available through other means or other forms of action or proceeding.[54]

The CA viewed that The Net Group's petition for declaratory relief is improper on the ground that petitioners' purported claim for Due Diligence L/C is a claim for "liquidation damages," which presupposes that a breach of the MOU has already been committed. The CA stated that the court cannot take cognizance of a case for declaratory relief after a breach of the subject contract has already been committed.[55]

The Net Group belies the CA's conclusion by asserting that it never claimed liquidated damages in the context of the Civil Code and that it only sought for the interpretation of the MOU's provision on Due Diligence L/C.

We reverse the findings of the CA on this matter.

Jurisdiction over the subject matter is conferred by the Constitution or by law, and is determined by the allegations of the complaint and the relief prayed for, regardless of whether the plaintiff is entitled to recover all or some of the claims. Jurisdiction is not dependent on defendant's answer or motion to dismiss.[56]

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[53] RULES OF COURT, Rule 63, Sec. 1.

[54] *Republic v. Roque*, G.R. No. 204603, September 24, 2013, 706 SCRA 273, 283.

[55] *Rollo*, pp. 96-98.

[56] *Presidential Commission on Good Governance (PCGG) v. Dumayas,* G.R. No. 209447, August 11, 2015, 765 SCRA 524, 551.

Certainly, Rule 63 vests with the RTC the jurisdiction to hear petitions for declaratory relief. The question now for our determination is whether the allegations in the initiatory pleading and the character of the reliefs prayed for contemplate an action for declaratory relief. It also requires us to resolve whether the initiatory pleading connotes a breach of contract which removed the subject matter from the jurisdiction of the RTC over declaratory relief. It is imperative, therefore, to examine the pertinent allegations in the petition:

Factual Antecedents

3. On 18 January 2007, THE NET GROUP and Ascendas entered into a Memorandum of Understanding where the parties agreed in principle to A[s]cendas' acquisition, either directly or indirectly through qualified entities, of the entire issued and outstanding shares of stock of THE NET GROUP companies. x x x

4. As stated in Section 1 of the MOU, the "Closing Date" was defined "two (2) weeks after the signing of the MOA but not later than March 31, 2007." Section 11 of the MOU provides:

x x x x x x x x x

5. The MOU further provides that:

5. *Security*. By way of security for full compliance by both Parties with the provisions of this MOU and/or the Definitive Agreements, each Party agrees to issue or grant the following security to the other Party:

a. Within five (5) business days upon signing of this MOU, Ascendas shall deliver to The Net Group the Due Diligence L/C in the amount of US$1,000,000.00, in the form to The Net Group, to be issued by a reputable bank duly licensed to conduct business within the Philippines and acceptable to The Net Group.

i. If Ascendas fails or refuses to sign the MOA without any justifiable reason, including but not limited to an instance when: (1) it is given a Due Diligence report showing no Relevant Findings; or (2) in case there are Relevant Findings in accordance with Clause 4(b) and/or as agreed upon by the Parties, then The Net Group

shall be authorized to draw upon the Due Diligence L/C upon the signing of the MOA or on March 31, 2007, whichever comes earlier; provided, however, the The Net Group submits a certification to the issuing bank that it is willing to execute the MOA upon submission by Ascendas to The Net Group of the Transaction Price L/C, without need of presenting or submitting a copy of the MOA to the said issuing bank. The amount so drawn by The Net Group shall serve as liquidated damages in its favor.

x x x x x x x x x

14(i) *Arbitration.* In case of any dispute arising out of or in connection with this MOU, the Parties agree to negotiate in good faith within a period of thirty (30) days after written notice by one Party to the other Party of the existence of such dispute, failing which the said dispute shall be referred to and finally resolved by arbitration under the Rules of the United Nations Commission of International Trade Law, which Rules are deemed to be incorporated by reference into this Clause. The arbitrations shall be held in Hong Kong. The language used in the arbitration shall be English.

14(l) *Effectivity.* This MOU shall take effect upon the signing thereof and shall continue to have force and effect unless earlier terminated pursuant to Clause 11 or until this is superseded by the execution of the Definitive Agreements. Upon the termination or lapse of this MOU, this MOU shall cease to have any force and effect except for Clause 14(e), which shall survive and remain effective and enforceable.

6. As of 31 March 2007, the parties failed to enter into any Definitive Agreement, or agreements to implement the MOU. In a letter dated 21 May 2007, THE NET GROUP informed respondent that due to the delay in the original timetable agreed upon, it deemed the MOU to have lapsed as of 1 April 2007. THE NET GROUP, however, stated that it would continue to negotiate with respondent, no longer under the MOU, but on purely voluntary and non-exclusive basis.

7. A meeting thereafter ensued between petitioner Carlos S. Rufino, Mr. Nonoy Colayco and respondent's Mr. Beng Khoeong Ong ("Mr. Ong"), the latter purporting to be respondent's authorized representative in the signing negotiation and execution of the MOU. Mr. Ong was also accompanied by respondent's Atty. Joel Cruz. At said meeting, the parties already agreed to the release of a joint press statement to inform the public that negotiations between the parties will no longer continue.

8. Thereafter, respondent's representatives requested THE NET GROUP to draft the joint press statement and to process the release of the due diligence fund. Respondent further asked THE NET GROUP to draft an agreement to be executed by the parties to confirm the lapse of the MOU.

9. It was to THE NET GROUP'S shock and surprise that in letters dated 11 and 25 June 2007, and 28 August 2007, respondent, through Mr. Ong, suddenly took the position that the MOU did not lapse, and that the delays were caused by THE NET GROUP. Respondent further demanded that THE NET GROUP inhibit itself from negotiating with other parties and finalize the MOU's implementing agreements. Worse, in its letter dated 25 July 2007, respondent sent THE NET GROUP its "final offer" for the purchase of the shares of THE NET GROUP companies, with a threat that if THE NET GROUP would not accept respondent's offer, the latter would bring the matter to arbitration.

Ground for Declaratory Relief

THE EFFECTIVITY OF THE MOU BETWEEN THE PARTIES LAPSED ON 31 MARCH 2007, AND THE PARTIES EXPRESSLY AGREED THAT EVEN THE ARBITRATION CLAUSE WOULD NOT SURVIVE THE MOU. HENCE, RESPONDENT CAN NO LONGER RELY ON SAID ARBITRATION CLAUSE AND CANNOT COMPEL THE NET GROUP TO ARBITRATE.

THE NET GROUP IS ENTITLED TO THE FULL AMOUNT OF THE DUE DILIGENCE L/C.

Discussion

The Effectivity of the Arbitration Clause has lapsed. Thus, respondent cannot

compel THE NET GROUP to arbitrate.

x x x x x x x x x

THE NET GROUP is entitled to the full amount of the Due Diligence L/C.

18. The language of the MOU does not expressly and categorically deem the Due Diligence L/C forfeited in favor of THE NET GROUP. It appears, however, that Section 5(a)(i) of the MOU entitles THE NET GROUP to the Due Diligence L/C as liquidated damages, in the event that respondent fails to sign the MOA on 31 March 2007.

19. But respondent, at the time it initially confirmed the MOU to have lapsed, requested for the return of the amount of the Due Diligence L/C. Respondent informed THE NET GROUP that a return of the amount was necessary since the Due Diligence L/C, for all intents and purposes, vested upon THE NET GROUP.

20. THE NET GROUP, however, believes that respondent, under the MOU, is not entitled to the return of the monetary equivalent of the Due Diligence L/C. For THE NET GROUP, the term used in the MOU, "Due Diligence L/C," describes its true intention, it is respondent's payment to THE NET GROUP for gaining the right to look into, evaluate, study a competitor's books, trade information and secrets. This is further supported by the parties' intention to consider the Due Diligence L/C to represent liquidated damages due to THE NET GROUP in the event no implementing agreement is signed by 31 March 2007.

21. Yet, the ambivalent language of the MOU causes THE NET GROUP to be cautious as it is exposed to charges of misappropriation in the event that THE NET GROUP'S interpretation of the MOU is mistaken. THE NET GROUP is even willing to consign the amount of ₱48,000,000.00 (US$1,000,000.00) with this Honorable Court until the matter is finally resolved. Accordingly, THE NET GROUP also comes to this Honorable Court for a judicial declaration that it is already

entitled to the Due Diligence L/C.[57] (Citations omitted; emphasis in the original.)

It is apparent in the petition that The Net Group is merely seeking for the interpretation of the MOU on two counts: (i) the applicability of the Arbitration Clause *vis-à-vis* the Effectivity Clause; and (ii) the nature of the Due Diligence L/C - whether The Net Group may automatically appropriate it under the tenor of the MOU. There is nothing in the petition which connotes breach of contract. In so far as the wordings of the petition are concerned, its allegations properly fall within the RTC's jurisdiction over a petition for declaratory relief.

At any rate, the interpretation as to the actual meaning of the Due Diligence L/C in the MOU falls within the ambit of declaratory relief, regardless of whether the ruling may be granted in favor of The Net Group.

III.

The actual nature of the "Due Diligence L/C" may be determined in the wordings of the MOU.

The Net Group's prayer to be declared entitled to Due Diligence L/C is founded on Clause 5 in relation to Clause 4 and the Transaction Timeline allowing the "drawdown of the Due Diligence L/C (in case no MOA is signed)" no later than March 31, 2007. The doubtful provisions of Clauses 4 and 5 of the MOU state:

> 4. ***Due Diligence.*** Ascendas, through its authorized representatives, shall conduct the Due Diligence Audit during the Due Diligence Period provided in Annex "C" of this MOU. Upon commencement of the Due Diligence Period and subject to the presentation by Ascendas of the Due Diligence L/C to The Net Group, The Net Group shall make available to Ascendas all relevant information and data as may be requested by Ascendas from time to time during the Due Diligence Audit concerning the Assets for the purpose of confirming all information contained in the Declaration Statement and

[57] *Rollo*, pp. 231-237.

other relevant records of the concerned Net Corporation.
x x x

x x x x x x x x x

5. ***Security.*** By way of security for full compliance by both Parties with the provisions of this MOU and/or the Definitive Agreements, each Party agrees to issue or grant the following security to the other Party:

a. Within five (5) business days upon signing of this MOU, Ascendas shall deliver to The Net Group the Due Diligence L/C in the amount of US$1,000,000.00, in the form acceptable to The Net Group, to be issued by a reputable bank duly licensed to conduct business within the Philippines and acceptable to The Net Group.

i. If Ascendas fails or refuses to sign the MOA without any justifiable reason, including but not limited to an instance when: (1) it is given a Due Diligence report showing no Relevant Findings; or (2) in case there are Relevant Findings in the Due Diligence report and The Net Group issues a certification that it shall cure and/or remedy all such Relevant Findings in accordance with Clause 4(b) and/or as agreed upon by the Parties, then The Net Group shall be authorized to draw upon the Due Diligence L/C upon the signing of the MOA or on March 31, 2007, whichever comes earlier; provided, however, that The Net Group submits a certification to the issuing bank that it is willing to execute the MOA upon submission by Ascendas to The Net Group of the Transaction Price L/C, without need of presenting or submitting a copy of the MOA to the said issuing bank. The amount so drawn by The Net Group shall serve as liquidated damages in its favor.[58] (Emphasis in the original.)

Also settled in this jurisdiction is the contract interpretation rule that "[the contract's] provisions should not be read in isolation but in relation to each other and in their entirety so

[58] *Rollo*, pp. 183, 186.

as to render them effective, having in mind the intention of the parties and the purpose to be achieved. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.[59] Instead of resorting to extrinsic factors to determine the intent of the parties, the court should first examine the contract in its entirety.

A reading of Clause 5 the MOU allows two interpretations: (i) The Net Group will only be entitled to draw on the Due Diligence L/C should Ascendas fail or refuse to sign the MOA without any justifiable reason: in which case the Due Diligence L/C server, as a penalty for Ascendas' breach; and (ii) Ascendas has the option not to sign the MOA, regardless of its reasons, provided that The Net Group will be allowed to draw on the Due Diligence L/C, in which case Ascendas is not in breach but is merely exercising its option to perform another prestation by paying the Due Diligence L/C instead of proceeding with the execution of the MOA. If Clause 5 will be read together with Clause 4 and the Transaction Timeline, the actual intention of the parties will be revealed.

Clause 4 of the MOU states the purpose for which the Due Diligence L/C: this serves as remuneration for The Net Group for allowing Ascendas to audit its business records. The RTC's observation on this matter is convincing:

> On the entitlement to and as to the true nature of the US$1,000,000.00, this Court so holds that the said amount is in the nature of a fee given to petitioners for giving the respondent the right to look into and evaluate their books, trade information and secrets, and not liquidated damages.
>
> From the name given to it, "Due Diligence L/C," it is descriptive of the parties' intention to treat the same as payment to petitioners to conduct due diligence. As stipulated by the parties, "Due Diligence L/C," under the definition of terms in their MOU, has reference to section 5(a), which provides that the said amount shall be given to petitioners within 5 days from the signing of the MOU. The obligation of respondent to give the amount to petitioners within 5 days from

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[59] *Juico v. China Banking Corporation,* G.R. No 187678, April 10, 2013, 695 SCRA 520, 538. Citation omitted.

the signing of the MOU shows the intent of the parties to treat it as payment to petitioners for the conduct of due diligence, and not as a penalty in the form of liquidated damages.

x x x Since petitioners are already given the Due Diligence L/C upon the signing of the MOU and because they are entitled to a drawdown no later than March 31, 2007 in case no MOA is signed, entitlement to the amount is not dependent on whether a breach of contract occurred.[60]

The Due Diligence L/C under Section 5(a) serves as an "exit" clause which allows the parties to terminate the deal.[61] In mergers and acquisitions, this concept is commonly referred to as break-up or walk-away fees, if it is the seller who terminated the deal, or reverse break-up fees, if it is the buyer who failed to proceed with the agreement. The clause on break-up fees allows the buyer to recoup some of its expenses if the seller walks away or terminates the deal because of change in circumstances or the desire to accept a better offer from another buyer. On the other hand, the reciprocal clause, or the clause on reverse break-up fees, protects the seller by covering the latter's expenses should the buyer walk away or default on a preliminary obligation or condition to closing.[62]

To our mind, the RTC's interpretation is thus, more in consonance with the parties' intention as to the real nature of the Due Diligence L/C. It is a remuneration to The Net Group for the expenses it incurred when it opened its business to Ascendas' audit should the latter opt out by not signing the MOA.

IV.

Lastly, we agree with the RTC that the conflict between the parties may be addressed in a summary judgment pursuant to Rule 35 of the Rules of Court, to wit:

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[60] *Rollo*, pp. 354-355.

[61] Yves Quintin, *M & (and) A Contracts in the American Financial Maelstrom: Have Reverse Break-up Fees and Mac Clauses Turned Them into Mere Options*, 2008 Int'l. Bus. L.J. 275 (2008).

[62] Andrew J. Sherman, *Mergers & Acquisitions From A to Z, 52 & 57*, 3rd Ed. (2010).

Sec. 1. *Summary Judgment for claimant.*— A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

Under this provision, a summary judgment may be used to expedite the proceedings and to avoid useless delays, when the pleadings, depositions, affidavits or admissions on file show that there exists no genuine question or issue of fact in the case, and the moving party is entitled to a judgment as a matter of law.[63]

Here, the parties merely presented issues as to the interpretation of the MOU. There was therefore no genuine question or issue of fact that must be resolved using the presentation of evidence. At most, the Court may rule on the interpretation of the contract by simply reviewing its terms.

WHEREFORE, the petition is **GRANTED**. The assailed Decision dated April 3, 2012 and Resolution dated January 27, 2014 of the Court of Appeals are hereby **SET ASIDE**.

The Order of the RTC dated December 14, 2007 on the summary judgment in favor of petitioners is **REINSTATED**. No costs.

SO ORDERED.

Bersamin, C.J. (*Chairperson*), *Gesmundo*, and *Reyes, J. Jr.,*[*] *JJ.*, concur.

Del Castillo, *J.*, on official leave.

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[63] *Mortel v. Brundige,* G.R. No. 190236, June 15, 2015, 757 SCRA 432, 438.

[*] Designated as Additional Member per Raffle dated June 3, 2019 in lieu of Associate Justice Rosmari D. Carandang.

SECOND DIVISION

[G.R. No. 222916. July 24, 2019]

HEIRS OF SPOUSES GERVACIO A. RAMIREZ and MARTINA CARBONEL, represented by CESAR S. RAMIREZ and ELMER R. ADUCA, *petitioners, vs.* **JOEY ABON and THE REGISTER OF DEEDS OF NUEVA VIZCAYA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ANNULMENT OF JUDGMENT; A REMEDY RESORTED TO IN CASES WHERE THE ORDINARY REMEDIES OF NEW TRIAL, APPEAL, PETITION FOR RELIEF FROM JUDGMENT, OR OTHER APPROPRIATE REMEDIES ARE NO LONGER AVAILABLE THROUGH NO FAULT OF THE PETITIONER, AND IS BASED ON ONLY TWO (2) GROUNDS; EXTRINSIC FRAUD, AND LACK OF JURISDICTION OR DENIAL OF DUE PROCESS.— Under Rule 47 of the Rules of Court, the remedy of annulment of judgment "is resorted to in cases where the ordinary remedies of new trial, appeal, petition for relief from judgment, or other appropriate remedies are no longer available through no fault of the petitioner, and is based on only two grounds: extrinsic fraud, and lack of jurisdiction or denial of due process." According to Section 3 of Rule 47, if based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel.

2. CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); SECTION 109 THEREOF; LAW APPLICABLE IN PETITIONS FOR ISSUANCE OF NEW OWNER'S DUPLICATE CERTIFICATES OF TITLE WHICH ARE LOST OR STOLEN OR DESTROYED; CASE AT BAR.— Jurisprudence holds that **Section 109 of Presidential Decree No. (PD) 1529** "is the law applicable in petitions for issuance of new *owner's duplicate* certificates of title which are lost or

stolen or destroyed." To clarify, in the instant case, what has been lost is the owner's duplicate copy of the subject OCT, and not the original copy of the OCT on file with the RD. As held in *Billote v. Solis*, "[a] reading of the provisions clearly reveals that Sections 18 and 19 of RA 26 applies only in cases of reconstitution of lost or destroyed *original* certificates of title on file with the Register of Deeds, while Section 109 of PD 1529 governs petitions for the issuance of new owner's *duplicate* certificates of title which are lost or destroyed." Hence, the petitioners Heirs of the Sps. Ramirez' original position in their Petition for Annulment of Judgment that RA 26 applies in the instant case, a theory they entirely abandoned in the instant Petition, is incorrect.

3. ID.; ID.; ID.; REQUIREMENTS FOR REPLACEMENT OF A LOST OWNER'S DUPLICATE CERTIFICATE OF TITLE; CASE AT BAR.— As explained by the CA, Former 14th Division in the assailed Decision, the requirements for the replacement of a lost owner's duplicate certificate of title can be summarized in the following manner. The requirements for the replacement of lost owner's duplicate certificate of title may be summarized, thus: a) the registered owner or other person in interest shall send notice of the loss or destruction of the owner's duplicate certificate of title to the Register of Deeds of the province or city where the land lies as soon as the loss or destruction is discovered; b) the corresponding petition for the replacement of the lost or destroyed owner's duplicate certificate shall then be filed in court and entitled in the original case in which the decree of registration was entered; c) the petition shall state under oath the facts and circumstances surrounding such loss or destruction; and d) the court may set the petition for hearing after due notice to the Register of Deeds and all other interested parties as shown in the memorandum of encumbrances noted in the original or transfer certificate of title on file in the office of the Register of Deeds; and e) after due notice and hearing, the court may direct the issuance of a new duplicate certificate which shall contain a memorandum of the fact that it is issued in place of the lost or destroyed certificate and shall in all respects be entitled to the same faith and credit as the original duplicate. In the instant case, it is not disputed that respondent Abon sent a notice of loss of the owner's duplicate certificate of the subject OCT to the RD in the form

of an Affidavit of Loss dated June 3, 2013 executed by respondent Abon under oath, detailing the facts and circumstances surrounding the loss of the owner's duplicate certificate. x x x With respect to the notice and due hearing requirement, it is likewise not disputed that a copy of respondent Abon's Petition for Reconstitution, together with a copy of RTC, Branch 28's Order dated July 17, 2013, was publicly posted, as certified by the RTC's Office of the Clerk of Court in its Certification dated August 23, 2013. Moreover, it is not disputed that copies of the aforementioned documents were furnished to the RD, the Land Registration Authority (LRA), and the Office of the Provincial Prosecutor. A Notice of Hearing dated August 23, 2013 was likewise issued by the RTC, Branch 28. Nevertheless, it is also not disputed that **the subject OCT remains to be registered in the name of the predecessors-in-interest of the petitioners Heirs of the Sps. Ramirez, *i.e.*, the Sps. Ramirez**. In other words, regardless of the sale of the subject property in favor of the father of respondent Abon, Angel, **the registered owners of the subject property remained to be the Sps. Ramirez**, aside from the 135-square meter portion of the subject property that was subdivided and now covered by TCT No. T-50359 registered in the name of Angel. It is similarly not in dispute that ***the Notice of Hearing was not sent to the petitioners Heirs of the Sps. Ramirez*. Otherwise stated, the petitioners Heirs of the Sps. Ramirez were not notified of the Petition for Reconstitution**.

4. ID.; ID.; ID.; ID.; WHEN AN OWNER'S DUPLICATE CERTIFICATE OF TITLE IS LOST OR DESTROYED, A PERSON WHO IS A TRANSFEREE OF THE OWNERSHIP OVER THE PROPERTY, WHO IS NOT NECESSARILY THE REGISTERED OWNER, MAY ALSO FILE THE PETITION FOR RECONSTITUTION; SINCE A TORRENS CERTIFICATE IS STILL THE BEST EVIDENCE OF OWNERSHIP OVER REGISTERED LAND, THE REGISTERED OWNER IS AN INTERESTED PARTY IN THE PETITION FOR RECONSTITUTION CASE WHO MUST BE NOTIFIED; RATIONALE OF NOTIFICATION OF THE REGISTERED OWNER.— According to Section 41 of PD 1529, "[t]he owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative." Because the owner's duplicate copy of a

certificate of title is given to and possessed by the registered owner, ordinarily, when an owner's duplicate copy is lost or destroyed, it is the registered owner who files the petition for reconstitution. In such a situation, other persons who have an interest in the property, such as mortgagees, must be notified of the proceedings. This is to amply protect their interests and to ensure that the encumbrances evidencing these interests, which are annotated in the owner's duplicate copy, will be carried over to the reconstituted owner's duplicate copy. However, Section 109 of PD 1529 also contemplates a situation wherein the petition for reconstitution is filed by another person having an interest in the property who is not the registered owner. In other words, when an owner's duplicate certificate of title is lost or destroyed, a person who is a transferee of the ownership over the property, who is not necessarily the registered owner, may also file the petition for reconstitution. Similarly, in this situation, the other persons having interest in the property should be notified of the proceedings. In this situation, the registered owner must also be duly notified of the proceedings. By his or her very status as registered owner, the latter is an interested party in the petition for reconstitution case. The registered owner is an interested party in the petition for reconstitution case because, as held by the Court in *Reyes v. Reyes*, "**the owner of the land in whose favor and in whose name said land is registered and inscribed in the certificate of title has a more preferential right to the possession of the owner's duplicate than one whose name does not appear in the certificate and has yet to establish his right to the possession thereof.**" x x x The rationale of requiring the notification of the registered owner in a petition for the reconstitution of a lost or destroyed owner's duplicate certificate of title is not hard to understand. With the legal presumption that the registered owner is the owner of the property, thus affording him preferential right over the owner's duplicate, duly notifying him would prevent a person who wrongfully purports to be the owner of the property to commit fraud. It would offer the registered owner sufficient opportunity to contest the supposed interest of the person filing the petition for reconstitution. The rule on the mandatory notification of the registered owner in a petition for reconstitution of a lost or destroyed owner's duplicate certificate filed by another person who is not the registered owner is to ensure an orderly proceeding

and to safeguard the due process rights of the registered owner. It prevents the commission of fraud.

5. **ID.; ID.; ID.; ID.; IF THE COURT HEARING THE PETITION FOR RECONSTITUTION FAILS TO NOTIFY THE REGISTERED OWNER WHO IS ALWAYS AN INTERESTED PARTY, JURISDICTION TO HEAR AND TRY THE PETITION IS NOT REQUIRED; CASE AT BAR.—** [T]he actual registered owner appearing on the certificate of title is always an interested party that must be notified by the court hearing the petition for reconstitution. Otherwise, such court does not acquire jurisdiction to hear and try the petition for reconstitution case. To restate, the instant ruling of the Court does not mean that respondent Abon cannot successfully seek the reconstitution of the owner's duplicate certificate of the subject OCT. He can. But the RTC hearing his application must notify the parties who appear on the OCT to be the registered owners. And if the RTC, after such notice and hearing, is satisfied that the Sps. Ramirez had truly divested all of their interest in the subject property, that respondent Abon has sufficiently established his interest over the subject property, that the owner's duplicate certificate of title was indeed lost, and that the jurisdictional requirements under Section 109 of PD 1529 had been sufficiently met, then the Petition for Reconstitution should be granted in favor of respondent Abon. However, without properly notifying the estate of the Sps. Ramirez, who continue to be the registered owners of the subject property, the RTC fails to acquire jurisdiction over the Petition for Reconstitution. Therefore, as the RTC, Branch 28 failed to acquire jurisdiction over LRC Case No. 6847 because of its failure to notify the petitioners Heirs of the Sps. Ramirez, the latter's Petition for Annulment of Judgment is meritorious.

APPEARANCES OF COUNSEL

Essex L. Silapan for petitioners.
Celerino V. Jandoc for respondent Abon.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioners Heirs of Spouses Gervacio A. Ramirez and Martina Carbonel (Heirs of the Sps. Ramirez), as represented by Cesar S. Ramirez (Cesar) and Elmer R. Aduca (Elmer), against respondents Joey T. Abon (Abon) and the Register of Deeds of Nueva Vizcaya (RD), assailing the Decision[2] dated July 29, 2015 (assailed Decision) and Resolution[3] dated February 15, 2016 (assailed Resolution) rendered by the Court of Appeals, Former Fourteenth Division (CA, Former 14th Division) in CA-G.R. SP No. 132961.

The Facts and Antecedent Proceedings

As narrated by the CA, Former 14th Division in its assailed Decision, and as culled from the records of the instant case, the essential facts and antecedent proceedings of the case are as follows:

> [The petitioners Heirs of the Sps. Ramirez] allege that Original Certificate of Title No. T-4480[4] (OCT, for brevity) is registered in the names of the late spouses Gervacio Ramirez and Martina Carbonel [(Sps. Ramirez)] and covers a 1,266-square meter lot (Lot 1748) located in Barrio Sta. Lucia, Bagabag, Nueva Vizcaya [(subject property)]. On May 30, 1978, Angel Abon, the father of [respondent Abon], requested the [RD] to issue a new owner's duplicate of the OCT on the basis of a document denominated as "*Confirmation of Previous Sale*"[5] (CPS, for brevity) whereby the [Sps. Ramirez] had allegedly sold Lot 1748 to him (Angel). Using the new owner's duplicate of

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[1] *Rollo*, pp. 3-17.

[2] *Id*. at 133-141. Penned by Associate Justice Melchor Q.C. Sadang with Associate Justices Celia C. Librea-Leagogo and Franchito N. Diamante, concurring.

[3] *Id*. at 172-173.

[4] *Id*. at 33.

[5] *Id*. at 34.

the OCT, Angel was able to segregate a 135-square meter portion [(Lot 1748-A)] from Lot 1748 and obtain title thereto-Transfer Certificate of Title No. T-50359[6] (TCT, for brevity). In June 2013, [the petitioners Heirs of the Sps. Ramirez] were furnished a copy of the CPS. Having been informed that respondent [Abon] would use the CPS to transfer title to the rest of Lot 1748, [the petitioners Heirs of the Sps. Ramirez] filed a [C]omplaint[7] [for Annulment of Confirmation of Previous Sale, Issuance of another Owner's Duplicate Copy of OCT No. 4480, Damages with Prayer for Issuance of Preliminary Mandatory Injunction] to have said CPS annulled on the ground of forgery. Unfortunately, the [Regional Trial Court of Nueva Vizcaya (RTC), Branch 27] dismissed the complaint *motu proprio* for lack of jurisdiction. [The petitioners Heirs of the Sps. Ramirez] filed a certiorari petition[8] [before the CA, Fourth (4th) Division], docketed as CA G.R. CV No. 131624. [According to the Case Status Inquiry System of the CA, on May 2, 2014, the CA, 4th Division rendered a Decision[9] denying the petitioners Heirs of the Sps. Ramirez' *certiorari* petition for lack of merit. On September 29, 2014, the CA, Special Former 4th Division issued a Resolution[10] denying the petitioners Heirs of the Sps. Ramirez' Motion for Reconsideration. As indicated by the Entry of Judgment,[11] the Decision and Resolution of the CA, 4th Division and Special Former 4th Division, respectively in CA-G.R. SP No. 131624 became final and executory on November 1, 2014.] Meanwhile, on July 5, 2013, respondent [Abon] filed before the [RTC, Branch 28], a petition[12] for reconstitution [(Petition for Reconstitution)] of the lost owner's duplicate of the OCT. [The case was docketed as LRC No. 6847.] Respondent [Abon] alleged in his petition that his father, Angel Abon, acquired the lot covered by said OCT under the CPS and [caused the subdivision of 135 square meters

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[6] *Id.* at 102-105.

[7] *Id*. at 156-162.

[8] CA *rollo*, pp. 34-44.

[9] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Ricardo R. Rosario and Leoncia Real-Dimagiba, concurring.

[10] Penned by Associate Justice Ricardo R. Rosario with Associate Justices Marlene Gonzales Sison and Leoncia Real-Dimagiba, concurring.

[11] *Rollo*, p. 192.

[12] CA *rollo*, pp. 16-17.

of the subject property, with TCT No. T-50359 covering the said subdivided portion of the subject property having been issued. Respondent Abon further alleged that his mother, Nellie T. Abon, left for Canada sometime in 2006 and entrusted to him the owner's duplicate of OCT No. 4480, which he kept in his cabinet. Respondent Abon then alleged that when his mother arrived in the Philippines in January 2013, she requested the former to bring out the owner's duplicate copy of OCT No. 4480 for purposes of an extrajudicial settlement of the estate of Angel. However, respondent Abon could not find the said owner's duplicate copy in his cabinets. Respondent Abon allegedly exerted diligent efforts to look for the owner's duplicate copy to no avail. Respondent Abon then executed an Affidavit of Loss[13] and had the same registered with the RD. x x x

On October 4, 2013, the RTC, Branch 28 issued its Decision[14] granting respondent Abon's petition, ordering the RD to issue a new owner's duplicate copy of OCT No. 4480 in lieu of the lost one.

The RTC, Branch 28's aforesaid Decision was not subjected to appeal. Hence, as indicated in the Certificate of Finality[15] dated November 19, 2013, the Decision dated October 4, 2013 became final and executory.

On December 3, 2013, the petitioners Heirs of the Sps. Ramirez filed a Petition for Annulment of Judgment[16] under Rule 47 of the Rules of Court before the CA, Former 14th Division. The case was docketed as CA-G.R. SP No. 132961.]

[The petitioners Heirs of the Sps. Ramirez] further allege that the CPS does not state the area bought by Angel Abon from the spouses Ramirez and respondent [Abon]'s claim that the lot is owned by his parents is belied by the OCT itself which shows that the owners thereof are the spouses Ramirez. [The petitioners Heirs of the Sps. Ramirez] argue that if the intention under the CPS was to transfer the entire lot to Angel Abon then the title should have been totally cancelled and a new one issued in lieu thereof; however, the CPS was annotated on

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[13] *Id*. at 20.

[14] *Id*. at 12-14. Penned by Presiding Judge Fernando F. Flor, Jr.

[15] *Id*. at 15.

[16] *Rollo*, pp. 18-24.

the OCT and the TCT was issued to cover only a 135-square meter portion of the lot.

[The petitioners Heirs of the Sps. Ramirez] finally contend that the [RTC, Branch 28] abused its discretion in granting respondent [Abon]'s petition for want of jurisdiction. Citing Sec. 12 of Republic Act (RA) No. 26 which requires that the petition for reconstitution shall be filed by the registered owner, his assigns, or any person having an interest in the property, [the petitioners Heirs of the Sps. Ramirez] contend that the [H]eirs of [S]pouses Ramirez were neither included as petitioners nor notified and this shows respondent [Abon]'s illicit desire to appropriate the entire lot. [The petitioners Heirs of the Sps. Ramirez] further allege that respondent [Abon] did not comply with the jurisdictional requirements of RA 26 thus: 1) proof of publication of the petition; 2) proof of posting of the petition; 3) name of the registered owner; 4) names of the occupants or persons in possession of the property; 5) names of the owners of adjoining properties and all other interested persons; and 6) the date when persons having interest must appear and file their objections to the petition.[17]

The Ruling of the CA, Former 14th Division

In the assailed Decision, the CA, Former 14th Division denied the petitioners Heirs of the Sps. Ramirez' Petition for Annulment of Judgment for lack of merit. The dispositive portion of the assailed Decision reads:

WHEREFORE, the petition is **DISMISSED** for lack of merit.

SO ORDERED.[18]

In sum, the CA, Former 14th Division held that there was no valid ground for the annulment of the RTC, Branch 28's Decision dated October 4, 2013, finding that "the RTC-Br. 28 had jurisdiction over the subject matter of the petition in LRC No. 6748."[19]

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[17] *Id*. at 133-135.

[18] *Id*. at 141.

[19] *Id*. at 138.

Feeling aggrieved, the petitioners Heirs of the Sps. Ramirez filed their Motion for Reconsideration[20] dated September 1, 2015, which was denied by the CA, Former 14th Division in the assailed Resolution.

Hence, the instant appeal before the Court.

Respondent Abon filed his Comment[21] dated November 12, 2016, to which the petitioners Heirs of the Sps. Ramirez responded to with their Reply to Comment[22] dated March 3, 2016.

Issue

Stripped to its core, the sole issue to be decided by the Court in the instant case is whether the CA, Former 14th Division erred in denying the petitioners Heirs of the Sps. Ramirez' Petition for Annulment of Judgment.

The Court's Ruling

Upon exhaustive review of the facts and the law surrounding the instant case, the Court finds the instant Petition meritorious.

It must be emphasized that the central issue in the instant case is whether there is any ground under Rule 47 to annul the RTC, Branch 28's final and executory Decision dated October 4, 2013, which ordered the RD to issue a new owner's duplicate copy of OCT No. 4480 in favor of respondent Abon.

Under Rule 47 of the Rules of Court, the remedy of annulment of judgment "is resorted to in cases where the ordinary remedies of new trial, appeal, petition for relief from judgment, or other appropriate remedies are no longer available through no fault of the petitioner, and is based on only two grounds: extrinsic fraud, and lack of jurisdiction or denial of due process."[23]

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[20] *Id*. at 142-155.

[21] *Id*. at 179-190.

[22] *Id*. at 200-212.

[23] *Alaban v. Court of Appeals*, 507 Phil. 682, 694 (2005).

According to Section 3 of Rule 47, if based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel.

In the instant case, the petitioners Heirs of the Sps. Ramirez maintain that the RTC, Branch 28 ***did not acquire jurisdiction*** over LRC Case No. 6847.

Jurisprudence holds that **Section 109 of Presidential Decree No. (PD) 1529** "is the law applicable in petitions for issuance of new *owner's duplicate* certificates of title which are lost or stolen or destroyed."[24]

To clarify, in the instant case, what has been lost is the owner's duplicate copy of the subject OCT, and not the original copy of the OCT on file with the RD. As held in *Billote v. Solis*,[25] "[a] reading of the provisions clearly reveals that Sections 18 and 19 of RA 26 applies only in cases of reconstitution of lost or destroyed *original* certificates of title on file with the Register of Deeds, while Section 109 of PD 1529 governs petitions for the issuance of new owner's *duplicate* certificates of title which are lost or destroyed."[26] Hence, the petitioners Heirs of the Sps. Ramirez' original position in their Petition for Annulment of Judgment that RA 26 applies in the instant case, a theory they entirely abandoned in the instant Petition, is incorrect.

Section 109 of PD 1529, which is the applicable law in the instant case, reads:

SEC. 109. *Notice and replacement of lost duplicate certificate*.— In case of loss or theft of an owner's duplicate certificate of title, **due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered**. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration

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[24] *New Durawood Co., Inc. v. CA*, 324 Phil. 109, 118 (1996).

[25] 760 Phil. 712 (2015).

[26] *Id*. at 723.

of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.[27]

As explained by the CA, Former 14th Division in the assailed Decision, the requirements for the replacement of a lost owner's duplicate certificate of title can be summarized in the following manner:

The requirements for the replacement of lost owner's duplicate certificate of title may be summarized, thus: a) the registered owner or other person in interest shall send notice of the loss or destruction of the owner's duplicate certificate of title to the Register of Deeds of the province or city where the land lies as soon as the loss or destruction is discovered; b) the corresponding petition for the replacement of the lost or destroyed owner's duplicate certificate shall then be filed in court and entitled in the original case in which the decree of registration was entered; c) the petition shall state under oath the facts and circumstances surrounding such loss or destruction; and d) the court may set the petition for hearing after due notice to the Register of Deeds and all other interested parties as shown in the memorandum of encumbrances noted in the original or transfer certificate of title on file in the office of the Register of Deeds; and e) after due notice and hearing, the court may direct the issuance of a new duplicate certificate which shall contain a memorandum of the fact that it is issued in place of the lost or destroyed certificate and shall in all respects be entitled to the same faith and credit as the original duplicate.[28]

In the instant case, it is not disputed that respondent Abon sent a notice of loss of the owner's duplicate certificate of the

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[27] Emphasis supplied.

[28] *Rollo*, p. 140; citing Oswaldo D. Agcaoili, *Property Registration Decree and Related Laws* (Land Titles and Deeds), 2006, ed., p. 753.

subject OCT to the RD in the form of an Affidavit of Loss dated June 3, 2013 executed by respondent Abon under oath, detailing the facts and circumstances surrounding the loss of the owner's duplicate certificate. With the RD being duly notified of respondent Abon's Affidavit of Loss, the fact of execution of the said notice was entered into the Memorandum of Encumbrances[29] of the subject OCT as Entry No. 2013003397.

With respect to the notice and due hearing requirement, it is likewise not disputed that a copy of respondent Abon's Petition for Reconstitution, together with a copy of RTC, Branch 28's Order[30] dated July 17, 2013, was publicly posted, as certified by the RTC's Office of the Clerk of Court in its Certification[31] dated August 23, 2013. Moreover, it is not disputed that copies of the aforementioned documents were furnished to the RD, the Land Registration Authority (LRA), and the Office of the Provincial Prosecutor. A Notice of Hearing[32] dated August 23, 2013 was likewise issued by the RTC, Branch 28.

Nevertheless, it is also not disputed that **the subject OCT remains to be registered in the name of the predecessors-in-interest of the petitioners Heirs of the Sps. Ramirez, *i.e.*, the Sps. Ramirez**. In other words, regardless of the sale of the subject property in favor of the father of respondent Abon, Angel, **the registered owners of the subject property remained to be the Sps. Ramirez**, aside from the 135-square meter portion of the subject property that was subdivided and now covered by TCT No. T-50359 registered in the name of Angel. It is similarly not in dispute that ***the Notice of Hearing was not sent to the petitioners Heirs of the Sps. Ramirez*. Otherwise stated, the petitioners Heirs of the Sps. Ramirez were not notified of the Petition for Reconstitution**.

Therefore, the critical question now redounds to whether the petitioners Heirs of the Sps. Ramirez, being the successors-

[29] CA *rollo*, p. 23.

[30] *Id*. at 25.

[31] *Id*. at 29.

[32] *Id*. at 26.

in-interest of the registered owners of the subject property, should be considered interested parties that should have been notified of the Petition for Reconstitution proceedings.

The Court answers in the affirmative.

According to Section 41 of PD 1529, "[t]he owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative." Because the owner's duplicate copy of a certificate of title is given to and possessed by the registered owner, ordinarily, when an owner's duplicate copy is lost or destroyed, it is the registered owner who files the petition for reconstitution. In such a situation, other persons who have an interest in the property, such as mortgagees, must be notified of the proceedings. This is to amply protect their interests and to ensure that the encumbrances evidencing these interests, which are annotated in the owner's duplicate copy, will be carried over to the reconstituted owner's duplicate copy.

However, Section 109 of PD 1529 also contemplates a situation wherein the petition for reconstitution is filed by another person having an interest in the property who is not the registered owner. In other words, when an owner's duplicate certificate of title is lost or destroyed, a person who is a transferee of the ownership over the property, who is not necessarily the registered owner, may also file the petition for reconstitution. Similarly, in this situation, the other persons having interest in the property should be notified of the proceedings. In this situation, the registered owner must also be duly notified of the proceedings. By his or her very status as registered owner, the latter is an interested party in the petition for reconstitution case.

The registered owner is an interested party in the petition for reconstitution case because, as held by the Court in *Reyes v. Reyes*,[33] "**the owner of the land in whose favor and in whose name said land is registered and inscribed in the certificate of title has a more preferential right to the possession of the owner's duplicate than one whose name**

[33] 124 Phil. 521 (1966).

does not appear in the certificate and has yet to establish his right to the possession thereof."[34]

While it is true that registration does not vest title and it is merely evidence of such title,[35] a Torrens certificate, as compared to a mere deed evidencing a contract of sale or any other private document, is still the best evidence of ownership over registered land.[36] Such title is entitled to respect and great weight until someone else can show a better right to the lot.[37] The Court has previously held that a certificate of registration accumulates in one document a precise and correct statement of the exact status of the fee held by its owner which, in the absence of fraud, is the evidence of title showing exactly the owner's real interest over the property covered thereby.[38] Therefore, the person who is registered as the owner of the property in a certificate of title is presumed to be the owner of such property. Needless to say, the presumed owner of the property is, at the very least, an interested party. Since Section 41 of PD 1529 mandates that the owner's duplicate certificate of title shall be delivered to the registered owner, the latter is presumed to be in possession thereof. Thus, the registered owner will be in the best position to account for the whereabouts of the owner's duplicate certificate.

The rationale of requiring the notification of the registered owner in a petition for the reconstitution of a lost or destroyed owner's duplicate certificate of title is not hard to understand.

With the legal presumption that the registered owner is the owner of the property, thus affording him preferential right over the owner's duplicate, duly notifying him would prevent a person who wrongfully purports to be the owner of the property

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[34] *Id*. at 525; emphasis and underscoring supplied.

[35] *Republic of the Phils. v. CA*, 328 Phil. 238, 250 (1996).

[36] *Guizano v. Veneracion*, 694 Phil. 658, 667 (2012).

[37] *Spouses Abad v. Court of Appeals*, 259 Phil. 445, 456 (1989).

[38] *Manipor v. Sps. Ricafort*, 454 Phil. 825, 835 (2003).

to commit fraud. It would offer the registered owner sufficient opportunity to contest the supposed interest of the person filing the petition for reconstitution. The rule on the mandatory notification of the registered owner in a petition for reconstitution of a lost or destroyed owner's duplicate certificate filed by another person who is not the registered owner is to ensure an orderly proceeding and to safeguard the due process rights of the registered owner. It prevents the commission of fraud.

Therefore, being the registered owners of the subject property, the Sps. Ramirez, whose rights are now transferred by succession to the petitioners Heirs of the Sps. Ramirez, should have, at the very least, been given sufficient opportunity to be heard in the Petition for Reconstitution.

Respondent Abon, in arguing that the petitioners Heirs of the Sps. Ramirez have no more interest in the subject property, puts much emphasis in the CPS to show that the Sps. Ramirez already completely divested their interest in the subject property when they sold the same to Angel.

This argument is misplaced.

As already explained above, persons registered as owners in a certificate of title, by their very status as registered owners, are interested parties in a petition for the reconstitution of a lost or destroyed owner's duplicate certificate of title because they are legally presumed to be the owners of the property. To restate once more, while registration does not vest title and it is merely evidence of such title, a Torrens certificate is still the best evidence of ownership over registered land as compared to a mere deed evidencing a contract of sale. The registered owner has a preferential right to the possession of the owner's duplicate than one whose name does not appear in the certificate.

This does not mean however that persons who are not registered owners of the property cannot successfully seek for the reconstitution of a lost or destroyed owner's duplicate certificate of title. If the court is satisfied that the registered owner has indeed completely divested his/her interest in the property, that the requesting party has sufficient interest in

the subject property, and that the owner's duplicate certificate of title is indeed lost or destroyed, then the petition for reconstitution should be granted in favor of the requesting party having interest in the subject property.

Be that as it may, in such a situation, if the certificate of title was not yet transferred in the name of the requesting party and is still registered in the name of the original owner, owing to the established doctrine that a Torrens certificate is still the best evidence of ownership over registered land, the original registered owner, having preferential status over the owner's duplicate, is still considered an interested party that should be notified in so far as the petition for reconstitution is concerned. This will ensure that the registered owner will have sufficient opportunity to contest the claim of the requesting party.

Neither can respondent Abon argue that the final and executory Decision of the CA, 4th Division in CA G.R. CV No. 131624, which affirmed the denial of the petitioners Heirs of the Sps. Ramirez' Complaint for Annulment of the CPS, incontrovertibly and irrefutably established beyond dispute the transfer of the subject property *via* a contract of sale between the Sps. Ramirez and Angel.

To recall, the dismissal of the petitioners Heirs of the Sps. Ramirez' Complaint was not due to any categorical and definitive finding on the veracity and validity of the CPS. The dismissal of the petitioners Heirs of the Sps. Ramirez' Complaint was solely due to lack of jurisdiction. In fact, the dismissal of the petitioners Heirs of the Sps. Ramirez' Complaint was a *motu proprio* dismissal.

Further, in his Comment, respondent Abon relies heavily on the case of *Office of the Court Administrator v. Judge Matas*[39] which held that the notice requirement under Section 109 of PD 1529 is sent to the Register of Deeds and only to those persons who have an interest in the property "as shown in the Memorandum of encumbrances at the back of the original or

[39] 317 Phil. 9 (1995).

transfer certificate of title on file in the office of the Register of Deeds. From a legal standpoint, there are no other interested parties who should be notified, except those abovementioned since they are the only ones who may be deemed to have a claim to the property involved."[40]

It is an opportune time for the Court to clarify its prior holding that only persons who have an interest in the property as shown in the memorandum of encumbrances can be considered persons in interest that must be notified in a petition for reconstitution of a lost or destroyed owner's duplicate certificate of title.

In *Office of the Court Administrator v. Judge Matas*, the alleged owner of the subject property therein, *i.e.*, J.K. Mercado and Sons Agricultural Enterprises (J.K. Mercado), was alleging that the respondent Judge therein, *i.e.*, Judge Jesus V. Matas of the Regional Trial Court of Tagum, Davao del Norte, Branch 2, acted without jurisdiction when it failed to notify J.K. Mercado as regards the petition for the issuance of a new owner's duplicate of the subject certificate of title.

Agreeing with the findings of the investigating Justice therein,[41] the Court agreed that J.K. Mercado was not an interested party because its claim of ownership was not indicated whatsoever in the certificate of title. The only piece of evidence presented by J.K. Mercado was a private Memorandum of Agreement that was never inscribed in the subject certificate of title and filed with the Register of Deeds:

> The only piece of evidence that would show the alleged ownership of the J.K. Mercado over the four (4) parcels of land, subject of Misc. Case No. 1626 is the alleged private Memorandum of Agreement entered on November 19, 1981 by and between George Mercado and J.K. Mercado. Said agreement was never entered on the Certificate of Titles in the name of their original/former owners on file with the Register of Deeds at the time of the filing or pendency of Misc. Case No. 1626. As such, how can private complainant expect to be notified.[42]

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[40] *Id*. at 18.

[41] Court of Appeals Associate Justice Jorge S. Imperial.

[42] *Office of the Court Administrator v. Judge Matas*, *supra* note 39, at 19.

In short, in the aforesaid case, J.K. Mercado had no registered interest whatsoever in the subject property therein that would justify its status as an interested party in the petition for the issuance of a new owner's duplicate certificate of the subject title. J.K. Mercado was not the registered owner. Its only claim of ownership over the subject property therein was a private, unregistered document. In sharp contrast, in the instant case, the predecessors-in-interest of the petitioners Heirs of the Sps. Ramirez are the very *registered owners* of the subject certificate of title, the owner's duplicate certificate of which is sought to be reconstituted by respondent Abon.

Hence, it is clear from the foregoing that the Court's holding in *Office of the Court Administrator v. Judge Matas* should not be understood as excluding as an interested party the very person or entity whose name is indicated in the OCT or TCT as the registered owner. Verily, the inscription of the name of the owner on the OCT or TCT is the proof of the registration of his/her interest in the property. The Court's holding in *Office of the Court Administrator v. Judge Matas* simply means that an alleged party-in-interest, whose interest in the property is not registered, not inscribed on the certificate of title, and is based on a mere private document, should not be considered an interested party that must be notified in a petition for reconstitution case.

Stated differently, the actual registered owner appearing on the certificate of title is always an interested party that must be notified by the court hearing the petition for reconstitution. Otherwise, such court does not acquire jurisdiction to hear and try the petition for reconstitution case.

To restate, the instant ruling of the Court does not mean that respondent Abon cannot successfully seek the reconstitution of the owner's duplicate certificate of the subject OCT. He can. But the RTC hearing his application must notify the parties who appear on the OCT to be the registered owners. And if the RTC, after such notice and hearing, is satisfied that the Sps. Ramirez had truly divested all of their interest in the subject property, that respondent Abon has sufficiently established his

interest over the subject property, that the owner's duplicate certificate of title was indeed lost, and that the jurisdictional requirements under Section 109 of PD 1529 had been sufficiently met, then the Petition for Reconstitution should be granted in favor of respondent Abon. However, without properly notifying the estate of the Sps. Ramirez, who continue to be the registered owners of the subject property, the RTC fails to acquire jurisdiction over the Petition for Reconstitution.

Therefore, as the RTC, Branch 28 failed to acquire jurisdiction over LRC Case No. 6847 because of its failure to notify the petitioners Heirs of the Sps. Ramirez, the latter's Petition for Annulment of Judgment is meritorious.

WHEREFORE, the instant Petition is **GRANTED**. The Decision dated July 29, 2015 and Resolution dated February 15, 2016 rendered by the Court of Appeals, Former Fourteenth Division in CA-G.R. SP No. 132961 are hereby **REVERSED and SET ASIDE**. The Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 28's Decision dated October 4, 2013 in LRC Case No. 6847 is hereby **ANNULLED** without prejudice to the refiling of another petition for reconstitution of a lost owner's duplicate certificate of title with proper notice to all interested parties.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 223512. July 24, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTONIO ALMOSARA,**[*] *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; MURDER; ELEMENTS.—** Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is not parricide or infanticide. There is no question here regarding the presence of the first and fourth elements. The victim died of hemorrhagic shock as a result of multiple stab wounds per Medico-Legal Report No. M-878-00 issued by examining doctor Filemon C. Porciuncula, Jr. There is no evidence showing that Arnulfo and appellant, or any of the Almosaras for that matter, are related by affinity or consanguinity. Hence, the killing is not parricide.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE CREDIBILITY OF THE EYEWITNESS IS AT ISSUE, DUE DEFERENCE AND RESPECT SHALL BE GIVEN TO THE TRIAL COURT'S FACTUAL FINDINGS, ITS CALIBRATION OF THE TESTIMONIES, ITS ASSESSMENT OF THEIR PROBATIVE WEIGHT, AND ITS CONCLUSIONS BASED ON SUCH FACTUAL FINDINGS, ABSENT ANY SHOWING THAT IT HAD OVERLOOKED CIRCUMSTANCES THAT WOULD HAVE AFFECTED THE FINAL OUTCOME OF THE CASE, ESPECIALLY WHERE THE TRIAL COURT'S FINDINGS ARE SUSTAINED BY THE COURT OF APPEALS.—** Children Gregorio (six [6] years old) and Marife (five [5] years old) saw up close the slaying of their father. Both positively identified

[*] The trial court's records indicate "Perez" as appellant's middle name. In the Court of Appeals, however, the indicated middle name of appellant is "Sy." Notably, too, in the Information itself, appellant's middle name was "Buenaflor."

appellant and his relatives as the persons who repeatedly stabbed their father to death. Indeed, when the credibility of the eyewitness is at issue, due deference and respect shall be given to the trial court's factual findings, its calibration of the testimonies, its assessment of their probative weight, and its conclusions based on such factual findings, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case. This rule finds an even more stringent application where the trial court's findings are sustained by the Court of Appeals, as in this case.

3. **ID.; ID.; ID.; INCONSISTENCIES ON TRIVIAL MATTERS DO NOT AFFECT THE CREDIBILITY OF WITNESSES, BUT INDICATE THAT THE WITNESSES WERE NOT REHEARSED.—** More important, Marife (five [5] years old) and Gregorio (six [6] years old) are just children who were not shown to have had any motive to falsely implicate appellant in their father's slaying if truly appellant was innocent. x x x . In any event, whether ·six (6) year old Gregorio and five (5) year old sister Marife were able to consistently account on who exactly launched the second attack on Arnulfo and whether Gregorio and Marife should not have gone inside their house after they saw their father wounded and bloodied are trivial matters which do not affect their credibility as witnesses. On the contrary, these inconsistencies, if at all, indicate that these witnesses were not rehearsed.

4. **ID.; ID.; ID.; THERE COULD BE NO HARD AND FAST GAUGE FOR MEASURING A PERSON'S REACTION OR BEHAVIOR WHEN CONFRONTED WITH A STARTLING AND HORRIFYING OCCURRENCE.—** Gregorio and Marife, young as they were, cannot be expected to give error-free and consistent testimonies. ***People of the Philippines v. Edwin Ibanez, et al.*** enunciated: x x x Too, Gregorio saw his father being stabbed to death. Young as he was, six (6) years old, Gregorio cannot not be expected to react like an adult in the face of this tragic moment. Besides, *there could be no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence, as in this case.*

5. **ID.; ID.; DEFENSE OF DENIAL AND ALIBI; POSITIVE TESTIMONIES OF EYEWITNESSES PERTAINING TO**

THE MATERIAL DETAILS OF THE CRIME AND APPELLANT'S ROLE IN PERPETRATING IT PREVAIL OVER APPELLANT'S DEFENSE OF DENIAL AND ALIBI.— In light of the positive testimonies of eyewitnesses Gregorio and Marife pertaining to the material details affecting their father's murder unfolding before their very eyes and appellant's role in perpetrating it, appellant's defense of denial and alibi must fail.

6. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; CONCEPT AND ESSENCE OF TREACHERY; IN ORDER FOR TREACHERY TO BE PROPERLY APPRECIATED, TWO ELEMENTS MUST BE PRESENT: (1) AT THE TIME OF THE ATTACK, THE VICTIM WAS NOT IN A POSITION TO DEFEND HIMSELF; AND (2) THE ACCUSED CONSCIOUSLY AND DELIBERATELY ADOPTED THE PARTICULAR MEANS, METHODS, OR FORMS OF ATTACK EMPLOYED BY HIM.— ***People of the Philippines v. Roger Racal*** has explained the concept of treachery, *viz:* Paragraph 16, Article 14 of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. The essence of treachery hinges on the aggressor's attack sans any warning, done in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. Here, appellant, without any warning, barged into the victim's premises, went straight to pin him down to the ground, and repeatedly stabbed him. Appellant continued pinning Arnulfo down to allow his other relatives who had joined in to freely take turns in stabbing the helpless victim.

7. ID.; ID.; ID.; TREACHERY MAY STILL BE APPRECIATED EVEN WHEN THE VICTIM WAS FOREWARNED OF THE DANGER ON HIS PERSON PROVIDED THE EXECUTION

OF THE ATTACK MADE IT IMPOSSIBLE FOR THE VICTIM TO DEFEND HIMSELF OR TO RETALIATE.— Appellant and his relatives attacked the victim while the latter was gathering stones right outside his home. The victim may have had a *bolo* around his waist, but the sudden attack launched on him by appellant and his relatives effectively prevented the victim from drawing the *bolo* around his waist to defend himself x x x. In ***People of the Philippines v. Marcial D. Pulgo,*** this Court held that treachery may still be appreciated even when the victim was forewarned of the danger on his person. The decisive factor leans on whether the execution of the attack made it impossible for the victim to defend himself or to retaliate.

8. ID.; MURDER; PROPER IMPOSABLE PENALTY.— Murder is punishable by *reclusion perpetua* to death if committed through any of the attendant circumstances mentioned in Articie 248 of the Revised Penal Code, as amended by RA 7659. Applying Article 63(2) of the Revised Penal Code, the lesser of the two (2) indivisible penalties, *i.e., reclusion perpetua,* shall be imposed provided there is no mitigating or aggravating circumstance which attended the killing, as in this case. Verily, both the trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua.*

9. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— As for appellant's civil liabilities, ***People of the Philippines v. Esmael Gervero, et al.*** ordained: Following the jurisprudence laid down by the Court in *People v. Jugueta,* accused-appellants are ordered to pay the heirs of Hernando Villegas, Jose Villegas, and Benito Basug, Jr. ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. It was also ruled in *Jugueta* that when no documentary evidence of burial or funeral expenses is presented in court, the amount of ₱50,000.00 as temperate damages shall be awarded. In addition, interest at the rate of six percent per annum shall be imposed on all monetary awards from the date of finality of this decision until fully paid. Applying ***Gervero*** to the present case, the award of temperate damages should be increased to Php50,000.00 and moral and exemplary damages to Php75,000.00 each. As for civil indemnity, the Court of Appeals correctly awarded Php75,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal seeks to reverse the Decision dated January 28, 2016[1] of the Court of Appeals in CA-G.R. CR-HC No. 07177 affirming the trial court's verdict of conviction[2] for murder against appellant with modification of the monetary awards.

The Information

Appellant Antonio Almosara, together with his father, Adolfo Almosara was charged with murder under the following Information:

That on or about the 6th day of December, 2000 in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a bladed weapons (sic), conspiring and confederating together with Anthony Almosara y Buenaflor and Ronnie Almosara who are still at large and all of them mutually helping and aiding one another with intent to kill, with treachery, and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously stab one Arnulfo Cabintoy y Oliar with said bladed weapon on the different parts of his body,

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[1] Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justice Ramon A. Cruz and now Supreme Court Associate Justice Henri Jean Paul B. Inting; CA *rollo*, pp. 92-103.

[2] Penned by then Executive Judge, now CA Associate Justice Ronaldo B. Martin; Decision dated September 2, 2014 of the Regional Trial Court, Branch 73, Antipolo City, in Criminal Case No. 00-19993, entitled *People of the Philippines v. Adolfo Almosara y Perez and Antonio Almosara y Perez* ; CA *rollo*, pp. 39-44; Record, pp. 453-458.

thereby inflicting upon the latter mortal wounds which caused his instantaneous death.

Contrary to law.[3]

Meantime, Adolfo Almosara died, hence, the case as to him was dismissed.[4]

But as to appellant Antonio Almosara, the case proceeded. On arraignment, appellant pleaded not guilty.[5] Thereafter, trial ensued.

Maria Cabintoy, Gregorio Cabintoy, Marife Cabintoy, Wilfredo Almazen, SPO1 Felipe Matias, and Dr. Felimon Porciuncula, Jr. testified for the prosecution. On the other hand, appellant alone testified for the defense.

Version of the Prosecution

On December 6, 2000, siblings Gregorio and Marife Cabintoy were inside their residence at Sitio Quarry in Antipolo City.[6] Right outside, their father Arnulfo Cabintoy was drinking with appellant Antonio, Anthony, Rodolfo (Adolfo), and Ronnie, all surnamed Almosara.[7]

After the drinking spree, Arnulfo advised appellant to go to sleep. Appellant irritably engaged in a heated exchange with Arnulfo.[8] Shortly after, appellant and his relatives left.[9]

Suspecting that the Almosaras might return and retaliate, Arnulfo thought of his son who was then in the basketball court. He asked his wife Maria to fetch their son.[10]

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[3] Record, pp. 1-2.

[4] *Id*. at 21.

[5] *Id.* at 34.

[6] TSN, February 21, 2002, p. 4; TSN, March 29, 2007, p. 3.

[7] TSN, March 29, 2007, p. 4.

[8] TSN, February 21, 2002, pp. 13-14.

[9] TSN, March 29, 2007, pp. 6-7.

[10] See Maria's Salaysay dated December 7, 2000, Record, p. 3.

Not long after, the Almosaras, now armed with bolos, had returned. At that point, Arnulfo was gathering stones he thought of using to defend himself and his family should the Almosaras be back.[11]

After a while, the Almosaras came back. For his part, appellant went straight to and pinned down Arnulfo and right then and there repeatedly stabbed Arnulfo. While Arnulfo was already lying prostrate on the ground, Anthony joined in and stabbed Arnulfo once in the stomach. Ronnie and Adolfo also joined in and stabbed Arnulfo a total of six (6) times in the back.[12] Thereafter, the Almosaras ran away.[13]

Meanwhile, Maria had returned from the basketball court and saw many people gathering around their house. Some restrained her from getting inside. Then she saw her husband lying face down on the ground. He was full of blood. She heard people talking that the persons responsible were her husband's drinking buddies.[14]

Wilfredo Almazen who lived nearby saw appellant, Adolfo, and another person passing by the road fronting his house. The three (3) were wearing bloodied clothes and holding bolos. Shortly after, Maria came to him asking for his help as barangay chairman for the arrest of the Almosaras. He readily obliged. He first went to Arnulfo's house where he saw Arnulfo's lifeless body. Then he went to chase appellant who was already fleeing at that time. He was able to catch appellant whom he immediately brought to the police headquarters.[15]

SPO1 Felipe Matias, on the other hand, pursued and also succeeded in getting hold of Adolfo.

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[11] TSN, March 29, 2007, pp. 6-7.

[12] TSN, February 21, 2002, pp. 7-8; TSN, March 29, 2007, p. 8.

[13] TSN, February 21, 2002, p. 12.

[14] See Maria's Salaysay dated December 7, 2000, Record, pp. 3-4.

[15] TSN, July 27, 2006, pp. 3-5.

Dr. Filemon Porciuncula, Jr. conducted an autopsy on Arnulfo's body.[16] He found incise wounds in Arnulfo's left nape and right arm, and abrasions on the left forehead, right knee, and left hand. They were all non-fatal wounds. He also found stab wounds in the left chest and four (4) stab wounds in the left side of the back. Three (3) of these stab wounds were fatal.[17] He concluded that Arnulfo died of hemorrhagic shock or loss of blood due to multiple stab wounds. His findings were reflected in his Medico Legal Report No. M-878-00.[18]

Version of the Defense

Appellant testified that on December 6, 2000, Arnulfo invited him to drink in his house at Sitio Quarry Tagbak, Barangay San Jose, Antipolo City. He met Ronnie for the first time there.[19]

While they were drinking, Ronnie and Arnulfo got into a heated argument. When he tried to pacify them, Arnulfo got enraged and snapped at him to mind his own business. Arnulfo also punched him so he ran away. But Arnulfo chased and poked him with a two-feet *tubo*. Fortunately, he did not get hit. When Arnulfo hit him another time, he was able to wrest the *tubo* from the latter. He used it to hit Arnulfo back. While he and Arnulfo were grappling for the *tubo*, Ronnie rushed in and repeatedly stabbed Amulfo with a bladed weapon. He then left and ran away.[20] But Chairman Almazen caught up and warned him he would be indicted for the killing of Arnulfo. He was brought to the police station where Arnulfo's wife Maria pointed him out as her husband's assailant. He readily denied the charge.[21]

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[16] TSN, June 4, 2009, p. 5.

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

[18] *Id*. at 17.

[19] TSN, June 8, 2011, p. 4.

[20] *Id* at 4-7.

[21] *Id* at 8-9.

The Trial Court's Ruling

By Decision dated September 2, 2014,[22] the trial court found appellant guilty as charged, *viz*:

> WHEREFORE, premises considered, accused Antonio Almosara y Perez is found GUILTY of the crime of MURDER and is sentenced to suffer the maximum sentence under the law and is hereby sentenced to the penalty of RECLUSION PERPETUA. He is also ordered to pay the heirs of the deceased Cristito Manasan y Cervantes (sic) Php75,000.00 in Exemplary Damages, Php50,000.00 in Moral Damages and Php40,600.00 in Actual Cost with costs against suit. Damages representing unearned income of the deceased is not justified as no supporting document was ever presented in this case.
>
> Accused Antonio Almosara y Perez is hereby ordered committed to the National Bilibid Prisons (sic) for immediate service of his sentence.
>
> **SO ORDERED**.[23]

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty of murder despite the alleged inconsistencies in the testimonies of the prosecution witnesses. His arguments may be summed up as follows:[24]

(1) Gregorio and Marife's testimonies failed to paint a coherent picture of the incident. Both said they shouted for the Almosaras to stop, yet, Gregorio did not notice his sister was also present at that time. Gregorio testified only he and their neighbor Kris witnessed the incident.[25]

(2) Marife and Gregorio gave inconsistent statements whether it was Ronnie or Anthony who stabbed their father right after appellant delivered the initial blow.[26]

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[22] CA *rollo*, pp. 39-44; Record, pp. 453-458.

[23] CA *rollo*, p. 44; Record, p. 458.

[24] See Appellant's Brief dated July 13, 2015; CA *rollo*, pp. 21-37.

[25] CA *rollo*, p. 29.

[26] *Id*. at 29-30.

(3) Gregorio's act of going inside their home and doing nothing even after his father already got stabbed was contrary to human experience.[27]

Appellant further negates the presence of treachery in the commission of the crime. According to him, there was no proof he consciously adopted said mode of attack to facilitate the killing. Too, the fact that per Gregorio's testimony, Arnulfo was also armed with a bolo, indicated that Arnulfo was not without any means to defend himself.[28] Also, the alleged quarrel between him and Arnulfo before the attack dispelled the presence of treachery.[29]

Abuse of superior strength was not present here either. Gregorio and Marife themselves testified that appellant and his family did not simultaneously attack their father. They took turns in stabbing Arnulfo. Notably, no evidence was adduced showing a disparity between the built of Arnulfo and the individual builts of the Almosaras.[30]

In the absence of treachery and abuse of superior strength, therefore, he should only be found liable for homicide.[31]

Although the defense of denial is weak, the prosecution must not profit from the weakness of his defense but must rely on the strength of its own evidence.[32]

The Office of the Solicitor General, through Assistant Solicitor General John Emmanuel F. Madamba and State Solicitor Ma. Jesusa Eleanor P. Siquijor-Magbanua, essentially countered:[33]

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[27] *Id*. at 31.

[28] *Id*. at 33-34.

[29] *Id*. at 34.

[30] *Id*. at 35.

[31] *Id*. at 35.

[32] *Id*. at 36.

[33] See the People's Brief dated November 16, 2015, *id*. at 68-85.

(a) The testimonies of Gregorio and Marife were not only replete with details on how their father was attacked, the same were also given in a straightforward manner.[34]

(b) The alleged inconsistencies in the testimonies of the children Gregorio and Marife as to who attacked their father first was an insignificant detail which cannot defeat their positive identification of appellant as one of the assailants. Besides, it is perfectly natural for witnesses to give varying details as one witness may notice a detail which the other did not. What matters is both Gregorio and Marife positively identified appellant as one of the slayers of their father.[35]

(c) Gregorio and Marife were only six (6) years old and five (5) years old, respectively, when they witnessed up close their father's murder. They cannot, therefore, be expected to give an error-free narration of the events.[36]

(d) As a six (6) year old boy, Gregorio cannot be expected to behave in a "natural way" like an adult. Besides, there is no showing that the prosecution witnesses were moved by any motive to falsely charge appellant with the slaying of Arnulfo.[37]

(e) When the credibility of the witnesses is in issue, the trial court's factual findings and calibration of their testimonies are accorded high respect, if not conclusive effect.[38]

(f) Treachery and abuse of superior strength qualified the killing of Arnulfo. Dr. Porciuncula, Jr. testified that Arnulfo was attacked from behind. Arnulfo was already lying prostrate on the ground when appellant and his family repeatedly stabbed him. Arnulfo was unaware of the imminent peril to his life and was rendered incapable of defending himself. While Arnulfo

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[34] *Id*. at 74.

[35] *Id*.

[36] *Id*. at 75.

[37] *Id*. at 80.

[38] *Id*. at 80-81.

did have a bolo around his waist, he was rendered unable to draw it.[39]

(g) Considering that treachery attended the killing, abuse of superior strength was deemed absorbed therein and may no longer be appreciated as a separate aggravating circumstance.[40]

(h) The trial court properly rejected appellant's defense of denial. It was inexplicable for Arnulfo to continue hitting appellant when it was Ronnie who was supposedly stabbing Arnulfo. Most telling is this: when appellant got arrested, he did not point to Ronnie at all as the assailant.[41]

(i) Denial cannot be accorded more weight than the categorical testimonies of the witnesses who positively identified appellant as the assailant himself.[42]

The Court of Appeals' Ruling

By its assailed Decision dated January 28, 2016,[43] the Court of Appeals affirmed with modification, thus:

WHEREFORE, premises considered, the instant Appeal is **DENIED** for lack of merit and the assailed 2 September 2014 Decision of the Regional Trial Court of Antipoio City, Branch 73 is **AFFIRMED** with **MODIFICATIONS** as to the civil liability:

Accused-Appellant Antonio Almosara y Sy is hereby ORDERED to pay the heirs of Arnulfo Cabintoy y Oliar the following:

1) Temperate damages, in the amount of Php25,000.00;
2) Civil Indemnity, in the amount of Php75,000.00;
3) Moral Damages, in the amount of Php50,000.00:
4) Exemplary Damages, in the amount of Php30,000.00; and
5) 6% interest per annum to all monetary awards from the finality of the decision until fully paid.

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

[40] *Id*. at 82.

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

[42] *Id*. at 83.

[43] *Id*. at 92-103.

SO ORDERED.[44]

The Present Appeal

Appellant now seeks affirmative relief from the Court praying anew for his acquittal. In compliance with Resolution dated June 20, 2016,[45] both appellant and the OSG manifested that in lieu of supplemental, briefs, they were adopting their respective briefs before the Court of Appeals.

Issue

Did the Court of Appeals err in affirming appellant's conviction for murder?

The Court's Ruling

Article 248 of the Revised Penal Code (RPC), as amended by Republic Act No. 7659 (RA 7659)[46] provides:

> Article 248. *Murder*. - Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;
>
> x x x x x x x x x

Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is not parricide or infanticide.[47]

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[44] *Id.* at 102.

[45] *Rollo*, p. 19.

[46] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, Other Special Penal Laws, and for Other Purposes.

[47] *People of the Philippines v. Charlie Flores, et al.*, G.R. No. 228886, August 08, 2018.

There is no question here regarding the presence of the first and fourth elements. The victim died of hemorrhagic shock as a result of multiple stab wounds per Medico-Legal Report No. M-878-00[48] issued by examining doctor Filemon C. Porciuncula, Jr.. There is no evidence showing that Arnulfo and appellant, or any of the Almosaras for that matter, are related by affinity or consanguinity. Hence, the killing is not parricide.

As for the second and third elements, appellant assails the findings of both courts that these two (2) elements same are likewise present in this case.

Second Element
Appellant was one of the
four (4) persons who killed Arnulfo

Children Gregorio (six [6] years old) and Marife (five [5] years old) saw up close the slaying of their father. Both positively identified appellant and his relatives as the persons who repeatedly stabbed their father to death. They testified:

Gregorio's testimony

Q: Do you know the person who killed your father?
A: Yes, Sir.

Q: Do you know his name?
A: Yes, Sir.

Q: What is his name?
A: Antonio, Sir.

Q: Are you referring to the accused in this case?
A: Yes, Sir.[49]

x x x x x x x x x

Q: How many persons killed your father?
A: Four (4) persons, Sir.

Q: Do you know their names?
A: Yes, Sir.

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[48] Record, p. 471.

[49] TSN, February 21, 2002, pp. 5-6.

Q: Will you please name them.
A: Antonio, Rodolfo, Ronnie and Anthony.

Q: And their family names are all Almosara?
A: Yes, Sir.[50]

x x x x x x x x x

Q: Would you please explain how your father was killed by these four (4) persons?
A: Antonio placed himself on top of my father.

Q: And he was stabbed?
A: Yes, Sir.

Q: How many times?
A: He stabbed my father two (2) times, Sir.

Q: And you are referring to Antonio Almosara?
A: Yes, Sir.

Q: How about the other Almosaras, how many times they stabbed your father?
A: Anthony stabbed my father once (in) the stomach.

Q: How about the other two (2)?
A: Rodolfo and Ronnie. My father was stabbed 6 times by the other accused (in) his back, Sir.[51]

x x x x x x x x x

Marife's testimony

Q: Do you know the circumstances of the death of your father?
A: Yes, sir, he was stabbed.

Q: Do you know who stabbed your father?

A: Yes, sir.

Q: Who?

A: Antonio, Anthony, Rodolfo and Ronnie.

Q: Do you know the surnames of the persons you mentioned?

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[50] TSN, February 21, 2002, pp. 6-7.

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

A: Almosara.[52]

x x x x x x x x x

Q: If Antonio Almosara is in Court, can you identify him?
A: Yes, sir, that one. (witness pointed to a person who gave his name as Antonio Almosara)

Q: Why do you know this Antonio Almosara?
A: Because he killed my father.[53]

Q: You said these persons came back carrying bladed weapons, what happened next?
A: They stabbed my father.

Q: When you said they stabbed your father, to whom are you referring to?
A: Antonio, Anthony, Ronnie.

Q: Can you remember what Antonio Almosara did to your father?
A: He repeatedly stabbed my father.[54]

x x x x x x x x x

Indeed, when the credibility of the eyewitness is at issue, due deference and respect shall be given to the trial court's factual findings, its calibration of the testimonies, its assessment of their probative weight, and its conclusions based on such factual findings, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case. This rule finds an even more stringent application where the trial court's findings are sustained by the Court of Appeals,[55] as in this case. ***People of the Philippines v. Jeffrey Collamat, et al***.[56] elucidates:

In cases where the issue rests on the credibility of witnesses, as in this case, it is important to emphasize the well-settled rule that "appellate

[52] TSN, March 29, 2007, p. 4.

[53] *Id*.

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

[55] See *People of the Philippines v. Marcial D. Pulgo*, 813 Phil. 205, 211 (2017).

[56] G.R. No. 218200, August 15, 2018.

courts accord the highest respect to the assessment made by the trial court because of the trial judge's unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination."

We explained in *Reyes, Jr. v. Court of Appeals* that the findings of the trial court will not be overturned absent any clear showing that it had *overlooked, misunderstood or misapplied* some facts or circumstances of weight or substance that could have altered the outcome of the case, *viz*.:

> Also, the issue hinges on credibility of witnesses. We have consistently adhered to the rule that **where the culpability or innocence of an accused would hinge on the issue of credibility of witnesses and the veracity of their testimonies, findings of the trial court are given the highest decree of respect**. These findings will not be ordinarily disturbed by an appellate court absent any clear showing that the trial court has overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could very well affect the outcome of the case. It is the trial court that had the opportunity to observe 'the witnesses' manner of testifying, their furtive glances, calmness, sighs or their scant or full realization of their oaths. It had the better opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grueling examination. Inconsistencies or contradictions in the testimony of the victim do not affect the veracity of the testimony if the inconsistencies do not pertain to material points. (Emphasis supplied)
>
> x x x x x x x x x

More important, Marife (five [5] years old) and Gregorio (six [6] years old) are just children who were not shown to have had any motive to falsely implicate appellant in their father's slaying if truly appellant was innocent. ***People of the Philippines v. Golem Sota***[57] is apropos:

> Sota and Gadjadli failed to attribute any ill motive on the part of Jocelyn in testifying against them. Notably, nothing from the records can sustain a finding that Jocelyn, who was a child when called to

[57] G.R. No. 203121, November 29, 2017, 847 SCRA 113, 133.

the witness stand, was moved by ill will against Sota and Gadjadli sufficient to encourage her to fabricate a tale before the trial court. Both Sota and Gadjadli, according to her, were even the friends of Artemio. **At her tender age, Jocelyn could not have been able to concoct particulars on how the group killed Artemio and burned their house. Settled is the rule that the absence of evidence as to an improper motive strongly tends to sustain the conclusion that none existed and that the testimony is worthy of full faith and credit.** x x x (Emphasis supplied)

In any event, whether six (6) year old Gregorio and five (5) year old sister Marife were able to consistently account on who exactly launched the second attack on Arnulfo and whether Gregorio and Marife should not have gone inside their house after they saw their father wounded and bloodied are trivial matters which do not affect their credibility as witnesses. On the contrary, these inconsistencies, if at all, indicate that these witnesses were not rehearsed.[58]

In any case, Gregorio and Marife, young as they were,[59] cannot be expected to give error-free and consistent testimonies. ***People of the Philippines v. Edwin Ibañez, et al***.[60] enunciated:

x x x x x x x x x

Rachel was only ten (10) years old when she witnessed the murder of the victim. She testified in open court two (2) years later. Thus, she cannot be expected to give an error-free narration of the events that happened two years earlier. The alleged inconsistencies between her sworn statement and testimony referred to by appellants do not affect her credibility. What is important is that in all her narrations she consistently and clearly identified appellants as the perpetrators of the crime. Inconsistencies between the sworn statement and the testimony in court do not militate against witness' credibility since sworn statements are generally considered inferior to the testimony in open court.

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[58] See *People of the Philippines v. Alberto Petalino*, G.R. No. 213222, September 24, 2018.

[59] Gregorio and Marife were only eight years old (in 2002) and eleven years old (in 2007), respectively, when they testified in court.

[60] 718 Phil. 370, 378 (2013).

x x x x x x x x x

Too, Gregorio saw his father being stabbed to death. Young as he was, six (6) years old, Gregorio cannot not be expected to react like an adult in the face of this tragic moment. Besides, *there could be no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence, as in this case.*[61] ***People of the Philippines v. Alvin Esugon***[62] teaches:

x x x every child is now presumed qualified to be a witness. x x x

x x x x x x x x x

The appellant did not object to Carl's competency as a witness. x x x **All that the Defense did was to attempt to discredit the testimony of Carl, but not for once did the Defense challenge his capacity to distinguish right from wrong, or to perceive, or to communicate his perception to the trial court**. Consequently, the trial judge favorably determined the competency of Carl to testify against the appellant.

The appellant points to inconsistencies supposedly incurred by Carl. That is apparently not disputed. However, it seems clear that **whatever inconsistencies the child incurred in his testimony did not concern the principal occurrence or the elements of the composite crime charged but related only to minor and peripheral matters. As such, their effect on his testimony was negligible, if not nil, because the inconsistencies did not negate the positive identification of the appellant as the perpetrator.** x x x

x x x **Moreover, according credence to Carl's testimony despite his tender age would not be unprecedented. In *People v. Mendiola*, the Court considered a 6-year-old victim competent, and regarded her testimony against the accused credible. In *Dulla v. Court of Appeals*, the testimony of the three-year-old victim was deemed acceptable. As such, Carl's testimony was entitled to full probative weight**. (Emphasis supplied)

In light of the positive testimonies of eyewitnesses Gregorio and Marife pertaining to the material details affecting their

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[61] See *People of the Philippines v. Golem Sota*, *supra* note 57, at 132.

[62] 761 Phil. 300, 311-312, 313 (2015).

father's murder unfolding before their very eyes and appellant's role in perpetrating it, appellant's defense of denial and alibi must fail.[63]

In another vein, appellant's use of "Ronnie" as fall guy is unconvincing. Appellant never implicated "Ronnie" during his arrest and even during the preliminary investigation. Obviously, his introduction of "Ronnie" as protagonist in Arnulfo's slaying utterly lacks merit.

Third Element
Treachery attended the killing

People of the Philippines v. Roger Racal[64] has explained the concept of treachery, *viz*:

> Paragraph 16, Article 14 of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.

The essence of treachery hinges on the aggressor's attack sans any warning, done in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape.[65]

Here, appellant, without any warning, barged into the victim's premises, went straight to pin him down to the ground, and repeatedly stabbed him. Appellant continued pinning Arnulfo down to allow his other relatives who had joined in to freely

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[63] *People of the Philippines v. Alberto Petalino*, *supra* note 58.

[64] G.R. No. 224886, September 4, 2017, 838 SCRA 476, 489.

[65] *People of the Philippines v. Golem Sota*, *supra* note 57, at 138.

take turns in stabbing the helpless victim. Gregorio and Marife testified:

Gregorio

Q: Would you please explain how your father was killed by these four (4) persons?
A: Antonio placed himself on top of my father.

Q: And he was stabbed?
A: Yes, Sir.[66]

x x x x x x x x x

Marife

Q: Can you describe the position of your father while he was being slabbed by these persons?
A: My father was already lying down, the four persons were still stabbing my father.[67]

x x x x x x x x x

Appellant and his relatives attacked the victim while the latter was gathering stones right outside his home. The victim may have had a *bolo* around his waist, but the sudden attack launched on him by appellant and his relatives effectively prevented the victim from drawing the *bolo* around his waist, to defend himself. Gregorio testified:

x x x x x x x x x

Q: When your father was stabbed, was he also carrying a bolo?
A: Yes, Your Honor.

Q: Was he able to draw the *bolo* from the holester (sic)?
A: No, Your Honor.

Q: (Was) your father able to hold that *bolo*?
A: No, Your Honor.[68]

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[66] TSN, February 21, 2002, p. 7.

[67] TSN, March 29, 2007, p. 8.

[68] TSN, February 21, 2002, pp. 14-15.

x x x x x x x x x x x x

Q: When your father was stabbed by these four (4) accused, he was not able to defend himself?

A: Yes, Sir.[69]

x x x x x x x x x x x x

In his Medico-Legal Report No. M-878-00,[70] Dr. Porciuncula, Jr. confirmed[71] that the victim was repeatedly stabbed in the back, *viz*:

x x x x x x x x x x x x

Q: Considering the location of the incise wound, can we estimate the position- of the assailant when the incise wound was incurred by the victim?[72]

A: It is possible that the assailant was on the left back portion of the victim.

x x x x x x x x x x x x

Q: Do I get it right that all of the fatal wounds were located at the left back portion of the victim?

A: Yes, sir and there is one on the front left side.[73]

x x x x x x x x x x x x

In ***People of the Philippines v. Marcial D. Pulgo***,[74] this Court held that treachery may still be appreciated even when the victim was forewarned of the danger on his person. The decisive factor leans on whether the execution of the attack made it impossible for the victim to defend himself or to retaliate.

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[69] *Id*. at 16.

[70] Record, p. 471.

[71] TSN, June 4, 2009, pp. 7-18.

[72] *Id*. at 7.

[73] *Id*. at 16.

[74] See *supra* note 55, at 217.

When the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter and may no longer be separately appreciated.[75]

Penalty

Murder is punishable by *reclusion perpetua* to death if committed through any of the attendant circumstances mentioned in Article 248 of the Revised Penal Code, as amended by RA 7659.[76]

Applying Article 63(2) of the Revised Penal Code,[77] the lesser of the two (2) indivisible penalties, *i.e., reclusion perpetua*, shall be imposed provided there is no mitigating or aggravating circumstance which attended the killing, as in this case. Verily, both the trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua*.

As for appellant's civil liabilities, ***People of the Philippines v. Esmael Gervero, et al***.[78] ordained:

Following the jurisprudence laid down by the Court in *People v. Jugueta*, accused-appellants are ordered to pay the heirs of Hernando Villegas, Jose Villegas, and Benito Basug, Jr. ₱75,000.00 as civil

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[75] See *People of the Philippines v. Golem Sota*, *supra* note 57, at 140.

[76] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended. Other Special Penal Laws, and for Other Purposes.

Article 248. *Murder*. - Any person who not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances x x x x

[77] Art. 63. *Rules for the application of indivisible penalties.* — x x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

[78] G.R. No. 206725, July 11, 2018.

indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. It was also ruled in *Jugueta* that when no documentary evidence of burial or funeral expenses is presented in court, the amount of ₱50,000.00 as temperate damages shall be awarded. In addition, interest at the rate of six percent per annum shall be imposed on all monetary awards from the date, of finality of this decision until fully paid.

Applying ***Gervero*** to the present case, the award of temperate damages should be increased to Php50,000.00 and moral and exemplary damages to Php75,000.00 each.

As for civil indemnity, the Court of Appeals correctly awarded Php75,000.00.[79]

ACCORDINGLY, the appeal is **DENIED**. The Decision dated January 28, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07177 is **AFFIRMED with MODIFICATION**. Appellant Antonio Almosara is found **GUILTY** of **MURDER** and sentenced with the imprisonment term of *reclusion perpetua*. He is further required to pay **₱75,000.00** each as civil indemnity, moral damages, and exemplary damages, and **₱50,000.00** as temperate damages.

All monetary awards shall earn interest at the legal rate of six percent (6%) *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.

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[79] *Id.*

SECOND DIVISION

[G.R. No. 225007. July 24, 2019]

SAN MIGUEL FOODS, INC. and JAMES A. VINOYA, *petitioners, vs.* **ERNESTO RAOUL V. MAGTUTO,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; DEFINED; ELEMENTS TO BE VALID, PRESENT IN CASE AT BAR.— Under the Civil Code, a contract is a meeting of the minds, with respect to the other, to give something or to render some service. x x x [F]or a contract to be valid, it must have the following essential elements: (1) consent of the contracting parties; (2) object certain, which is the subject matter of the contract; and (3) cause of the obligation which is established. Consent is manifested by the meeting of the offer and the acceptance of the thing and the cause, which are to constitute the contract. The contract is perfected at the moment there is a meeting of the minds upon the thing that is the object of the contract and the price. In the present case, all the essential elements - consent, object and cause - are present. Magtuto entered into an agreement with Vinoya for the growing of broiler chicks. They agreed that SMFI would provide the day-old chicks, feeds, medicines, materials and technical support, while Magtuto would be given a certain period to grow the chicks and keep them healthy. Afterwards, SMFI would harvest the chicks and Magtuto would be paid a grower's fee depending on the number of chicks harvested. The chicks delivered by SMFI and grown by Magtuto constitutes the object or subject matter of the contract and the grower's fee is the consideration.

2. ID.; ID.; ID.; PETITIONERS CANNOT INVOKE THE UNENFORCEABILITY OF THE VERBAL AGREEMENTS THEY ENTERED INTO WITH RESPONDENT; CIRCUMSTANCES REVEALED THAT PETITIONER VINOYA HAD AUTHORITY TO DEAL WITH RESPONDENT IN BEHALF OF SMFI; EVEN ASSUMING THAT VINOYA HAD NO AUTHORITY, THE CONTRACT

WAS IMPLIEDLY RATIFIED BY SMFI THROUGH ITS SEVERAL ACTS SHOWING APPROVAL.— SMFI cannot assail the unenforceability of the agreement entered into between Magtuto and Vinoya on the ground that Vinoya had no authority to bind the corporation. The contract, assuming that Vinoya had no authority to sign for SMFI, was impliedly ratified when the broiler chicks subject of the contract were delivered by SMFI, together with the feeds, medicines and materials, until the grown chickens were harvested by SMFI. This occurred not only once but five times over the course of nine months. In *Prime White Cement Corp. v. IAC,* we held that implied ratification may take various forms - like silence or acquiescence; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom. Under Article 1317 of the Civil Code, the contract is enforceable against SMFI. x x x Also, Magtuto had full faith that Vinoya had authority to deal with him as a chick grower for several reasons: x x x Thus, SMFI cannot deny that Vinoya does not have any authority to transact with Magtuto since SMFI delivered day-old chicks to Magtuto for almost a year; administered the growth of the chicks for 30-35 days by providing feeds, medicines and technical support; harvested the grown chickens; and finally paid Magtuto for growing said chicks. In every step of the process, Magtuto signed and received several documents and materials from SMFI. These transactions were competently proven during trial with both parties supplying the proper documentation such as delivery receipts, trust receipts, receiving slips, flock records, cash receipts, and liquidation statements. SMFI delivered broiler chicks to Magtuto five times and neither SMFI nor Magtuto had objected to the arrangement until the fifth delivery when SMFI was short of 4,000 broiler chicks.

3. **ID.; DAMAGES; RESPONDENT IS ENTITLED TO ACTUAL OR COMPENSATORY DAMAGES ONLY ON THE DELIVERY SHORTAGE OF BROILER CHICKS WITH LEGAL INTEREST.—** As to the amount that must be compensated to Magtuto, we agree with the computation of the actual or compensatory damages made by the appellate court as specified in its decision only as to that portion pertaining to the shortage of delivery of the 4,000 heads by SMFI on the fifth delivery made in June 2003. An award of actual or compensatory damages requires proof of pecuniary loss. Under

> Articles 2199 and 2200 of the Civil Code, actual or compensatory damages are those awarded in satisfaction of or in recompense for loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done. x x x To be entitled to compensatory damages, the amount of loss must be capable of proof and actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable. The burden of proof of the damage suffered is imposed on the party claiming the same, who should adduce the best evidence available in support thereof. x x x Given that SMFI is liable only for the loss of the 4,000 short-delivery of chicks since the contract entered into was on a "per grow basis," we agree with the computation of the appellate court with regard to the unrealized income for the month of June 2003 in the amount of ₱38,383.58. This amount represents the actual or compensatory damages for Magtuto's loss of income on the 4,000 short-delivery of chicks on the fifth grow which SMFI should indemnify. Also, the amount of ₱38,383.58 shall be subject to the payment of legal interest. In *Nacar v. Gallery Frames,* we held that an award of interest in the concept of actual or compensatory damages is imposed when an obligation, not constituting a loan or forbearance of money, is breached, then an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% *per annum.* Thus, the actual or compensatory damages in the amount of ₱38,383.58 shall earn interest at the rate of 6% *per annum* from the date of finality of this Decision until full payment.

APPEARANCES OF COUNSEL

Botor, Botor Bracia & Associates Law & Notarial Offices for petitioners.

Lucille Fe R. Maggay-Principe for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari*[1] assailing the Decision[2] dated 28 August 2015 and the Resolution[3] dated 6 May 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 101074.

The Facts

Sometime in July 2002, respondent Ernesto Raoul V. Magtuto (Magtuto), a businessman engaged in growing broiler chicks and doing business under the name Alyssandra Farms, attended a gathering of broiler chick growers of Swift Foods, Inc., which was closing operations in Bicol at the end of the year 2002. The gathering, organized by Dr. Edwin Rosales, at that time the Branch Manager of the Bicol branch and a veterinarian for the contract growing operation of Swift Foods, Inc., was held at Villa Caceres Hotel in Naga City. Those in attendance were broiler chick growers and some employees of Swift Foods, Inc. and representatives of petitioner San Miguel Foods, Inc. (SMFI), a company engaged in the business of breeding and hatching broiler chickens, poultry processing, and manufacturing of poultry and livestock feeds.

Magtuto was present at the gathering since he was a grower for Swift Foods, Inc. for six years from 1996 to 2002 and was well-known as one of the biggest broiler chick growers in the Bicol region maintaining several grow-out facilities in Carolina, Nabua and Baao, Camarines Sur. Petitioner Dr. James A. Vinoya[4]

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 40-57. Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Normandie B. Pizarro and Ma. Luisa C. Quijano-Padilla concurring.

[3] *Id.* at 68-69.

[4] Referred to as James Benoya in the records and transcript of stenographic notes. Proper name shows James A. Vinoya, see *rollo*, pp. 28-29.

(Vinoya), SMFI's veterinarian and production supervisor, and Engr. Rene C. Ogilvie (Ogilvie), SMFI's Bicol Region Poultry Operations Manager, attended the gathering representing SMFI. The growers were there to know if they can do business with SMFI and successively, SMFI, as an integrator, was looking into recruiting new growers or getting additional capacity for the company's production program in the region. At the gathering, SMFI presented to the contract growers SMFI's chick growing scheme, payment system, and benefits.

Several months after the said gathering or sometime in September 2002, Magtuto and Vinoya arrived at an agreement. Vinoya told Magtuto that he can be accommodated as a broiler chick grower of SMFI only if excess chicks would be available from the SMFI hatchery located in Laguna. They did not execute a written contract. However, Vinoya showed Magtuto a copy of SMFI's standard Broiler Chicken Contract Growing Agreement and told Magtuto that he is bound by the same terms and conditions as their regular contract growers and Magtuto agreed.

The agreement involved the delivery of 36,000 day-old chicks by SMFI which Magtuto would grow for a period of about 30-35 days at his grow-out facility located in Carolina, Camarines Sur. SMFI would provide all the feeds, medicines, materials, and technical support. After the 30-35 day period, the grown chickens, after reaching the desired age and weight, would be harvested and hauled by SMFI. Then Magtuto would be given a period of 15 days to clear, disinfect, and prepare his grow-out facility for the next delivery.

To guarantee the faithful performance by Magtuto of his obligations as a grower and for the protection of both parties, Magtuto gave SMFI the amount of ₱72,000, as cash bond, equivalent to two successive grows of ₱36,000 per grow where ₱1 for every chick delivered would be deducted from Magtuto's account.

Magtuto and Vinoya did not discuss how long the agreement would last but for the months of October and November 2002,

and January and April 2003, SMFI delivered chicks to Magtuto four times consisting of 36,000 chicks per delivery. After every harvest, SMFI paid Magtuto a grower's fee for his service of growing the chicks for the company.

Then sometime in June 2003, on the fifth delivery, the broiler chicks delivered by SMFI was short of 4,000 heads. Instead of 36,000 broiler chicks, SMFI only delivered 32,000 chicks. Magtuto reported this to Vinoya. Vinoya replied and told Magtuto that there were no more excess chicks to give due to the low supply from the hatchery and the decline in the demand of chicken in the market because of the influx of cheap chicken coming from other countries. Magtuto demanded that Vinoya deliver more chicks in order to make use of his facility to the maximum capacity but Vinoya said that he was only being accommodated and their priority would be the official contract growers of SMFI.

After several exchange of messages, Magtuto felt that Vinoya responded arrogantly and in an insulting manner instead of addressing his query; thus, Magtuto went straight to SMFI and sent a letter-complaint[5] dated 12 June 2003 addressed to Ogilvie expressing his dissatisfaction with Vinoya's alleged "arrogance, incompetence and unprofessional attitude."[6] Ogilvie, however, did not take any action on the matter.

On 12 August 2003, Vinoya informed Magtuto that their arrangement was terminated due to "poor working relationship." Magtuto was surprised claiming that the termination was prompted by the complaint on unprofessional conduct he made against Vinoya. Magtuto then sent a letter[7] dated 25 August 2003 to Benjamin Hilario, SMFI's Assistant Vice President and Luzon Processing Manager, narrating his experience with Vinoya and Ogilvie's inaction. Magtuto mentioned that the timing of the notice of termination delayed his July chick-in

[5] Records, pp. 6-7.

[6] *Id*. at 6.

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

by three weeks and that he incurred considerable expenses in preparing his grow-out facility and was deprived of income for the month of July. In the same letter, Magtuto stated that he was withdrawing the ₱72,000 cash bond that he posted which should be deducted from his account with SMFI.

Thereafter, Magtuto filed a complaint[8] for damages against SMFI, Vinoya, and Ogilvie before the Regional Trial Court (RTC) of Naga City, Branch 22.

In his complaint, Magtuto claimed that because of the abrupt unilateral termination of contract by SMFI (1) he was deprived of income for the month of July 2003 in the amount of not less than ₱360,000; (2) he incurred considerable expenses in preparing his grow-out facility in the amount of not less than ₱150,000; and (3) his good reputation as a contract grower was tainted, causing him social humiliation, mental anguish and serious anxiety, which SMFI must compensate in the amount of not less than ₱500,000. Also, Magtuto alleged that SMFFs act in terminating the agreement was contrary to justice and good faith causing damage and injury to his rights for which SMFI, Vinoya, and Ogilvie must be condemned to pay nominal damages of not less than ₱100,000, and by way of example for the public good, SMFI, Vinoya, and Ogilvie must pay him exemplary damages in the amount of not less than ₱200,000. Further, Magtuto (1) claimed that the 4,000 broiler chicks lacking in the delivery of June 2003 deprived him of income amounting to ₱48,000, (2) demanded the return of the bond deposited with SMFI in the amount of ₱72,000, and (3) claimed that he was constrained to litigate and engage the services of counsel at an agreed attorney's fees of ₱100,000 and ₱1,500 per appearance fee.

In its Answer,[9] SMFI claimed that Magtuto was not a contract grower of SMFI and that SMFI did not execute any written broiler chicken contract growing agreement with Magtuto. SMFI narrated that sometime in September 2002, Magtuto was the

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[8] *Id*. at 1-5. Docketed as Civil Case No. 2004-0008.

[9] *Id*. at 21-28.

one who manifested his desire to become a contract grower of SMFI to Vinoya. Vinoya, without the knowledge and prior consent of SMFI, entered into a private arrangement by way of "accommodation" with Magtuto. As an accommodation, Vinoya promised to deliver to Magtuto broiler chicks from the SMFI hatchery only when the surplus was not earmarked for delivery to contract growers of SMFI. Vinoya intended that if Magtuto maintains a healthy working relation and proves his competence, Vinoya would recommend Magtuto for possible execution of the written broiler chicken contract growing agreement with SMFI. SMFI added that since the accommodation by Vinoya was without the knowledge and consent of SMFI, Vinoya required Magtuto to post a bond of ₱72,000 to secure SMFI from any loss and Vinoya from being held liable by SMFI for extending an accommodation to Magtuto. Afterwards, Vinoya delivered 36,000 heads of broiler chicks to Magtuto. Other deliveries were made, though not on a regular basis, and only when there were surplus broiler chicks from the hatchery not earmarked for delivery to contract growers of SMFI. Then, sometime in June 2003, Magtuto conveyed to Vinoya that the delivery of broiler chicks was short of 4,000 heads. Vinoya explained that as an accommodated party, the delivery would depend on the surplus of broiler chicks, and that SMFI's priority would be the official contract growers. However, Magtuto continuously demanded delivery of the 4,000 heads. Thus, Vinoya ignored Magtuto's demands. Magtuto then sent a letter to Ogilvie who also ignored said letter thinking that Magtuto does not have any vested right to demand from SMFI. Also, SMFI averred that Magtuto was formerly a contract grower of Swift Foods, Inc. and at the time he was accommodated by Vinoya, Magtuto had a contract with Bounty Fresh Food, Inc., a competing company. SMFI asserted that Magtuto maintains his grow-out facility in Carolina and incurred expenses, not because of his relation with SMFI, but because he was also a regular grower for other companies engaged in the same business. Thus, SMFI strongly averred that Magtuto was not a contract grower of SMFI and that the delivery of broiler chicks made to Magtuto was only by way of accommodation. There is no

termination of contract but a mere withdrawal or termination of the accommodation due to the decrease in the production of broiler chicks and decline in the demand for chicken in the market. SMFI claimed that Magtuto was aware of the accommodation given to him by Vinoya and that he was never made nor misled to believe that there existed a contract between him and SMFI.

Magtuto, aside from presenting himself as a witness in court also presented two other witnesses: (1) Dr. Edwin Rosales and (2) Ramon B. Bayta, Jr., a former co-contract grower at Swift Foods, Inc. who also had an experience being "accommodated" by SMFI for two grows and at the time he testified, was a poultry contract grower for Bounty Fresh Food, Inc.

SMFI, on the other hand, presented three witnesses: (1) Vinoya, (2) Ogilvie, and (3) Dante Gito, a Finance Analyst of SMFI Naga Plant in-charge of the liquidation of contract growers.

In a Decision[10] dated 4 February 2013, the RTC resolved the case in favor of Magtuto. The RTC stated that Magtuto was a contract grower of SMFI even in the absence of a written broiler chicken contract growing agreement. The RTC explained that the verbal agreement of Magtuto and Vinoya created respective obligations between them. Magtuto posted a cash bond to guarantee full performance of his obligations under the same terms and conditions as contained in a written growing agreement. SMFI, in turn, delivered five times to Magtuto for the growing of the day-old chicks, harvested fhe grown chickens, and paid Magtuto his grower's fee like any of its contract growers. Thus, the RTC did not treat the arrangement between Magtuto and Vinoya as an accommodation only but as a contract growing agreement even if not made in writing. The dispositive portion states:

WHEREFORE, viewed in the light of the foregoing premises, DECISION is hereby rendered ORDERING the DEFENDANTS SAN

[10] CA *rollo*, pp. 65-87. Penned by Judge Efren G. Santos.

MIGUEL FOODS, INC. and JAMES VINOYA, to jointly and severally pay PLAINTIFF, ERNESTO RAOUL V. MAGTUTO, the following:

a) The amount of Php 334,556.41 as ACTUAL and COMPENSATORY DAMAGES;

b) The amount of Php 500,000.00 as MORAL DAMAGES;

c) The amount of Php 100,000.00 as NOMINAL DAMAGES;

d) The amount of Php 200,000.00 as EXEMPLARY DAMAGES;

e) The amount of Php 100,000.00 as and for ATTORNEY'S FEES;

f) The further sum of Php 13,583.80 as EXPENSES OF LITIGATION; and

g) All other CLAIMS and COUNTERCLAIMS are hereby ordered DISMISSED for lack of merit.

No pronouncement as to costs.

SO ORDERED.[11]

Petitioners filed an appeal with the CA. In a Decision dated 28 August 2015, the CA affirmed with modification the decision of the RTC. The dispositive portion of the decision states:

WHEREFORE, premises considered, the assailed 04 February 2013 Decision of the Regional Trial Court of Naga City, Branch 22 is hereby MODIFIED. The amount of the actual or compensatory damages is INCREASED to PhP383,835.85. The awards for moral and exemplary damages are hereby DELETED for lack of factual basis. Likewise, the award for nominal damages is DELETED for being improper.

SO ORDERED.[12]

Petitioners filed a Motion for Reconsideration which was denied by the CA in a Resolution dated 6 May 2016.

Hence, this petition.

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[11] *Id*. at 86-87.

[12] *Rollo*, p. 56.

The Issue

Whether or not the appellate court committed reversible error in holding that Magtuto is entitled to actual or compensatory damages absent a written broiler chicken contract growing agreement between Magtuto and SMFI.

The Court's Ruling

The petition is partly meritorious.

Petitioner SMFI contends that there was never any written broiler chicken contract growing agreement between SMFI and Magtuto. SMFI asserts that it had no participation in and knowledge of the agreement made to Magtuto by Vinoya, who had no authority to enter into a contract growing agreement with any person in behalf of SMFI. SMFI asserts that Vinoya only accommodated Magtuto on the condition that excess chicks would be available since the company's priority would be their official contract growers. Thus, the continuity of the accommodation and the supply of the day-old chicks were contingent upon the availability of excess chicks from SMFPs hatchery. SMFI also submits that Vinoya and Magtuto did not even fix a duration on how long the arrangement would be. SMFI insists that the lower and appellate courts, in awarding actual or compensatory damages, erroneously relied on the self-serving testimony of Magtuto, absent any clear and convincing proof that Magtuto is entitled to such damages.

Under the Civil Code, a contract is a meeting of the minds, with respect to the other, to give something or to render some service. Article 1318 of the Civil Code provides:

> Art. 1318. There is no contract unless the following requisites concur:
> (1) Consent of the contracting parties;
> (2) Object certain which is the subject matter of the contract; and
> (3) Cause of the obligation which is established.

Accordingly, for a contract to be valid, it must have the following essential elements: (1) consent of the contracting

parties; (2) object certain, which is the subject matter of the contract; and (3) cause of the obligation which is established. Consent is manifested by the meeting of the offer and the acceptance of the thing and the cause, which are to constitute the contract.[13] The contract is perfected at the moment there is a meeting of the minds upon the thing that is the object of the contract and the price.

In the present case, all the essential elements — consent, object and cause — are present. Magtuto entered into an agreement with Vinoya for the growing of broiler chicks. They agreed that SMFI would provide the day-old chicks, feeds, medicines, materials and technical support, while Magtuto would be given a certain period to grow the chicks and keep them healthy. Afterwards, SMFI would harvest the chicks and Magtuto would be paid a grower's fee depending on the number of chicks harvested. The chicks delivered by SMFI and grown by Magtuto constitutes the object or subject matter of the contract and the grower's fee is the consideration.

Thus, a contract, once perfected, is generally binding in whatever form, whether written or oral, it may have been entered into, provided the essential requisites for its validity are present. Article 1356 of the Civil Code provides:

> Art. 1356. Contracts shall be obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present, x x x.

SMFI claims that the agreement is unenforceable in the absence of a written contract and that Vinoya had no authority to enter into any contracts in the name of SMFI.

We disagree.

SMFI cannot assail the unenforceability of the agreement entered into between Magtuto and Vinoya on the ground that Vinoya had no authority to bind the corporation. The contract, assuming that Vinoya had no authority to sign for SMFI, was

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[13] Art. 1319 of the Civil Code.

impliedly ratified when the broiler chicks subject of the contract were delivered by SMFI, together with the feeds, medicines and materials, until the grown chickens were harvested by SMFI. This occurred not only once but five times over the course of nine months. In *Prime White Cement Corp. v. IAC*,[14] we held that implied ratification may take various forms - like silence or acquiescence; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom.

Under Article 1317 of the Civil Code, the contract is enforceable against SMFI. The said provision states:

> Art. 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.
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> A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contradicting party.

Also, Magtuto had full faith that Vinoya had authority to deal with him as a chick grower for several reasons: (1) Vinoya, together with Ogilvie, attended the gathering of Swift Foods, Inc. broiler chick growers before Swift Foods, Inc. closed down its operations in 2002 and both gave a presentation as official representatives of SMFI who were there to scout for new partners in the chick growing business; (2) Vinoya, as SMFI's veterinarian and production supervisor in charge of facility inspection, fieldwork, and technical assistance, was the one who directly dealt with Magtuto as a chick grower; (3) Magtuto was shown by Vinoya a standard Broiler Chicken Contract Growing Agreement of SMFI and even if they did not execute one, Magtuto agreed to be bound by the same terms and conditions; and (4) Magtuto posted a ₱72,000 cash bond, equivalent to two consecutive grows, in order to guarantee faithful performance of his obligations as a grower.

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[14] 292-A Phil. 198, 204 (1993).

Thus, SMFI cannot deny that Vinoya does not have any authority to transact with Magtuto since SMFI delivered day-old chicks to Magtuto for almost a year; administered the growth of the chicks for 30-35 days by providing feeds, medicines and technical support; harvested the grown chickens; and finally paid Magtuto for growing said chicks. In every step of the process, Magtuto signed and received several documents and materials from SMFI. These transactions were competently proven during trial with both parties supplying the proper documentation such as delivery receipts, trust receipts, receiving slips, flock records, cash receipts, and liquidation statements. SMFI delivered broiler chicks to Magtuto five times and neither SMFI nor Magtuto had objected to the arrangement until the fifth delivery when SMFI was short of 4,000 broiler chicks.

Also, court records show that SMFI issued official documents: (1) cash receipts for the day-old chicks; (2) delivery receipts for feeds, medicines, and vaccines; (3) transfer receipts; (4) trust/delivery receipts for the harvested birds; and (5) statements of payment or payment request memorandum after each harvest. Magtuto also presented (1) copies of deposit slips of checks paid by SMFI; (2) flock records containing day to day activities of the chicks from day one until the grown chickens are harvested to keep track of the total number of birds, total inventory, and actual reap; and (3) the forecast for one year, the purpose of which is not to overproduce during lean season and under produce during peak season, as provided by SMFI and prepared by Vinoya and SMFFs Sales Department, showing the placement of chicks and feeds of all growers for SMFI which includes Magtuto's farm.

Clearly, these documents would prove that SMFI, even in the absence of a written contract, approved of the "arrangement by way of accommodation" made by Vinoya to Magtuto. The numerous documents submitted did not only pertain to one grow but to four other grows which SMFI evidently consented to. As correctly observed by the lower court in its Decision dated 4 February 2013:

x x x SMFI and VINOYA are in estoppel. Equity demands that SMFI through OGILVIE and VINOYA cannot just disown its previous declarations to the prejudice of MAGTUTO who relied reasonably and justifiably on the former's declarations that they are clothe[d] with authority to enter into contract, verbal or otherwise, being the Area Operations Manager for Bicol since 1996 who manages the operations of poultry raising and operations of the dressing plant and the Veterinarian who handles the contract growers, respectively of SMFI.[15]

x x x [T]he claim of SMFI that MAGTUTO was merely a contract-grower by accommodation was belied no less by OGILVIE who testified that he and VINOYA were sent by SMFI to the meeting where he met MAGTUTO, to recruit some contract-growers of SWIFT and several months after the meeting, MAGTUTO went into contract-growing with SMFI. Such declaration was supported by BAYTA, another contract-grower of SMFI who claimed that his contract is not on a per grow basis because if that was the case, he would not have agreed to be a contract-grower of SMFI, since as such on an accommodation, he will not have any security, a fact corroborated by DR. ROSALES who said that accommodation growing scheme where a contract-grower is only given a certain fix[ed] number of chicks if there are excess chicks available from the hatchery can be made only once or twice because the grower should not be placed in a position where his business has no direction in the future. Delivering 40,000 chicks to a contract-grower every after 15 days rest period from harvest time cannot be considered an accommodation. Clearly, the arrangement between SMFI and MAGTUTO is not an accommodation as the arrangement and/or engagement of the latter to the former was not made as a favor but upon a consideration received by MAGTUTO from SMFI for his services rendered as contract-grower.[16]

The CA, in its Decision dated 28 August 2015, also made these observations:

SMFI cannot utilize to exculpate itself from liability [in] the allegation that Mr. Vinoya had no authority to contract in its behalf. Mr. Ogilvie, SMFFs branch manager in [the] Bicol Region, admitted

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[15] CA *rollo*, p. 81.

[16] *Id*. at 80-81.

that during the meeting in the Villa Caceres Hotel, they were authorized by SMFI to be there to select among the contract growers of Swift. Moreover, the subsequent actions of the other departments of SMFI indicated no less than the meeting of minds between them. In fact, a minute detail noted by this Court showed that SMFI still had the intention to load Mr. Magtuto when it deducted PhP36,000 as cash bond in 12 June 2003 after its deliveries of chicks to Mr. Magtuto on 06 June and 09 June 2003. Noteworthy at this juncture is the equally important observation that despite SMFI's allegation that it did not authorize Mr. Vinoya to contract with Mr. Magtuto, its actions subsequent thereto, such as the delivery of chicks, medicines, feeds necessary for growing the chicks and the checks it issued in favor of Mr. Magtuto indicate otherwise. Obviously, SMFI ratified the action of Mr. Vinoya assuming arguendo that he was not authorized.[17]

Now that there exists a valid contract between Magtuto and SMFI, the next question would be: Is Magtuto entitled to actual or compensatory damages due to (1) the shortage of 4,000 broiler chicks at the fifth delivery made in June 2003, (2) the expenses that Magtuto incurred during the 15 day rest period while preparing his grow-out facility for the next chick delivery, and (3) the loss on Magtuto's possible income for the month of July 2003 due to the termination of the contract?

The answer is affirmative only on the delivery shortage of 4,000 broiler chicks and not Magtuto's expenses incurred during the 15-day rest period and loss on Magtuto's possible income for the succeeding month.

In the present case, Vinoya and Magtuto arrived at an agreement that SMFI would supply day-old chicks which Magtuto would grow for a certain period. Afterwards, SMFI would harvest the grown chickens and Magtuto would be paid a grower's fee. Both fulfilled their obligations on four occasions in a span of less than a year. However, on the fifth delivery, SMFI failed to complete the 36,000 heads and was only able to deliver 32,000. Given that the parties did not execute any written contract and their verbal agreement involved growing chicks which starts from delivery of the day-old chicks until

[17] *Rollo*, p. 48.

the grown chickens are harvested, then it is clearly understood that the contract entered into by Vinoya and Magtuto was on a "per grow basis," the duration of which is for one growing season.

This case is akin to a lease without a written contract where the basis of the lease is on a month to month basis. This is called a lease with a definite period which is provided for in Article 1687 of the Civil Code. The provision states:

> Art. 1687. **If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily.** However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month. (Emphasis supplied)

In *De Miranda v. Lim Shi*,[18] we held that when there is no clear period of renewal agreed upon between the parties then the implied renewed contract is on a month to month basis. Similarly, the verbal agreement which transpired between Vinoya and Magtuto did not specify any clear period of renewal. Thus, the renewal of the contract would be from one growing season to another or until the next delivery of the new batch of day-old chicks.

Being a valid contract and not one against law, public policy, and custom, then the agreement is binding and serves as the law between them. SMFI delivered 36,000 heads, the maximum number which Magtuto could ideally raise the chicks in his facilities, four times since the start of their contract. SMFI cannot now escape from its obligation to deliver the same number of chicks required for the particular growing season in question.

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[18] 120 Phil. 1392 (1964).

Article 1159 of the Civil Code provides that obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. Since SMFI's obligation is to deliver the 36,000 day-old chicks in the month of June 2003 and there was shortage of 4,000 heads, then Magtuto must be compensated for SMFI's non-fulfillment of its obligation.

However, given that the renewal of the broiler chick growing contract occurs from one growing season to another, then Magtuto is not entitled to (1) the expenses that he incurred during the 15-day rest period after the fifth delivery, and (2) his loss on possible income for the succeeding month.

As to the amount that must be compensated to Magtuto, we agree with the computation of the actual or compensatory damages made by the appellate court as specified in its decision only as to that portion pertaining to the shortage of delivery of the 4,000 heads by SMFI on the fifth delivery made in June 2003.

An award of actual or compensatory damages requires proof of pecuniary loss. Under Articles 2199[19] and 2200[20] of the Civil Code, actual or compensatory damages are those awarded in satisfaction of or in recompense for loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done. In *Terminal Facilities and Services Corporation v. Philippine Ports Authority*,[21] we explained that there are two kinds of actual or compensatory damages: (1) the loss of what a person already possesses, and (2) the failure to receive as a benefit that which would have pertained to him. In the latter instance, the familiar rule is that

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[19] Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

[20] Art. 2200. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain.

[21] 428 Phil. 99, 138 (2002).

damages consisting of unrealized profits, frequently referred to as *ganacias frustradas* or *lucrum cessans*, are not to be granted on the basis of mere speculation, conjecture, or surmise, but rather by reference to some reasonably definite standard such as market value, established experience, or direct inference from known circumstances. It is not necessary to prove with absolute certainty the amount of *ganacias frustradas* or *lucrum cessans*. Citing *Producers Bank of the Philippines v. Court of Appeals*,[22] the Court further ruled that:

> x x x. The benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent, a matter of speculation, but the injured party is not to be denied for that reason alone. He must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act, he is entitled to recover.

To be entitled to compensatory damages, the amount of loss must be capable of proof and actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable. The burden of proof of the damage suffered is imposed on the party claiming the same, who should adduce the best evidence available in support thereof.[23]

Here, the appellate court based the actual or compensatory damages on the grower's fee paid by SMFI to Magtuto from December 2002 to July 2003 as adequately proved by flock records, liquidation statements, payment request memorandum, check vouchers and deposit slips submitted by the parties then added the ₱72,000 cash bond posted by Magtuto. The appellate court came up with an average of Magtuto's income for the five growing periods amounting to ₱345,452.27. Thus, the unrealized income of the 4,000 heads would be based on the average income of ₱345,452.27 per grow divided by 36,000

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[22] 417 Phil. 646, 660 (2001).

[23] *Pryce Properties Corporation v. Spouses Octobre*, 802 Phil. 391, 397 (2016).

heads less the shortage of 4,000 heads totaling to the amount of ₱38,383.58.

Given that SMFI is liable only for the loss of the 4,000 short-delivery of chicks since the contract entered into was on a "per grow basis," we agree with the computation of the appellate court with regard to the unrealized income for the month of June 2003 in the amount of ₱38,383.58. This amount represents the actual or compensatory damages for Magtuto's loss of income on the 4,000 short-delivery of chicks on the fifth grow which SMFI should indemnify.

Also, the amount of ₱38,383.58 shall be subject to the payment of legal interest. In *Nacar v. Gallery Frames*,[24] we held that an award of interest in the concept of actual or compensatory damages is imposed when an obligation, not constituting a loan or forbearance of money, is breached, then an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% *per annum*. Thus, the actual or compensatory damages in the amount of ₱38,383.58 shall earn interest at the rate of 6% *per annum* from the date of finality of this Decision until full payment

WHEREFORE, we **PARTIALLY GRANT** the petition. The Decision dated 28 August 2015 and the Resolution dated 6 May 2016 of the Court of Appeals in CA-G.R. CV No. 101074 are **AFFIRMED WITH MODIFICATION** that San Miguel Foods, Inc. is liable for actual or compensatory damages in the amount of ₱38,383.58, which shall earn legal interest at the rate of 6% *per annum* from the date of finality of this Decision until full payment.

SO ORDERED.

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

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[24] 716 Phil. 267, 278-279 (2013), citing *Eastern Shipping Lines, Inc. v. Court of Appeals*, 304 Phil. 236, 252-253 (1994).

SECOND DIVISION

[G.R. No. 226021. July 24, 2019]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, *petitioner, vs.* **GILDA[*] A. BARCELON, HAROLD A. BARCELON, and HAZEL A. BARCELON,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; DEFINED; DETERMINATION OF JUST COMPENSATION IS A JUDICIAL FUNCTION; ISSUES PERTAINING TO THE VALUE OF THE PROPERTY EXPROPRIATED ARE QUESTIONS OF FACT.— Jurisprudence defines just compensation "as the full and fair equivalent of the property taken from its owner by the expropriator." It is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government. The determination of just compensation is a judicial function because what is sought to be determined is a full, just, and fair value due to the owner of a condemned property with an equally-important consideration that the payment of the same entails the expenditure of public funds, and this can only be attained by reception of evidence consisting of reliable and actual data, and the circumspect evaluation thereof. Thus, issues pertaining to the value of the property expropriated are questions of fact.

2. ID.; ID.; ID.; ID.; WHERE THE REGIONAL TRIAL COURT'S DETERMINATION OF JUST COMPENSATION, WHICH WAS AFFIRMED BY THE COURT OF APPEALS, WAS BASED ON THE ESTABLISHED FACTORS AND THE

[*] Also referred to as "Glenda" in some parts of the *rollo*.

STANDARDS PROVIDED BY LAW, THE COURT FINDS NO REASON TO DEVIATE FROM THE COURT *A QUO'S* FINDINGS AND CONCLUSION.— The RTC also took into consideration several established factors before it came up with a notably lower amount of just compensation compared to the Board of Commissioners' recommendation. x x x On appeal, as can be gleaned from the CA's assailed Decision, the appellate court was guided by the standards for the assessment of the value of condemned properties under Section 5 of Republic Act (R.A.) No. 8974, which is the same provision being invoked by petitioner in the case at bar. It includes consideration of relevant factors such as the classification and use for which the property is suited; value declared by the owners; the current selling price of similar lands in the vicinity; the size, shape or location, tax declaration and zonal valuation of the land; and the price of the land as manifested in the ocular findings, oral as well as documentary evidence presented, among others. Notably, the CA found the Board of Commissioners' report, which was submitted to, and considered by the RTC, to be supported by attachments or documentary evidence, while petitioner's allegations about the subject property, *i.e.,* the area was infested with informal settlers, were unsupported by any evidence except certain testimonies, which at most, only prove that tagging and relocation were conducted in the area. This Court is also one with the CA in rejecting petitioner's argument that the amount of just compensation cannot be more than the zonal valuation of the property. As stated above, there are several well-established and relevant factors to be considered in determining the value of condemned properties. We have consistently held that zonal valuation is just one of the indices of the fair market value of real estate. It cannot be the sole basis of just compensation in expropriation cases. Clearly from the foregoing, thus, the RTC did not merely rely on the distance of the subject property from the Hobart Realty and Spouses Serrano properties, contrary to petitioner's contention. The determination of the amount of just compensation by the RTC was even affirmed by the CA, which had the opportunity to examine the facts anew. Hence, the Court finds no reason to deviate from the court *a quo's* findings and conclusion.

3. ID.; ID.; ID.; ID.; JUST COMPENSATION SHOULD BE MADE AT THE TIME OF TAKING; WHERE THE

INITIAL PAYMENT IS NOT THE FULL FAIR AND EQUIVALENT VALUE OF THE PROPERTY, THE REMAINING BALANCE SHOULD EARN LEGAL INTEREST RECKONED FROM THE TAKING OF THE PROPERTY, WHICH IS FROM THE ISSUANCE OF WRIT OF POSSESSION IN THIS CASE.— Just compensation should be made at the time of the taking, and the amount of payment should be the fair and equivalent value of the property. The law above-cited, however, allows the government to take possession of the property even before the court's determination of the amount of just compensation by giving an initial payment equivalent to 100% of the value of the property based on the BIR zonal valuation. This initial payment, however, is not the full fair and equivalent value of the property as the same, at this stage, is still for the court's determination. As stated above, when the decision of the court as to the proper amount of just compensation becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court. The difference between the final and initial payments forms part of the just compensation that the property owner is entitled *from the date of the taking of the property.* Thus, as the owners were already deprived of their property before receipt of the full just compensation, there was already a delay in the payment of the remaining balance. The remaining balance should, therefore, earn legal interest as a forbearance of money. In this case, the CA erred in imposing legal interest on the initial payment made by the petitioner considering that there was no delay with regard to the said payment. In fact, petitioner's initial payment was in compliance with the law as a pre-requisite for the issuance of the writ of possession. The interest imposed thereon should, therefore, be deleted. With regard to the remaining balance, while the CA correctly imposed the legal interest thereon, said interest should be reckoned from the taking of the property, *i.e.,* from the issuance of the writ of possession, *not* from the filing of the complaint as the owners of the condemned property are entitled to the full just compensation only upon the taking of the property. In fine, petitioner's delay begins only upon the taking of the property *not* from filing of the complaint since it is from the date of the taking that the fact of deprivation of property can be established.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Pablo M. Inventor, Jr. for respondents.

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 December 17, 2015, and Resolution[3] dated July 21, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 102216.

The Facts

On February 8, 2008, the Republic of the Philippines (petitioner), through the Department of Public Works and Highways, filed a complaint for expropriation before the Regional Trial Court (RTC) of Valenzuela, Branch 172 for the acquisition of a parcel of land with its improvements thereon belonging to Gilda A. Barcelon, Harold A. Barcelon, and Hazel A. Barcelon (respondents) for the construction of the C-5 Northern Link Road Project (Segment 8.1) from Mindanao Avenue in Quezon City to the North Luzon Expressway. The subject property is located in Barangay Ugong, Valenzuela City, covered by Transfer Certificate of Title No. V-75179 with an area of 52 square meters, zonal value of ₱2,750.00 per square meter, with a one-storey residential house improvement valued at ₱288,418.54.[4]

Upon deposit of a Development Bank of the Philippines (DBP) manager's check dated November 20, 2008, amounting to

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[1] *Rollo*, pp. 18-34.

[2] Penned by then Associate Justice Romeo F. Barza, with Associate Justices Andres B. Reyes, Jr. (now Associate Justice of the Supreme Court) and Agnes Reyes-Carpio, concurring; *id.* at 40-53.

[3] *Id.* at 54-56.

[4] *Id.* at 20.

₱413,418.54, which was received by respondents on November 21, 2008, the RTC issued a writ of possession dated December 2, 2008. Said amount, however, was found to be lacking ₱18,000.00 to complete the 100% zonal value of the property, required under the rules for the immediate possession thereof. Upon respondents' motion, the RTC ordered the release of the said balance to the respondents in an Order dated March 9, 2010.[5]

Pursuant to Section 5, Rule 67 of the Rules of Court, the RTC constituted a Board of Commissioners composed of Osita F. De Guzman, RTC, Branch 172, Branch Clerk of Court; Atty. Ard Henry Binwag, City Assessor; and Atty. Engr. Pilar Morales, to determine and recommend the amount of just compensation for the subject property.[6]

Before the Board of Commissioners, petitioner harped on the zonal valuation of the subject property at ₱2,750.00 per square meter; and alleged that the area is infested with informal settlers with poor living conditions, has no proper drainage, and has no distinct pathway for motor vehicles, to support its argument that the amount of the just compensation should not be higher than the zonal value.[7]

Respondents, on the other hand, argue that the amount of just compensation should be within the range of ₱10,000.00 to ₱15,000.00 per square meter considering the prevailing market value of the subject property and the location thereof within a high-intensity commercial zone.[8]

After hearing and submission of the parties' respective position papers, the Board of Commissioners submitted its report dated July 9, 2013, recommending the amount of ₱10,000.00 per square meter as just compensation. It was also recommended that the

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[5] *Id.* at 21 and 42.

[6] *Id.* at 42.

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

[8] *Id.* at 44.

amount of ₱288,418.54 is the just, fair, and reasonable compensation for the improvement on the lot.[9]

In arriving at its valuation, the Board of Commissioners considered, among others, the valuation arrived at by the trial court, which was affirmed by this Court, in the case of Hobart Realty Development Corporation (Hobart Realty), as well as that of the Spouses Mapalad Serrano (Spouses Serrano), whose expropriated properties for the same government project are nearby and actually within the area of respondents' property subject of this expropriation suit.[10]

The Ruling of the RTC

In its Decision dated December 12, 2013, the RTC fixed the amount of just compensation at ₱9,000.00 per square meter, disposing as follows:

> WHEREFORE, judgment is hereby rendered fixing the just compensation of the 52 square meters lot (TCT No. V-75179) at Php468,000.00 (52 sq meters x Php9,000.00) and authorizing the payment thereof by the [petitioner] to the [respondents] for the property condemned deducting the provisional deposit of Php143,000.00 previously made and subject to the payment of all unpaid real property taxes and other relevant taxes by the [respondents], if there be any.
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> The [petitioner] is directed to pay interest at the rate of 12% per annum on the amount of deposit of Php 143,000.00 from the time of the filing of the complaint on February 8, 2008, up to the time that the said amount was deposited in court by the [petitioner] on November 20, 2008 and to pay the interest rate of 12% per annum on the unpaid balance of just compensation of Php325,000.00 (Php468,000.00 – Php143,000.00) computed from the time of the filing of the complaint until the [petitioner] fully paid the balance.
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> Considering that [respondents] failed to substantiate their claim as to the replacement costs of the one-storey residential house, no additional amount for the replacement costs of the improvements erected on the lot owned by the [respondents] is awarded. The amount [of

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[9] *Id*. at 21 and 44-46.

[10] *Id*. at 46.

Php288,418.54] for the value of improvement is considered just, fair and reasonable just compensation.

The [petitioner] is also directed to pay the members of the Board of commissioners the amount of Php3,000.00 each as Commissioner's fees.[11]

Questioning the amount fixed as just compensation, as well as the interest imposed by the RTC, petitioner appealed to the CA.

The Ruling of the CA

The CA found that the RTC judiciously determined the fair market value of the subject property in the amount of ₱9,000.00 per square meter. It found no error on the part of the RTC when it took into consideration the Board of Commissioners' findings, which were hinged upon the court's evaluation in the cases of Hobart Realty and Spouses Serrano to an extent. Specifically, the CA considered the distance of the subject property to those of Hobart Realty's and Spouses Serrano's, which are within a high-density commercial area, and as such, the valuation of ₱9,000.00 per square meter is, according to the CA, acceptable.[12]

The CA did not accept petitioner's claim that the subject property was within an area infested with informal settlers as no evidence was presented to prove such claim. According to the CA, the testimonies of petitioner's witnesses were, at most, only able to prove that tagging and relocation were conducted in some areas of Barangays Ugong and Gen. T. De Leon.[13]

The CA also rejected petitioner's contention that the just compensation should be based on the zonal value of the property. It ruled that zonal valuation is just one of the indices of the fair market value of a property.[14]

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[11] *Id*. at 46-47.

[12] *Id*. at 47.

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

[14] *Id*. at 51.

In all, the CA upheld the amount of just compensation fixed by the RTC at ₱9,000.00 per square meter but modified the interest imposed thereon in accordance with the prevailing jurisprudence, thus:

> **WHEREFORE**, the appeal is **PARTLY GRANTED**. The legal interest rate of 12% per annum shall be paid on the amount of deposit of Php143,000.00 from the time of the filing of the complaint on February 8, 2008, up to the time the said amount was deposited in court by [petitioner] on November 20, 2008. The balance in the amount of Php325,000.00 shall carry an interest rate of 12% per annum from the time of the filing of the complaint until June 30, 2013. Beginning July 1, 2013, until fully paid, the amount of Php325,000.00 shall earn interest at the new legal rate of 6% per annum. All other aspects of the decision are **AFFIRMED**.
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> **SO ORDERED.**[15]

Petitioner's motion for reconsideration was denied in the CA's July 21, 2016 Resolution, the dispositive thereof reads:

> **WHEREFORE**, the Motion for Reconsideration is **DENIED**. The Decision dated December 17, 2015 **STANDS**.
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> **SO ORDERED.**[16]

Hence, this petition.

Petitioner questions the amount of just compensation fixed by the RTC and affirmed by the CA. Essentially, it argues that the manner of determining the just compensation award is arbitrary as the courts *a quo* only considered the distance of the subject property from the Hobart Realty and Spouses Serrano properties, and did not take into consideration the actual use, classification, size, area, and actual condition of the subject property.[17] Petitioner insists that at the time of taking of the subject property, the same is within an area proximate to properties inhabited by informal settlers. Hence, petitioner

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[15] *Id*. at 52.

[16] *Id*. at 55.

[17] *Id*. at 22.

maintains that the amount of the just compensation for the expropriation of said property cannot be more than the zonal value.

The Issue

Did the CA err in sustaining the amount of just compensation fixed by the RTC?

The Ruling of the Court

We rule in the negative.

Jurisprudence defines just compensation "as the full and fair equivalent of the property taken from its owner by the expropriator."[18] It is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government.[19]

The determination of just compensation is a judicial function because what is sought to be determined is a full, just, and fair value due to the owner of a condemned property with an equally-important consideration that the payment of the same entails the expenditure of public funds, and this can only be attained by reception of evidence consisting of reliable and actual data, and the circumspect evaluation thereof. Thus, issues pertaining to the value of the property expropriated are questions of fact.[20]

This Court is not a trier of facts and questions of fact are beyond the scope of the judicial review of this Court under Rule 45.[21] Moreover, factual findings of the trial court, when

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[18] *Republic v. C.C. Unson Company, Inc.*, 781 Phil. 770, 782 (2016), citing *Republic v. Asia Pacific Integrated Steel Corporation*, 729 Phil. 402, 415 (2014).

[19] *Republic v. Asia Pacific Integrated Steel Corporation*, *id*. at 412.

[20] *Evergreen Manufacturing Corporation v. Republic*, 839 Phil. 200, 215 (2017).

[21] *Republic v. C.C. Unson Company, Inc., supra* note 18, at 783.

affirmed by the CA, are conclusive upon this Court. While this Court has recognized several exceptions[22] to this rule, we do not find any of those present in this case.

At any rate, the instant petition fails to provide us a cogent reason to deviate from the findings and conclusions of the CA. As correctly ruled by the CA, the RTC's determination of the amount of just compensation in this case is well-taken.

Petitioner, however, insists that the CA merely agreed with the findings of the RTC which failed to consider all relevant factors in the determination of the just compensation. Petitioner maintains that the RTC, merely considered the Board of Commissioners' report, which allegedly relied only on the distance of the subject property from the Hobart Realty and Spouses Serrano properties.

A careful reading of the Board of Commissioners' report, the RTC, as well as the CA's Decisions, negate this contention. As can be gleaned from said report and decisions, the proximity of the subject property's location to that of Hobart Realty's and Spouses Serrano's, respectively, was merely one of the factors considered by the RTC and the CA in their judicial valuation of the property.

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[22] [I]n several cases, the Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. *Evergreen Manufacturing Corporation v. Republic, supra* note 20, at 215-216. (Citation omitted)

The Board of Commissioners reported as follows:

After the careful consideration of the location, the land usage and the distance of the property of the [respondents] to that of Hobart Realty Development Corporation and Sps. Mapalad Serrano, et al., where this Honorable Court in its Decision dated March 16, 2010 and August 12, 2012 rendered the aforesaid cases pegged the fair market value at Php15,000.00 and Php5,000.00, respectively, the undersigned commissioners unanimously recommended the amount of Php10,000.00 per square meter as the just, fair and reasonable fair market value of the property of the [respondents] subject of the appropriation proceedings in this case.

The undersigned did not recommend any additional replacement cost for the improvement erected on the lot of the property owned by the [respondents] although the [respondents] through their counsel asked that the same be increased to at least 50% on the basis of the initial payment they already received in the amount of Php 288,418.54. However, absence of any evidence to support such claim, the undersigned have ruled that the amount already received by the [respondents] is considered as just, fair and reasonable compensation of the improvement.[23] (Emphasis supplied)

The RTC also took into consideration several established factors before it came up with a notably lower amount of just compensation compared to the Board of Commissioners' recommendation. Relevant portions of its Decision read:

Considering the recommendation of the Board of Commissioners dated July 9, 2013[,] in the amount of Php10,000.00; **the BIR zonal valuation of Php 2,750 per square meter which is certainly higher than the other zonal valuation of other lots subjected to [petitioner's] expropriation and the value declared by the [respondents]** in the amount of Php15,000.00 per square meter in their Memorandum; **this court's observation on the location of the two properties which is 669.90 meters away from Hobart Realty Development Corporation, a commercial lot**, the value of the property was pegged by this court at Php15,000.00/sq.meter in a decision dated March 16, 2010 in Civil Case No. 15-V-08 which decision was affirmed by the Court of Appeals and Supreme Court, **the classification of**

[23] *Rollo*, p. 46.

the lot, which is for residential usage, and within the high intensity commercial zone, and the selling price of the property within the vicinity, the amenities present like water, electricity, transportation and communication, the Court rules that the just compensation for the [respondents'] property sought to be taken in this case is fixed at Php 9,000.00 per square meter.[24] (Emphases supplied)

On appeal, as can be gleaned from the CA's assailed Decision, the appellate court was guided by the standards for the assessment of the value of condemned properties under Section 5[25] of Republic Act (R.A.) No. 8974,[26] which is the same provision being invoked by petitioner in the case at bar. It includes consideration of relevant factors such as the classification and use for which the property is suited; value declared by the owners; the current selling price of similar lands in the vicinity; the size, shape or location, tax declaration and zonal valuation of the land; and the price of the land as manifested in the ocular

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[24] *Id*. at 50.

[25] Sec. 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale*. - In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

(a) The classification and use for which the property is suited;
(b) The developmental costs for improving the land;
(c) The value declared by the owners;
(d) The current selling price of similar lands in the vicinity;
(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon;
(f) This size, shape or location, tax declaration and zonal valuation of the land;
(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and
(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

[26] AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES, APPROVED on November 7, 2000.

findings, oral as well as documentary evidence presented, among others.[27]

Notably, the CA found the Board of Commissioners' report, which was submitted to, and considered by the RTC, to be supported by attachments or documentary evidence, while petitioner's allegations about the subject property, *i.e.*, the area was infested with informal settlers, were unsupported by any evidence except certain testimonies, which at most, only prove that tagging and relocation were conducted in the area.[28]

This Court is also one with the CA in rejecting petitioner's argument that the amount of just compensation cannot be more than the zonal valuation of the property. As stated above, there are several well-established and relevant factors to be considered in determining the value of condemned properties. We have consistently held that zonal valuation is just one of the indices of the fair market value of real estate. It cannot be the sole basis of just compensation in expropriation cases.[29]

Clearly from the foregoing, thus, the RTC did not merely rely on the distance of the subject property from the Hobart Realty and Spouses Serrano properties, contrary to petitioner's contention. The determination of the amount of just compensation by the RTC was even affirmed by the CA, which had the opportunity to examine the facts anew. Hence, the Court finds no reason to deviate from the court *a quo*'s findings and conclusion.

We, however, find it proper to correct the award of legal interest imposed by the CA.

Section 4 of R.A. No. 8974[30] provides in part:

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

[28] *Id.* at 49-50.

[29] *Republic v. Asia Pacific Integrated Steel Corporation, supra* note 19, at 416.

[30] AN ACT TO FACILITATE THE ACQUISITION OR RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES.

Sec, 4. *Guidelines for Expropriation Proceedings*. - Whenever it is necessary to acquire real property for the right-of-way, site or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

> (a) Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;
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> x x x x x x x x x

Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

Before the court can issue a Writ of Possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned.

In the event that the owner of the property contests the implementing agency's proffered value, the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case. When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court.

Just compensation should be made at the time of the taking, and the amount of payment should be the fair and equivalent value of the property. The law above-cited, however, allows the government to take possession of the property even before the court's determination of the amount of just compensation by giving an initial payment equivalent to 100% of the value of the property based on the BIR zonal valuation. This initial payment, however, is not the full fair and equivalent value of the property as the same, at this stage, is still for the court's determination. As stated above, when the decision of the court

as to the proper amount of just compensation becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court. The difference between the final and initial payments forms part of the just compensation that the property owner is entitled *from the date of the taking of the property*.[31] Thus, as the owners were already deprived of their property before receipt of the full just compensation, there was already a delay in the payment of the remaining balance. The remaining balance should, therefore, earn legal interest as a forbearance of money.[32]

In this case, the CA erred in imposing legal interest on the initial payment made by the petitioner considering that there was no delay with regard to the said payment. In fact, petitioner's initial payment was in compliance with the law as a pre-requisite for the issuance of the writ of possession. The interest imposed thereon should, therefore, be deleted.

With regard to the remaining balance, while the CA correctly imposed the legal interest thereon, said interest should be reckoned from the taking of the property, *i.e.,* from the issuance of the writ of possession, *not* from the filing of the complaint as the owners of the condemned property are entitled to the full just compensation only upon the taking of the property. In fine, petitioner's delay begins only upon the taking of the property *not* from filing of the complaint since it is from the date of the taking that the fact of deprivation of property can be established.

In sum, while petitioner filed the expropriation complaint on February 8, 2008, no interest yet shall accrue as it did not take possession of the subject property until the issuance of the writ of possession on December 2, 2008.[33] The remaining balance of the full just compensation as determined by the court

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[31] *Republic v. Judge Mupas*, 769 Phil. 21, 106 (2015).

[32] *Evergreen Manufacturing Corporation v. Republic, supra* note 20, at 229.

[33] *Republic v. Macabagdal*, G.R. No. 227215, January 10, 2018.

shall then earn legal interest at the rate of 12% per annum from the date of the issuance of the writ of possession up to June 30, 2013 and, 6% per annum from July 1, 2013 until finality of this Decision. Thereafter, the total amount of the foregoing shall earn legal interest of 6% per annum from the finality of the Decision until full payment thereof.

WHEREFORE, premises considered, the Decision dated December 17, 2015 and Resolution dated July 21, 2016 of the Court of Appeals in CA-G.R. CV No. 102216 are hereby **AFFIRMED WITH MODIFICATION** in that: (a) the legal interest imposed on the deposit amounting to ₱143,000.00 is **DELETED**; and (b) the 12% per annum legal interest imposed on the balance amounting to ₱325,000.00 is to be reckoned from December 2, 2008, up to June 30, 2013, and thereafter, or from July 1, 2013, the legal interest at the rate of 6% per annum shall be imposed thereon until the finality of this Decision; (c) the total amount of just compensation shall earn legal interest of 6% per annum from the finality of this Decision until full payment thereof.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 227960. July 24, 2019]

REPUBLIC OF THE PHILIPPINES [represented by the DEPARMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH)], *petitioner, vs.* **SPOUSES LORENZANA JUAN DARLUCIO and COSME DARLUCIO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION IS LIMITED ONLY TO QUESTIONS OF LAW.—** In a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court, only questions of law may be raised. The Court not being a trier of facts will not take cognizance of factual issues which require the presentation and appreciation of the parties' evidence. The Court, therefore, will not calibrate anew the same evidence which the courts below had already passed upon in full. Indeed, in the absence here of grave abuse of discretion, misapprehension of facts, conflicting findings, or erroneous appreciation of the evidence, the trial court's factual findings are conclusive and binding on the Court, more so because such factual findings carry the concurrence of the Court of Appeals.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; DEFINED.—** [J]ust compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent for the property to be taken shall be real, substantial, full, and ample.

3. **ID.; ID.; ID.; ID.; REPUBLIC'S PLEA FOR REDUCTION OF THE AMOUNT OF JUST COMPENSATION AS FIXED BY THE REGIONAL TRIAL COURT AND AFFIRMED BY THE COURT OF APPEALS IS DEVOID OF FACTUAL AND LEGAL BASIS; REASONS; THE AMOUNT OF ₱15,000 PER SQUARE METER AS JUST COMPENSATION FOR THE EXPROPRIATED PROPERTY IN CASE AT BAR IS PROPER.—** [T]he challenge of the Republic against the so called "just compensation" devoid of factual and legal bases must fail. In any event, the Republic's persistent plea for a remarkably reduced amount of just compensation here should give way to what is fair and just. Consider: **One.** The amount of ₱2,000.00 per square meter way back circa 1997 is no longer just or fair ten (10) years after in 2007 when the expropriation complaint was filed. It is settled that just compensation refers to the value of the

property *at the time of taking* not earlier nor later. **Two.** The zonal value alone of the properties in the area whether of recent or vintage years does not equate to just compensation. Otherwise, its determination will cease to be judicial in nature. x x x **Three.** Continuous resistance against the application of *Hobart* here is uncalled for. x x x Hobart is the binding final and executory precedent on how much is deemed to be just compensation for the property in question. x x x **Four.** The Republic failed to prove the alleged presence of informal settlers in the property or its immediate vicinity. x x x All told, the Court of Appeals did not err when it affirmed the amount of ₱15,000.00 per square meter as just compensation for the expropriated land owned by respondent Spouses Lorenzana Juan Darlucio and Cosme Darlucio.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Ricardo C. Pilares, Jr. for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

Antecedents

Complaint for Expropriation

On November 23, 2007, petitioner Republic of the Philippines, represented by the Department of Public Works and Highways (DPWH), filed against "John Doe GGGGG" the complaint below for expropriation of a parcel of land situated in Barangay Ugong, Valenzuela City, measuring five hundred twenty-seven (527) square meters. It is covered by Transfer Certificate of Title (TCT) No. B-26619. The Republic sought to expropriate the land for the construction of the its C-5 Northern Link Road Project, Segment 8.1. running through the stretch of Mindanao Avenue, Quezon City up to the North Luzon Expressway (NLEX), Valenzuela City.

The Republic essentially alleged that the land was unoccupied and did not bear any improvements; despite diligent effort, the owner/s of the land could not be ascertained or located. The current zonal valuation of the land was ₱3,450.00 per square meter. It sought to expropriate four hundred thirteen (413) square meters of the land.

The Order of Expropriation

On September 9, 2008, the trial court issued an order of expropriation and directed petitioner to deposit with the Office of the Clerk of Court (OCC) the amount of ₱1,424,850.00 equivalent to one hundred percent (100%) of the zonal valuation of the land. Petitioner complied.

Subsequently, respondents Spouses Lorenzana Juan Darlucio and Cosme Darlucio were named as owner-defendants in the expropriation complaint.

Answer

In their Answer, Spouses Darlucio signified their conformity to the expropriation of the land for the indicated public purpose. They admitted that the zonal value of the land was ₱3,450.00 per square meter, albeit they demanded that the amount of just compensation be based on the prevailing market value of the similarly situated properties. Since the area had been categorized as industrial, the prevailing market value of the land should range from ₱10,000.00 to ₱15,000.00 per square meter.

The trial court subsequently constituted the Board of Commissioners to ascertain the amount of just compensation.

Based on the parties' respective evidence, the result of its own research on the classification and value of the land, the Board recommended the amount of ₱15,000.00 per square meter as just compensation on the land. According to the Board, the amount was based on the *Hobart* case wherein expropriated properties situated within the *Hobart Village* were prized at ₱15,000.00 per square meter. These properties lie right in front of respondents' property.

The Republic opposed the recommendation. It argued that the recommendation relied solely on *Hobart* and completely disregarded the evidence on record pertaining to the property's actual use, classification, size, area, and physical condition. Prior to this action, it had already expropriated 80.50 square meters of the land at only ₱2,000.00 per square meter. The land was exclusively residential. The Board also allegedly disregarded the presence of informal settlers in the surrounding areas.

Respondents, on the other hand, agreed with the Board's recommendation. They averred that it would already be difficult for them to acquire another property in the same area of the same size.

The Trial Court's Ruling

By Decision dated May 16, 2014,[1] the trial court fixed the amount of just compensation at ₱15,000.00 per square meter directed the Republic to perform its corresponding obligation pertaining to the property, *viz*:

> WHEREFORE, judgment is hereby rendered fixing the just compensation of the 413 square meters out of the 527 square meters lot (TCT No. B-26619) at Php6,195,000.00 (413 sq. meters x Php15,000.00) and authorizing the payment thereof by the plaintiff to the defendants-spouses for the property condemned deducting the provisional deposit of ₱1,424,850.00 previously made and subject to the payment of all unpaid real property taxes and other relevant taxes by the defendants-spouses up to the taking of the property by plaintiff, if there be any.
>
> The plaintiff is directed to pay interest at the rate (of) 12% per annum on the amount of deposit of Php1,424,850.00 from the time of the filing of the complaint on November 23, 2007 up to the time that the said amount was deposited in court by the plaintiff on December 16, 2008 and to pay the interest rate of 12% per annum on the unpaid balance of just compensation of Php4,770,150.00 (Php6,195,000.00 - Php 1,424,850.00) computed from the time of the filing of the complaint until the plaintiff fully pays the balance.

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[1] *Rollo*, pp. 65-69.

The plaintiff is also directed to pay the members of the Board as commissioner's fee the amount of Php3,000.00 each, the amount of Php502,500.00 as consequential damages and Php50,000.00 as attorney's fees.

For the transfer of the title of the property from the defendants-spouses to the plaintiff, the payment of the capital gains tax shall be at the expense of the defendants-spouses while the payment of (the) transfer tax and other related fees to be paid to the City Government of Valenzuela and the Register of Deeds of Valenzuela City shall be at the expense of the plaintiff.

Let a certified true copy of this decision be forwarded to the Office of the Register of Deeds of Valenzuela City for the latter to annotate this decision in the Transfer Certificate of Title No. B-26619 registered in the name of the defendants-spouses.

SO ORDERED.[2]

The trial court noted that the amount of ₱15,000.00 per square meter represented the fair market value of the property which the Republic failed to refute by any countervailing evidence.

The Court of Appeals' Ruling

On appeal,[3] the Court of Appeals affirmed with modification through its assailed Decision dated May 11, 2016,[4] *viz*:

WHEREFORE, the appeal is **PARTIALLY GRANTED**. The May 16, 2014 Decision of the Regional Trial Court, Branch 172, Valenzuela City in Civil Case No. 205-V-07 is hereby **AFFIRMED** with the following **MODIFICATIONS**:

1. The interest rate on the unpaid balance of the just compensation shall be 12% *per annum* from the time of taking on November 23, 2007 until June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of this Decision. Thereafter, the principal amount due as adjusted by interest shall likewise earn interest at 6% *per annum* until fully paid; and

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[2] *Id*. at 69.

[3] *Id*. at 75-103.

[4] *Id.* at 37-51.

2. The award of attorney's fees and the imposition of "12% interest *per annum* on the amount deposited in court from the time of filing the complaint up to the time it was deposited" are hereby **DELETED**.

All other aspects of the assailed Decision stand.

SO ORDERED.[5]

The Court of Appeals held that the satellite map on record showed that the land was located near Hobart Village. Thus, the final judicial determination of just compensation on the property in *Hobart, i.e.* ₱15,000.00 per square meter is material to the determination of the amount of just compensation in this case. In ascertaining just compensation, the measure is not the taker's gain, but the owner's loss.

The Court of Appeals further noted that the Republic's offer of the 2003 zonal valuation did not reflect the fair market value of the land as of November 2007 when the complaint for expropriation was filed. In any event, the zonal valuation was only one of the indices of the land's value. The Republic also failed to prove the supposed presence of informal settlers on the land itself.

Lastly, the Court of Appeals held that while the Republic may have way back in 1997 expropriated 80.50 square meters of the property for only ₱2,000.00 per square meter, this amount was no longer the prevailing fair market value of the remaining area ten (10) years later in 2007 when the Republic initiated the present expropriation complaint.

The Present Petition

The Republic now asks the Court to exercise its discretionary appellate jurisdiction to review and reverse the assailed decision of the Court of Appeals pertaining to the amount of just compensation on the property.

The Republic asserts that *Hobart* should not be considered the veritable factor in determining the amount of just

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

compensation here. Other equally important factors include the nature and character of the land, the presence of informal settlers in the adjacent areas, and the zonal valuation of the land.[6]

In their Comment dated June 14, 2017,[7] respondents argue that the trial court did not err when it sustained *Hobart*'s final and executory valuation in the amount of ₱15,000.00 per square meter. Too, the amount of just compensation for the previously expropriated 80.50 square meters of the property could no longer be considered fair and just ten (10) years later. More, while there may be informal settlers in the barangay, there are no informal settlers within the vicinity of the property itself. The property lies just a few steps away from Hobart Village where the prevailing market price has risen to ₱40,000.00. Based on distance or proximity, the land may be reasonably assessed at ₱30,000.00 per square meter, yet, the Board reduced it by half and recommended only ₱15,000.00 per square meter.

In its Reply dated December 21, 2017,[8] the Republic points out that the Board did not even conduct an ocular inspection of the land albeit the C-5 Northern Link Project had already been completed around the same time the Board was constituted. It only relied on the land valuation found in previously decided cases and electronic data *via* internet, although these data are not genuinely verifiable. While it is true that the property lies beside Hobart Village, *Hobart* cannot be applied here because the factual circumstances there are different from those obtaining here. Department Order No. 81-2015 dated July 28, 2016 issued by the Department of Finance shows that the zonal value for residential lots in Barangay Ugong range only from ₱2,000.00 to ₱3,950.00 per square meter.

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[6] *Id.* at 23-30.

[7] *Id.* at 116-126.

[8] *Id.* at 136-144.

The Core Issue

Did the Court of Appeals commit reversible error in affirming the amount of ₱15,000.00 per square meter as just compensation for the property?

Ruling

The petition utterly lacks merit.

In a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court, only questions of law may be raised. The Court not being a trier of facts will not take cognizance of factual issues which require the presentation and appreciation of the parties' evidence. The Court, therefore, will not calibrate anew the same evidence which the courts below had already passed upon in full. Indeed, in the absence here of grave abuse of discretion, misapprehension of facts, conflicting findings, or erroneous appreciation of the evidence, the trial court's factual findings are conclusive and binding on the Court, more so because such factual findings carry the concurrence of the Court of Appeals.[9]

In any event, just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent for the property to be taken shall be real, substantial, full, and ample.[10]

Section 5 of Republic Act 8974[11] (RA 8974) enumerates the following relevant standards the court may consider, among others, in the determination of just compensation, *viz*:

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[9] See *National Power Corporation v. Apolonio V. Marasigan, et al.*, G.R. No. 220367, November 20, 2017, 845 SCRA 248, 264-265.

[10] See *National Transmission Corporation v. Oroville Development Corporation*, 815 Phil. 91, 105 (2017).

[11] An Act to Facilitate the Acquisition of Right-of-Way, Site or Location For National Government Infrastructure Projects and for Other Purposes, November 7, 2000.

Section 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale.* - In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

(a) The classification and use for which the property is suited;
(b) The developmental costs for improving the land;
(c) The value declared by the owners;
(d) The current selling price of similar lands in the vicinity;
(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon;
(f) [The] size, shape or location, tax declaration and zonal valuation of the land;
(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and
(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

Did the trial court consider these relevant standards in its determination of the just compensation in the case? This requires a quick reference to the decision itself, *viz*:

In estimating the market value, all the capabilities of the property and all the uses to which it may be applied or for which it is adapted are to be considered and not merely the condition it is the time and use to which it is then applied by the owner. All the facts as to the condition of the property and its surroundings, its improvements and capabilities may be shown and considered in estimating its value.

The court takes judicial notice of the fact that the project, C-5 Northern Link Road Project Segment 8.1 from Mindanao Avenue in Quezon City to the North Luzon Expressway, Valenzuela City, which is the basis for the expropriation of the property of the defendants-spouses has already been completed and has long been utilized by the motoring public.

There is no dispute that the 413-square meter subject lot, irregular "L" in shape with generally flat terrain, was classified as residential

by the Bureau of International (sic) Revenue (BIR) and the same has a zonal valuation of Php3,450.00/square meter. The property subject of expropriation is a portion of the 527-square meter lot covered by TCT No. B-26619 registered in the name of the defendants-spouses. Previously, a portion of the lot at about 80.50 sq.m., covered by TCT No. B-26619 was already expropriated in favor of the government. The property subject of expropriation is about 0.00 meters away, adjacent to the property Hobart Realty Development Corporation, which was expropriated by the plaintiff and in which the just compensation was pegged by this court in the amount of Php15,000/sq.m.. It is located in an area with mixed residential and commercial land usages.

Plaintiff tried to lower the value of the subject property by proving that in several portions of C-5 Northern link Road Project, Segment 8.1, Valenzuela City, there were informal settlers in Barangay Ugong where the property of the defendants-spouses is located. Plaintiff, however, failed to prove that the lot of the defendants-spouses was occupied by squatters or near the vicinity of the alleged squatters.

x x x x x x x x x

In fine, considering that the plaintiff failed to adduce evidence to support its claim for a lower valuation for the defendants-spouses' property, the court approves the recommendation of the Board of Commissioners of Php15,000.00 per square meter.[12]

The decision speaks for itself. Land capabilities, use, shape, flat terrain, classification as residential property, surroundings, improvements, adjacent properties, final decision in similar expropriation cases of adjacent properties, proof of informal settlers, if any, in adjacent areas are the relevant standards considered by the trial court in determining the amount of just compensation for the property. In fact, the Court of Appeals aptly took notice of the meticulous process by which the trial court determined the amount of just compensation here, *viz*:

As borne by the records, the RTC considered the foregoing standards in fixing the just compensation for the subject property. It considered the classification, size, shape, location, and zonal valuation thereof, selling price of a similar land in the vicinity, and value declared by

[12] *Id*. at 68-69.

the owners. It is clear from the satellite map that the property sought to be expropriated is located near the property subject of the *Hobart case*. No less than the Republic itself presented an evidence that the subject property is situated within the Hobart Village. Hence, the RTC's final determination of the just compensation in the Hobart case is material in assessing the FMV of the property sought to be expropriated. The Hobart case was decided on March 16, 2010 and the RTC pegged the FMV of the subject property therein at ₱15,000.00 per sq.m. Indubitably, the said valuation equally applies to the subject property considering that they are similarly situated. Thus, the RTC was correct in fixing the just compensation of the expropriated land at ₱15,000.00 per sq.m. x x x x

On the other hand, the Republic cannot insist that the FMV of the subject property is only ₱3,450.00 per sq.m. Notably, the Republic based such valuation on the BIR zonal valuation determined sometime in 2003 which is obsolete and does not reflect the value of the property at the time of the filing of the expropriation proceedings on November 23, 2007. It must be emphasized that the zonal valuation cannot, by and itself, be considered as the sole basis for just compensation.[13] x x x

In sum, the challenge of the Republic against the so called "just compensation" devoid of factual and legal bases must fail.

In any event, the Republic's persistent plea for a remarkably reduced amount of just compenastion here should give way to what is fair and just. Consider:

One. The amount of ₱2,000.00 per square meter way back circa 1997 is no longer just or fair ten (10) years after in 2007 when the expropriation complaint was filed. It is settled that just compensation refers to the value of the property *at the time of taking*[14] not earlier nor later.

Two. The zonal value alone of the properties in the area whether of recent or vintage years does not equate to just compensation. Otherwise, its determination will cease to be

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[13] *Id.* at 46-47.

[14] *National Transmission Corporation v. Oroville Development Corporation, supra* note 10, at 107.

judicial in nature. All the court has to do is adopt the zonal value of the property in its decision, a purely mechanical act which totally negates the exercise of judicial discretion. For sure, this is highly irregular if not totally improper. Precisely, RA 8974 prescribes relevant standards the courts may consider in fixing the amount of just compensation subject to the court's exercise of judicial discretion.

Three. Continuous resistance against the application of *Hobart* here is uncalled for. In its assailed decision, the Court of Appeals lucidly discussed why Hobart bears the fair and reasonable amount of just compensation for the property in question, thus:

> x x x x It is clear from the satellite map that the property sought to be expropriated is located near the property subject of the *Hobart case*. No less than the Republic itself presented an evidence that the subject property is situated within the Hobart Village. Hence, the RTC's final determination of the just compensation in the Hobart case is material in assessing the FMV of the property sought to be expropriated. The Hobart case was decided on March 16, 2010 and the RTC pegged the FMV of the subject property therein at ₱15,000.00 per sq.m. Indubitably, the said valuation equally applies to the subject property considering that they are similarly situated. Thus, the RTC was correct in fixing the just compensation of the expropriated land at ₱15,000.00 per sq.m.[15] x x x x

Indeed, Hobart is the binding final and executory precedent on how much is deemed to be just compensation for the property in question. Hobart is circa 2012 but the same has been adopted by the Court anew in ***Republic v. Ng***,[16] involving expropriation of lot in Barangay Ugong, Valenzuela City, as in this case, the just compensation of which the Court lifted from Hobart. *Republic v. Ng* is fairly recent. It came out only on November 29, 2017, or less than two (2) years ago.

Four. The Republic failed to prove the alleged presence of informal settlers in the property or its immediate vicinity. Its

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[15] *Rollo*, p. 46.

[16] G.R. No. 229335, November 29, 2017, 847 SCRA 321.

own witness, Fe Pesebre, Officer-in-Charge in the Institutional Development Division of the National Housing Authority, testified that she had no information whether informal settlers were found on respondents' property.[17]

Republic v. C.C. Unson Company, Inc.,[18] articulates the extent of the Court's discretionary appellate jurisdiction over cases brought before it via Rule 45, *viz*:

> This Court, however, is not a trier of facts; and petitions brought under Rule 45 may only raise questions of law. This rule applies in expropriation cases as well. In *Republic v. Spouses Bautista*, the Court explained the reason therefor:
>
> > This **Court is not a trier of facts**. Questions of fact may not be raised in a petition brought under Rule 45, as such petition may only raise questions of law. **This rule applies in expropriation cases.** Moreover, **factual findings of the trial court, when affirmed by the CA, are generally binding on this Court**. An evaluation of the case and the issues presented leads the Court to the conclusion that it is unnecessary to deviate from the findings of fact of the trial and appellate courts.
> >
> > **Under Section 8 of Rule 67 of the Rules of Court, the trial court sitting as an expropriation court may, after hearing, accept the commissioners' report and render judgment in accordance therewith.** This is what the trial court did in this case. **The CA affirmed** the trial court's pronouncement in toto. Given these facts, **the trial court and the CA's identical findings of fact concerning the issue of just compensation should be accorded the greatest respect, and are binding on the Court absent proof that they committed error in establishing the facts and in drawing conclusions from them. There being no showing that the trial court and the CA committed any error, we thus accord due respect to their findings.**
> >
> > The only legal question raised by the petitioner relates to the commissioners' and the trial court's alleged failure to take into consideration, in arriving at the amount of just compensation,

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[17] *Rollo*, p. 41.

[18] 781 Phil. 770, 783-784 (2016).

> Section 5 of RA 8974 enumerating the standards for assessing the value of expropriated land taken for national government infrastructure projects. What escapes petitioner, however, is that the courts are not bound to consider these standards; the exact wording of the said provision is that "in order to facilitate the determination of just compensation, the courts may consider" them. The use of the word "may" in the provision is construed as permissive and operating to confer discretion. In the absence of a finding of abuse, the exercise of such discretion may not be interfered with. For this case, the Court finds no such abuse of discretion. (Emphasis supplied)

All told, the Court of Appeals did not err when it affirmed the amount of ₱15,000.00 per square meter as just compensation for the expropriated land owned by respondent Spouses Lorenzana Juan Darlucio and Cosme Darlucio.

WHEREFORE, the petition is **DENIED**, and the Decision dated May 11, 2016 and Resolution dated October 26, 2016, **AFFIRMED**.

SO ORDERED.

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

SPECIAL SECOND DIVISION

[G.R. No. 228819. July 24, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JEFFREY SANTIAGO *y* MAGTULOY,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; EXTINCTION OF CRIMINAL LIABILITY; CRIMINAL LIABILITY IS TOTALLY EXTINGUISHED BY THE DEATH OF THE ACCUSED PRIOR TO HIS FINAL CONVICTION; CIVIL LIABILITY GROUNDED ON THE CRIMINAL ACTION IS ALSO EXTINGUISHED.—** Under prevailing law and jurisprudence, Santiago's death prior to his final conviction by the Court should have resulted in the dismissal of the criminal case against him. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused[.] x x x Likewise, the civil action instituted for the recovery of the civil liability *ex delicto* is also *ipso facto* extinguished, as it is grounded on the criminal action. The rationale behind this rule is that upon an accused-appellant's death pending appeal of his conviction, the criminal action is deemed extinguished inasmuch as there is no longer a defendant to stand as the accused.

2. **ID.; ID.; WHERE THE COURT WAS MADE AWARE OF THE ACCUSED'S DEATH ONLY AFTER THE RESOLUTION AFFIRMING ACCUSED'S CONVICTION WITH CORRESPONDING CRIMINAL AND CIVIL LIABILITY HAD ALREADY ATTAINED FINALITY, THE COURT DEEMS IT APT TO RECTIFY THE ERROR BY SETTING ASIDE SAID RESOLUTION; DOCTRINE OF IMMUTABILITY OF FINAL JUDGMENT, RELAXED.—** [H]ad the Court been timely made aware of Santiago's supervening death in the interim, his conviction would not have been affirmed as his criminal liability and civil liability *ex delicto* in connection therewith have been already extinguished. Given the foregoing, while the Court acknowledges that the Resolution dated September 4, 2017 affirming Santiago's criminal and civil liability had already attained finality, and hence, covered by the doctrine on immutability on judgments, the Court deems it apt to rectify the situation by setting aside the said Resolution, as well as the Entry of Judgment dated December 6, 2017. In *People v. Layag,* the Court explained that it has the power to relax the doctrine of immutability of judgment if, *inter alia*, there exists special or compelling circumstances therefor, as in this case, when the Court was belatedly informed of Santiago's supervening death pending his appeal. x x x **The immutability**

> **of final judgments is not a hard and fast rule as the Court has the power and prerogative to relax the same in order to serve the demands of substantial justice considering:** *(a)* matters of life, liberty, honor, or property; *(b)* **the existence of special or compelling circumstances**; x x x Finding the aforesaid exception to be applicable, the Court therefore sets aside its Resolution dated September 4, 2017 and Entry of Judgment dated December 6, 2017 in connection with this case. Consequently, the Court hereby dismisses Criminal Case No. G-7541 before the Regional Trial Court of Guagua, Pampanga, Branch 51 by reason of Santiago's supervening death prior to his final conviction.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

In a Resolution[1] dated September 4, 2017, the Court affirmed the Decision[2] dated July 5, 2016 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07316 finding accused-appellant Jeffrey Santiago *y* Magtuloy (Santiago) guilty beyond reasonable doubt of Robbery with Homicide, the pertinent portion of which reads:

WHEREFORE, the Court **ADOPTS** the findings of fact and conclusions of law in the July 5, 2016 Decision of the CA in CA-G.R. CR-HC No. 07316 and **AFFIRMS with MODIFICATION** said Decision finding accused-appellant Jeffrey Santiago *y* Magtuloy **GUILTY** beyond reasonable doubt of the crime of Robbery with Homicide, as defined and penalized under Article 294 of the Revised Penal Code, sentencing him to suffer the penalty of *reclusion perpetua*

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[1] *Rollo*, pp. 25-26.

[2] *Id.* at 2-15. Penned by Associate Justice Danton Q. Bueser with Associate Justices Apolinario D. Bruselas, Jr. and Renato C. Francisco, concurring.

and to pay the following amounts: (*a*) ₱75,000.00 as civil indemnity; (*b*) ₱75,000.00 as moral damages; (*c*) ₱75,000.00 as exemplary damages; and (*d*) ₱50,000.00 as temperate damages, with legal interest at the rate of 6% per annum on all amounts due from the date of finality of this Resolution until full payment.[3]

However, it appears that based on a letter[4] dated June 13, 2017 from the Bureau of Corrections, Santiago had already died on October 11, 2016, as evidenced by the Notice[5] issued by the New Bilibid Prison Hospital and Certificate of Death[6] attached thereto. Notably, this means that Santiago had already passed away during the pendency of the criminal case against him, since the same was resolved by the Court only through the aforesaid Resolution[7] dated September 4, 2017, which attained finality on December 6, 2017.[8]

Under prevailing law and jurisprudence, Santiago's death prior to his final conviction by the Court should have resulted in the dismissal of the criminal case against him. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused, to wit:

> Article 89. *How criminal liability is totally extinguished*. - Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;
>
> x x x x x x x x x

Likewise, the civil action instituted for the recovery of the civil liability *ex delicto* is also *ipso facto* extinguished, as it is

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[3] *Id*. at 25.

[4] Signed by Director General Atty. Benjamin C. De Los Santos and received by the Court on June 19, 2017; *id*. at 32.

[5] Dated October 12, 2016 and signed by Medical Officer III Gerbert S. Madlang-Awa, M.D.; *id* at 56.

[6] *Id*. at 57.

[7] *Id*. at 25-26.

[8] See Entry of Judgment; *id*. at 44.

grounded on the criminal action. The rationale behind this rule is that upon an accused-appellant's death pending appeal of his conviction, the criminal action is deemed extinguished inasmuch as there is no longer a defendant to stand as the accused.[9]

Nonetheless, the Court clarified in *People v. Culas*[10] that in such an instance, the accused's civil liability in connection with his acts against the victim may be based on sources other than delicts; in which case, the victim may file a separate civil action against the accused's estate, as may be warranted by law and procedural rules, *viz.*:

> From this lengthy disquisition, we summarize our ruling herein:
>
> 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability[,] as well as the civil liability[,] based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."
>
> 2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:
>
> a) Law
> b) Contracts
> c) Quasi-contracts
> d) x x x
> e) Quasi-delicts
>
> 3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

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[9] See *People v. Culas*, 810 Phil. 205, 209 (2017).

[10] *Id.*

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[11]

Therefore, had the Court been timely made aware of Santiago's supervening death in the interim, his conviction would not have been affirmed as his criminal liability and civil liability *ex delicto* in connection therewith have been already extinguished. Given the foregoing, while the Court acknowledges that the Resolution dated September 4, 2017 affirming Santiago's criminal and civil liability had already attained finality, and hence, covered by the doctrine on immutability on judgments, the Court deems it apt to rectify the situation by setting aside the said Resolution, as well as the Entry of Judgment dated December 6, 2017. In *People v. Layag*,[12] the Court explained that it has the power to relax the doctrine of immutability of judgment, if, *inter alia*, there exists special or compelling circumstances therefor, as in this case, when the Court was belatedly informed of Santiago's supervening death pending his appeal:

Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down. **Nonetheless, the immutability of final judgments is not a hard and fast rule as the Court has the power and prerogative to relax the same in order to serve the demands of substantial justice considering:** (*a*) matters of life, liberty, honor, or property; (*b*) **the existence of special or compelling circumstances**; (*c*) the merits of the case; (*d*) a cause not entirely

[11] *Id*. at 208-209; citing *People v. Layag*, 797 Phil. 386, 390-391 (2016).

[12] *Id*.

attributable to the fault or negligence of the party favored by the suspension of the rules; (*e*) the lack of any showing that the review sought is merely frivolous and dilatory; and (*f*) that the other party will not be unjustly prejudiced thereby.[13]

Finding the aforesaid exception to be applicable, the Court therefore sets aside its Resolution dated September 4, 2017 and Entry of Judgment dated December 6, 2017 in connection with this case. Consequently, the Court hereby dismisses Criminal Case No. G-7541 before the Regional Trial Court of Guagua, Pampanga, Branch 51 by reason of Santiago's supervening death prior to his final conviction.

WHEREFORE, the Court resolves to: (*a*) **SET ASIDE** the Court's Resolution dated September 4, 2017 and Entry of Judgment dated December 6, 2017; (*b*) **DISMISS** Criminal Case No. G-7541 before the Regional Trial Court of Guagua, Pampanga, Branch 51 by reason of the death of accused-appellant Jeffrey Santiago *y* Magtuloy; and (*c*) **DECLARE** this case **CLOSED** and **TERMINATED**. No costs.

Let entry of final judgment be issued immediately.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 228828. July 24, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ZZZ,** *accused-appellant.*

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[13] *Id*. at 339, citing *Bigler v. People*, 782 Phil. 158, 166 (2016); emphases and underscoring supplied.

SYLLABUS

1. **CRIMINAL LAW; ; SPECIAL COMPLEX CRIME OF RAPE WITH HOMICIDE; ELEMENTS.—** In *People v. Villarino*, the elements of special complex crime of rape with homicide are the following: (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman.

2. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; IN THE ABSENCE OF DIRECT EVIDENCE, A RESORT THERETO IS USUALLY NECESSARY IN PROVING THE COMMISSION OF RAPE; CIRCUMSTANTIAL EVIDENCE ARE PROOF OF COLLATERAL FACTS AND CIRCUMSTANCES FROM WHICH THE EXISTENCE OF THE MAIN FACT MAY BE INFERRED ACCORDING TO REASON AND COMMON EXPERIENCE; WHEN SUFFICIENT TO SUSTAIN A CONVICTION; CASE AT BAR.—** The commission of the crime of rape may be proven not only by direct evidence, but also by circumstantial evidence. Circumstantial evidence are "proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience." In the absence of direct evidence, a resort to circumstantial evidence is usually necessary in proving the commission of rape. This is because rape "is generally unwitnessed and very often only the victim is left to testify for [him or] herself. It becomes even more difficult when the complex crime of rape with homicide is committed because the victim could no longer testify." Rule 133, Section 4 of the Revised Rules on Evidence provides the requirements for circumstantial evidence to be sufficient to sustain a conviction: SECTION 4. Circumstantial evidence, when sufficient. - Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. The trial court and the Court of Appeals considered the following circumstantial evidence in convicting accused-appellant: (1) BBB testified

seeing him dragging AAA to the school on the night of the incident; (2) accused-appellant's brother, YYY, testified going home with him and AAA, but accused-appellant asked him to leave them behind; (3) after AAA's body had been found, accused-appellant fled town and hid his identity using an alias; and (4) the post-mortem examination conducted by Dr. Mejia and Dr. Bandonill confirmed that the cause of AAA's death was a traumatic cerebral contusion, while the dried blood from her vagina was caused by a tear inside the genital area. A careful review of the records shows nothing that warrants the reversal of the trial court's and the Court of Appeals' rulings.

3. **ID.; ID.; CREDIBILITY OF WITNESSES; TRIAL COURT'S FINDINGS, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE BINDING AND CONCLUSIVE ON THE SUPREME COURT.—** As this Court held in *People v. Baron*, "factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance." Here, it was not shown that the trial court erred and misapprehended any fact or evidence. The trial court's findings, when affirmed by the Court of Appeals, are binding and conclusive on this Court. Thus, its findings must not be disturbed.

4. **ID.; ID.; DENIAL AND ALIBI; FOR THE DEFENSE OF ALIBI TO BE CREDIBLE, THE ACCUSED MUST SHOW THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE CRIME SCENE WHEN THE CRIME WAS COMMITTED; CASE AT BAR.—** [A]ccused-appellant's denial cannot prevail over the prosecution's evidence. Although the testimony of his brother YYY corroborated his denial, it does not escape this Court's attention that his brother admitted in his initial testimony that he did not go home with accused-appellant on the night of the incident. This Court has held that retractions are generally disfavored as they are unreliable. Nevertheless, even if we consider YYY's more recent testimony, accused-appellant's alibi must still fail. For his defense of alibi to be credible, he must show that it was physically impossible for him to be at the crime scene when the crime was committed. Yet, accused-appellant, who stayed in the same barangay as AAA and the school, failed to do so.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9344 (JUVENILE JUSTICE AND WELFARE ACT OF 2006); CHILDREN ABOVE 15 YEARS OLD BUT BELOW 18 YEARS OLD WHO ACTED WITHOUT DISCERNMENT ARE EXEMPT FROM CRIMINAL RESPONSIBILITY BUT IF THEY ACTED WITH DISCERNMENT, THEY SHALL NOT BE EXEMPT; DISCERNMENT IS DEFINED AS MENTAL CAPACITY OF A MINOR TO FULLY APPRECIATE THE CONSEQUENCES OF HIS UNLAWFUL ACT; CASE AT BAR.— Republic Act No. 9344, or the Juvenile Justice and Welfare Act of 2006, provides the minimum age of criminal responsibility. x x x This Court has defined discernment as the "mental capacity of a minor to fully appreciate the consequences of his unlawful act." This is determined by considering all the facts of each case. Under Republic Act No. 9344, children above 15 years old but below 18 years old who acted without discernment are exempt from criminal responsibility. They "shall be released and shall be subjected to an intervention program as may be determined by a local social welfare and development officer, pursuant to Section 20[.]" On the other hand, if they acted with discernment, they shall not be exempt from criminal responsibility. x x x Here, accused-appellant argues that even if he were guilty of raping AAA, he must still be exempt from criminal liability since he was only 15 years old when he committed the offense and the prosecution failed to prove that he acted with discernment. The trial court and the Court of Appeals found that accused-appellant acted with discernment in carrying out the crime. First, he perpetrated the crime in a dark and isolated place. Second, after knowing that he had been tagged as the suspect, he evaded authorities by fleeing to Tarlac and concealing his identity. Third, as confirmed by the social worker assigned to him, he knew and understood the consequences of his acts. Lastly, Dr. Bandonill concluded that AAA was raped by means of force, as evidenced by the contusions all over her body and by the tear from her vaginal area. As can be gleaned from these facts, accused-appellant committed the crime with an understanding of its depravity and consequences. He must suffer the full brunt of the penalty of the crime.

6. ID.; ID.; AUTOMATIC SUSPENSION OF SENTENCE; WHILE THE SUSPENSION OF SENTENCE STILL APPLIES EVEN IF THE CHILD IN CONFLICT WITH THE LAW IS ALREADY OF THE AGE OF MAJORITY AT THE

TIME HIS CONVICTION WAS RENDERED, THE SUSPENSION APPLIES ONLY UNTIL THE MINOR REACHES THE MAXIMUM AGE OF 21; CASE AT BAR.— Considering that accused-appellant is already over 30 years old when he was convicted, the automatic suspension of the sentence provided under Section 38 of Republic Act No. 9344, in relation to Section 40, may no longer be applied. While the suspension of sentence still applies even if the child in conflict with the law is already of the age of majority at the time his conviction was rendered, the suspension applies only until the minor reaches the maximum age of 21.

7. **ID.; RAPE WITH HOMICIDE; ABSENT ANY AGGRAVATING CIRCUMSTANCES, THE PENALTY OF *RECLUSION PERPETUA* IS IMPOSABLE; PROPER PENALTY IN CASE AT BAR.—** [T]he imposable penalty for the crime of rape with homicide is death. Under Article 63 of the Revised Penal Code, if the penalty prescribed by law is composed of two (2) indivisible penalties, the lesser penalty shall be imposed if neither mitigating nor aggravating circumstances are present in the commission of the crime. Absent any aggravating circumstances, the lesser penalty of *reclusion perpetua* is imposable. Furthermore, since accused-appellant was a minor when he committed the crime, he is entitled to the privileged mitigating circumstance of minority under Section 68(2) of the Revised Penal Code. Thus, the proper imposable penalty on him is *reclusion temporal*. Applying the Indeterminate Sentence Law, the indeterminate penalty has a minimum period within the range of *prision mayor*-the penalty one (1) degree lower to that provided in Article 249—and a maximum period within the range of *reclusion temporal* in its medium period. Hence, the indeterminate sentence of 10 years and one (1) day of *prision mayor*, as minimum, to 17 years and four (4) months of *reclusion temporal*, as maximum, should be imposed.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

In the absence of direct evidence, a resort to circumstantial evidence is usually necessary in proving the commission of rape. This is because the crime "is generally unwitnessed and very often only the victim is left to testify for [him or] herself. It becomes even more difficult when the complex crime of rape with homicide is committed because the victim could no longer testify."[1]

This Court resolves the appeal from the Court of Appeals' February 29, 2016 Decision[2] in CA-G.R. CR-HC No. 06486. The Court of Appeals affirmed the Regional Trial Court's March 4, 2013 Decision[3] finding ZZZ guilty beyond reasonable doubt of the crime of rape with homicide.

In an October 14, 1996 Information, ZZZ was charged with the crime of rape with homicide.[4] It read:

That on or about the 16th day of May 1996 in the evening,in [redacted], Philippines and within the jurisdiction of this Honorable Court, the above- named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with AAA against her will and consent and on the same occasion the said accused did then and there willfully, unlawfully and feloniously strike, assault and club the said victim inflicting upon her the following:

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[1] *People v. Broniola*, 762 Phil. 186, 194 (2015) [Per J. Villarama, Jr., Third Division].

[2] *Rollo*, pp. 2-19. The Decision was penned by Associate Justice Zenaida T. Galapate-Laguilles, and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino of the Tenth Division, Court of Appeals, Manila.

[3] CA *rollo*, pp. 46-61. The Decision, in Crim. Case No. SCC-2594, was penned by Judge Hermogenes C. Fernandez of Branch 56, Regional Trial Court, [redacted].

[4] CA *rollo*, p. 46.

- Cracked temporal skull with brains coming out
- Lacerated wound (1/2) inch long below (L) labia

which directly caused her death, to the damage and prejudice of her heirs.[5] (Citation omitted)

ZZZ went at large, but he was later arrested on February 6, 2003. Upon arraignment, ZZZ pleaded not guilty to the crime charged.[6]

The prosecution presented five (5) witnesses: (1) the victim's uncle BBB; (2) Senior Police Officer 3 Jaime Lavarias (SPO3 Lavarias); (3) Dr. Paz Q. Mejia (Dr. Mejia); (4) Dr. Ronald Bandonill (Dr. Bandonill); and (5) the victim's father CCC.[7]

BBB testified that he was the uncle of both AAA and ZZZ. The victim's father, CCC, was his brother, and ZZZ's mother is his second cousin. ZZZ's mother and AAA's father are relatives, making them related.[8]

BBB testified that at around 7:00p.m. on May 16, 1996, he was on his way to the store to buy cigarettes when he saw ZZZ dragging AAA by the wrist toward the school. Though it was dark and he was about 10 meters away, he was able to see them using a flashlight he was carrying. Still, he said he presumed nothing was off, thinking they were relatives. He had merely reprimanded them before he went on to buy his cigarette and returned home, where he had a drinking spree with his nephews.[9]

The following day, news spread that AAA was missing. With his cousin Josefino Camilet, BBB went on a search for his niece and informed barangay officials who then helped to look for her.[10]

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[5] *Id*.

[6] *Id.*

[7] *Id*. at 47-48. SPO3 Lavarias was also referred to in the *rollo* as PO3 Lavarias.

[8] *Id*.

[9] *Id*. and 96.

[10] *Id*.

A couple of days later, the barangay officials found a lifeless AAA in a bamboo grove near the school. BBB said that her niece's naked body had already blackened due to decomposition. On the same day, he said he found ZZZ in his house—the last time he had ever seen him.[11]

SPO3 Lavarias testified that he was on duty the day AAA was found. When he and his companions went to [redacted], they saw AAA's corpse under the bamboo grove. They came to know the body's identity through BBB, who also claimed that ZZZ was the person behind the crime. Accompanied by BBB, the police went to ZZZ's house, but he was nowhere to be found. They proceeded to prepare an investigation report and requested an autopsy on AAA.[12]

In the police officers' Joint Affidavit, SPO3 Lavarias recalled that they went back to the barangay on May 20, 1996 and found YYY, ZZZ's brother. YYY told them that on the night of the incident, he was walking home with ZZZ and AAA when his brother told him to go home alone.[13]

Dr. Mejia, a municipal health officer in [redacted], testified that she was the physician who conducted the initial autopsy as requested by the police officers. According to her report, there was a crack on AAA's temporal skull and a half-inch long laceration below her left labia, while brain matter leaked above her left ear. The doctor also noted that the body had already been decomposing when it was found.[14]

Dr. Mejia, however, said that she could not give a precise medical opinion on the laceration on AAA's labia as she was not an obstetrician- gynecologist. She also could not precisely tell how many days lapsed since AAA had died, though she testified that the cracked temporal skull may have caused AAA's death.[15]

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[11] *Id*.

[12] *Id*.

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

[14] *Id*. at 49.

[15] *Id*.

Dr. Bandonill, the medico-legal officer of the National Bureau of Investigation, testified that he conducted an autopsy on AAA on May 29, 1996. Upon examination, he found that the cadaver was at an advanced state of decomposition, the face was contorted, the tongue was protruding from the mouth, and all the extremities were flexed. He noted that the contorted face could have been either due to decomposition or due to a grimace caused by pain before she died.[16]

Dr. Bandonill also observed contusions on AAA's face, right arm's anterior surface, and the front and side parts of her thigh. He noted contusions on the genital area, which could have been caused by a hard or blunt instrument. Clumps of dried blood from the vaginal opening could have also been caused by a tear inside the genital area.[17]

From these findings, Dr. Bandonill remarked that AAA might have been sexually assaulted. He added that AAA's death could have been caused by the traumatic cerebral contusion.[18]

CCC, the victim's father, testified that AAA was 11 years old when she was raped and killed. He showed that he spent ₱20,000.00 for the internment of AAA and ₱30,000.00 for miscellaneous expenses such as transportation costs. In anguish from AAA's death, he also asked for damages.[19]

For the defense, ZZZ testified that he was 15 years old when the incident happened, as evidenced by his birth certificate. He confirmed that he knew AAA as his cousin, and that both resided in the same barangay. On the night of May 16, 1996, he said that he went to his grandmother's house, where he watched television with his brother and around 20 other people—including AAA. After watching, he and his brother, YYY, returned to their sister's house to sleep. He said that he did not notice if AAA left their grandmother's house.[20]

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[16] *Id*. at 49-50.

[17] *Id*. at 50.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 51.

Cansino added that when AAA was found dead, none of the barangay officials and police officers went to his sister's house to investigate him. On May 22, 1996, his stepfather brought him to Tarlac to work as a helper in a grocery store, where he used the *alias* Peter Viray to be employed. He later found out that he was charged with rape with homicide of AAA.[21]

Also testifying for the defense was YYY, ZZZ's brother, who retracted what he had said earlier when the police interviewed him. Affirming ZZZ's testimony, he testified that on the night of the incident, they watched television at their grandmother's house before they went home and slept at their sister's house.[22]

In a March 4, 2013 Decision,[23] the Regional Trial Court found ZZZ guilty of the crime charged. The dispositive portion read:

> WHEREFORE, premises considered, judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of the crime charged, punishable by *reclusion perpetua*. However, the service of sentence is hereby suspended, and in lieu of imprisonment, he is disposed with in an agricultural camp or any other training facility that may be supervised and controlled by the BUCOR, in coordination with the DSWD, in accordance with Section 51 of RA 9344.
>
> The accused is ordered to pay the heirs of the victim: Php20,000.00 as actual damages; Php100,000.00 as civil indemnity *ex delicto*; Php75,000.00 as moral damages; and Php50,000.00 as exemplary damages.
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> SO ORDERED.[24]

The trial court found that the circumstantial evidence presented by the prosecution proved ZZZ's guilt beyond reasonable doubt. It ruled that there was moral certainty that ZZZ perpetrated the crime since he had been the last person seen with AAA

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[21] *Id*. at 51-52.

[22] *Id*. at 52.

[23] *Id*. at 46-61.

[24] *Id*. at 61.

before she disappeared, and he fled and hid his identity when he learned that he was a suspect.[25] The trial court ruled that the positive identification of ZZZ prevailed over the defense of denial. It found his alibi that he went home after watching television did not preclude the possibility that he was at the crime scene.[26]

Adopting the report of the social worker who was assigned to ZZZ, the trial court found that he acted with discernment in committing the crime against AAA.[27]

Upon appeal, the Court of Appeals, in its February 29, 2016 Decision,[28] affirmed ZZZ's conviction:

> IN VIEW OF THE FOREGOING, the instant Appeal is hereby DENIED for lack of merit. The Decision dated March 2013 of the Regional Trial Court, Branch 56, [redacted], in Criminal Case No. SCC-2594 is hereby AFFIRMED.
>
> SO ORDERED.[29]

The Court of Appeals agreed with the trial court in relying on the testimony of BBB, who saw ZZZ dragging AAA toward the school on the night of the incident. Aside from finding his testimony spontaneous and convincing, it did not find any motive from BBB to wrongly implicate ZZZ to the crime.[30]

The Court of Appeals ruled that although BBB did not actually see ZZZ raping AAA, circumstantial evidence led to the reasonable conclusion that ZZZ perpetrated the crime: (1) BBB positively identified ZZZ as the person last seen with the victim immediately before the incident; and (2) ZZZ hid from authorities and adopted an *alias*. The Court of Appeals concluded that these pieces of circumstantial evidence operated against ZZZ.[31]

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[25] *Id*. at 56.

[26] *Id*. at 57.

[27] *Id*. at 58.

[28] *Rollo*, pp. 2-19.

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

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

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

Furthermore, the Court of Appeals ruled that between the categorical statements and the bare denial of ZZZ, the former prevailed. While ZZZ's testimony was corroborated by his brother, the Court of Appeals ruled that the latter could not be considered a disinterested witness. Moreover, it found that it was not physically impossible for ZZZ to be in the crime scene since he and AAA resided in the same barangay.[32]

The Court of Appeals held that the trial court was correct in retroactively applying Republic Act No. 9344, or the Juvenile Justice and Welfare Act of 2006. Under Section 6 of the law, a child above 15 years old but below 18 years old is not exempt from criminal liability when the child acted with discernment. The Court of Appeals found that ZZZ acted with discernment when he perpetrated the crime in a dark and isolated place, and when he evaded arrest by fleeing to Tarlac under an alias. It noted that even the social worker assigned to him arrived at the same conclusion.[33]

As ZZZ was already above 30 years old when he was convicted, the Court of Appeals held that the automatic suspension of the penalty as provided under Sections 38 and 40 of Republic Act No. 9344 was no longer applicable.[34]

ZZZ filed his Notice of Appeal. His appeal having been given due course, the Court of Appeals elevated the records of this case to this Court.[35]

In its February 20, 2017 Resolution,[36] this Court required the parties to submit their supplemental briefs. Both parties later manifested that they would adopt their Briefs before the Court of Appeals.[37]

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[32] *Id*. at 12.

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

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

[35] CA *rollo*, p. 146.

[36] *Rollo,* p. 25.

[37] *Id*. at 37-38.

Accused-appellant mainly argues that the prosecution failed to prove his guilt.[38]

First, accused-appellant questions the credibility of BBB's testimony. He claims that contrary to BBB's testimony, human experience dictates that BBB, as AAA's guardian, should have been alarmed when he allegedly saw him dragging her to a dark place. He also questions BBB's story in which AAA did not ask for help when BBB allegedly saw her being dragged.[39] Moreover, he finds it suspicious that BBB failed to find AAA's body when he purportedly searched the area near the school, as the corpse's stench would have caught his attention.[40] He surmises that BBB implicated him in the crime because BBB was himself investigated by the police.[41]

Even assuming that he was the last person seen with AAA, accused-appellant argues that this merely raises suspicion but is not sufficient to establish his guilt.[42]

Second, accused-appellant posits that even if he committed the crime, the Information failed to allege that he acted with discernment, which meant that he should not be held criminally liable. He posits that the trial court, in failing to conduct its own determination and merely relying on the social worker's report, erred in ruling that he had acted with discernment.[43]

Third, accused-appellant contends that he was not guilty of fleeing to evade the charge against him. He reasons that he went to Tarlac because he was brought there by his stepfather, and as a child, he had no choice but to follow this order. He also points out that he regularly returned to [redacted] every month while he was working in Tarlac.[44]

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[38] CA *rollo,* p. 33.

[39] *Id.* at 36.

[40] *Id.* at 37-38.

[41] *Id*. at 39.

[42] *Id.* at 39-40.

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

[44] *Id*. at 41-42.

Lastly, accused-appellant avers that his denial must be considered since it was corroborated by his brother, who was with him when the crime was committed. He posits that while the defense of denial is deemed inherently weak, the prosecution cannot profit from this alone; instead, it should rely on the strength of its own evidence.[45]

On the other hand, plaintiff-appellee People of the Philippines, through the Office of the Solicitor General, argues that the circumstantial evidence submitted by the prosecution proves accused-appellant's guilt beyond reasonable doubt.[46] It avers that the circumstances in this case created an unbroken chain that led to the reasonable conclusion that accused- appellant raped and killed AAA.[47]

Moreover, plaintiff-appellee argues that the testimony of ZZZ's brother, YYY, deserves no credence.[48] It points out that according to PO3 Lavarias' testimony, YYY narrated on May 20, 1996 that while he was walking home with accused-appellant and AAA on the night of the incident, his brother advised him to leave them behind.[49] In his testimony in court, however, YYY recanted this story and stated that he went home with accused-appellant. Plaintiff-appellee submits that YYY's narration in 1996 was more credible than his testimony, as it was taken almost right after the incident and when he was only seven (7) years old, leaving little room for coaching.[50]

Plaintiff-appellee contends that the trial court did not err in giving credence to BBB's testimony, maintaining that there was nothing incredible in what he said: (1) he was not alarmed when he saw accused-appellant with AAA because they were

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

[46] *Id.* at 83.

[47] *Id*.

[48] *Id*. at 93.

[49] *Id*. at 92.

[50] *Id*. at 93.

relatives; and (2) he testified that both of them told him that they would follow him home after he had admonished them.[51] Plaintiff-appellee also maintains that SPO3 Lavarias clarified that BBB was never a suspect in the case, quashing accused-appellant's claim that BBB had the motive to implicate him in the crime.[52] It echoes the settled doctrine that appellate courts will generally not disturb the trial court's findings when it comes to witnesses' credibility.[53]

Plaintiff-appellee asserts that the positive identification of accused-appellant, taken together with other circumstantial evidence, leads to a reasonable conclusion that he perpetrated the crime.[54]

As to whether accused-appellant acted with discernment, plaintiff-appellee posits that the allegation in the Information sufficiently met the requirement.[55] Nevertheless, should there be a defect in the Information, plaintiff-appellee maintains that accused-appellant is deemed to have waived his objections when he entered his plea.[56] Moreover, it argues that hiding from authorities indicates accused-appellant's discernment, as it shows that he was fully aware of his act's consequences and depravity.[57]

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

First, whether or not accused-appellant ZZZ is guilty beyond reasonable doubt of the crime of rape with homicide; and

Second, whether or not the prosecution proved that accused-appellant acted with discernment.

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[51] *Id*. at 96.

[52] *Id*. at 96-97.

[53] *Id*. at 98.

[54] *Id*. at 100.

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

[56] *Id*. at 106.

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

I

In *People v. Villarino*,[58] the elements of special complex crime of rape with homicide are the following:

> (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman.[59]

The commission of the crime of rape may be proven not only by direct evidence, but also by circumstantial evidence.[60] Circumstantial evidence are "proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience."[61]

In the absence of direct evidence, a resort to circumstantial evidence is usually necessary in proving the commission of rape. This is because rape "is generally unwitnessed and very often only the victim is left to testify for [him or] herself. It becomes even more difficult when the complex crime of rape with homicide is committed because the victim could no longer testify."[62]

Rule 133, Section 4 of the Revised Rules on Evidence provides the requirements for circumstantial evidence to be sufficient to sustain a conviction:

> SECTION 4. Circumstantial evidence, when sufficient. — Circumstantial evidence is sufficient for conviction if:

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[58] 628 Phil. 269 (2010) [Per *J*. Del Castillo, Second Division].

[59] *Id*. at 280 citing *People v. Yatar*, 472 Phil. 556 (2004) [*Per Curiam*, *En Banc*].

[60] *People v. Belgar*, 742 Phil. 404, 415 (2014) [Per *J*. Bersamin, First Division].

[61] *People v. Broniola*, 762 Phil. 186, 194 (2015) [Per *J*. Villarama, Jr., Third Division].

[62] *Id.* citing *People v. Pascual*, 596 Phil. 260 (2009) [Per *J*. Leonardo-De Castro, *En Banc*].

(a) There is more than one circumstance;
(b) The facts from which the inferences are derived are proven; and
(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

The trial court and the Court of Appeals considered the following circumstantial evidence in convicting accused-appellant: (1) BBB testified seeing him dragging AAA to the school on the night of the incident; (2) accused-appellant's brother, YYY, testified going home with him and AAA, but accused-appellant asked him to leave them behind; (3) after AAA's body had been found, accused-appellant fled town and hid his identity using an *alias*; and (4) the *post-mortem* examination conducted by Dr. Mejia and Dr. Bandonill confirmed that the cause of AAA's death was a traumatic cerebral contusion, while the dried blood from her vagina was caused by a tear inside the genital area.

A careful review of the records shows nothing that warrants the reversal of the trial court's and the Court of Appeals' rulings.

Accused-appellant questions the trial court's Decision by pointing out that the sole basis of his conviction is that he had been the last person seen with AAA before she disappeared. This is not the case. His conviction is anchored not only on this single instance, but on the series of circumstantial evidence against him. The circumstantial evidence proffered by the prosecution constitutes an unbroken chain that leads to a reasonable conclusion that accused-appellant, and no other person, was the author of the crime. Indeed, proof beyond reasonable doubt "does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind."[63]

Moreover, there is no showing that the trial court erred in giving credence to BBB's testimony. As BBB explained, he

[63] *Id*. at 195 citing *People v. Guihama*, 452 Phil. 824, 843 (2003) [Per *J*. Azcuna, First Division].

reprimanded accused-appellant and AAA when he saw them, but he was not suspicious since the two were relatives. Moreover, the prosecution established that BBB was not a suspect in the crime, and nor was there any proof that BBB had motive to erroneously implicate accused-appellant.

As this Court held in *People v. Baron*,[64] "factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance."[65] Here, it was not shown that the trial court erred and misapprehended any fact or evidence. The trial court's findings, when affirmed by the Court of Appeals, are binding and conclusive on this Court.[66] Thus, its findings must not be disturbed.

Lastly, accused-appellant's denial cannot prevail over the prosecution's evidence. Although the testimony of his brother YYY corroborated his denial, it does not escape this Court's attention that his brother admitted in his initial testimony that he did not go home with accused-appellant on the night of the incident. This Court has held that retractions are generally disfavored as they are unreliable.[67]

Nevertheless, even if we consider YYY's more recent testimony, accused-appellant's alibi must still fail. For his defense of alibi to be credible, he must show that it was physically impossible for him to be at the crime scene when the crime

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[64] 776 Phil. 725 (2016) (Per J. Leonen, Second Division].

[65] *Id.* at 734 citing *People v. De Jesus*, 695 Phil. 114, 122 (2012) [Per J. Brion, Second Division].

[66] *Land Bank of the Philippines v. Musni*, 806 Phil. 308, 321-323 (2017) [Per J. Leonen, Second Division] citing *Manotok Realty, Inc. v. CLT Realty Development Corporation*, 512 Phil. 679, 706 (2005) [Per J. Sandoval-Gutierrez, Third Division].

[67] *People v. Zafra*, 712 Phil. 559 (2013) [Per J. Leonardo-De Castro, First Division].

was committed.[68] Yet, accused-appellant, who stayed in the same barangay as AAA and the school, failed to do so.

II

Republic Act No. 9344, or the Juvenile Justice and Welfare Act of 2006, provides the minimum age of criminal responsibility:

> SECTION 6. Minimum Age of Criminal Responsibility. — A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.
>
> A child is deemed to be fifteen (15) years of age on the day of the fifteenth anniversary of his/her birthdate.
>
> A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings m accordance with this Act.
>
> The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

This Court has defined discernment as the "mental capacity of a minor to fully appreciate the consequences of his unlawful act."[69] This is determined by considering all the facts of each case.[70]

Under Republic Act No. 9344, children above 15 years old but below 18 years old who acted without discernment are exempt from criminal responsibility. They "shall be released and shall be subjected to an intervention program as may be determined

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[68] *People v. Ravanes*, 348 Phil. 689 (1998) [Per J. Bellosillo, First Division].

[69] *Madali v. People*, 612 Phil. 582, 606 (2009) [Per J. Chico-Nazario, Third Division].

[70] *Id.*

by a local social welfare and development officer, pursuant to Section 20[.]"[71]

On the other hand, if they acted with discernment, they shall not be exempt from criminal responsibility. In *Dorado v. People*, this Court explained how the law applies to children in conflict with the law who acted with discernment:

> Consequently, under R.A. No. 9344, only a child above fifteen (15) years but below eighteen (18) years of age who acted with discernment shall not be exempted from criminal responsibility. Nevertheless, the said child does not immediately proceed to trial. Instead, he or she may undergo a diversion, which refers to an alternative, child-appropriate process of determining the responsibility and treatment of the [child in conflict with the law] without resorting to formal court proceedings. If the diversion is unsuccessful or if the other grounds provided by law are present, then the [child in conflict with the law] shall undergo the appropriate preliminary investigation of his or her criminal case, and trial before the courts may proceed.
>
> Once the [child in conflict with the law] is found guilty of the offense charged, the court shall not immediately execute its judgment; rather, it shall place the [child in conflict with the law] under suspended sentence. Notably, the suspension shall still be applied even if the juvenile is already eighteen (18) years of age or more at the time of the pronouncement of his or her guilt. During the suspension, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law. If the disposition measures are successful, then the court shall discharge the [child in conflict with the law]. Conversely, if unsuccessful, then the court has the following options: (1) to discharge the child, (2) to order execution of sentence, or (3) to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.[72] (Citations omitted)

Here, accused-appellant argues that even if he were guilty of raping AAA, he must still be exempt from criminal liability

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[71] *Dorado v. People*, 796 Phil. 233, 246 (2016) [Per J. Mendoza, Second Division].

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

since he was only 15 years old[73] when he committed the offense and the prosecution failed to prove that he acted with discernment.

The trial court and the Court of Appeals found that accused-appellant acted with discernment in carrying out the crime.[74] First, he perpetrated the crime in a dark and isolated place. Second, after knowing that he had been tagged as the suspect, he evaded authorities by fleeing to Tarlac and concealing his identity. Third, as confirmed by the social worker assigned to him, he knew and understood the consequences of his acts. Lastly, Dr. Bandonill concluded that AAA was raped by means of force, as evidenced by the contusions all over her body and by the tear from her vaginal area.

As can be gleaned from these facts, accused-appellant committed the crime with an understanding of its depravity and consequences. He must suffer the full brunt of the penalty of the crime.

Considering that accused-appellant is already over 30 years old when he was convicted, the automatic suspension of the sentence provided under Section 38 of Republic Act No. 9344, in relation to Section 40, may no longer be applied. While the suspension of sentence still applies even if the child in conflict with the law is already of the age of majority at the time his conviction was rendered, the suspension applies only until the minor reaches the maximum age of 21.[75] The provisions state:

SECTION 38. Automatic Suspension of Sentence. — Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the

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[73] CA *rollo*, p. 58. Accused-appellant's birth certificate reflected that he was born on March 21, 1981.

When the incident happened on May 16, 1996, he was 15 years, one month, and 25 days old.

[74] *Id*. at 59 and *rollo*, p. 17.

[75] *People v. Ancajas*, 772 Phil. 166, 188 (2015) [Per *J*. Peralta, Third Division].

court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

. . . . . .

SECTION 40. Return of the Child in Conflict with the Law to Court. — If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

As to the proper penalty for rape with homicide, Articles 266-A and 266-B of the Revised Penal Code provides:

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.

ARTICLE 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

. . . . . .

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion perpetua* to death.

Thus, the imposable penalty for the crime of rape with homicide is death. Under Article 63[76] of the Revised Penal Code, if the penalty prescribed by law is composed of two (2) indivisible penalties, the lesser penalty shall be imposed if neither mitigating nor aggravating circumstances are present in the commission of the crime. Absent any aggravating circumstances, the lesser penalty of *reclusion perpetua* is imposable. Furthermore, since accused-appellant was a minor when he committed the crime, he is entitled to the privileged mitigating circumstance of minority under Section 68(2)[77] of the Revised Penal Code. Thus, the proper imposable penalty on him is *reclusion temporal*.

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[76] REV. PEN. CODE, Art. 63, par. 2 provides:

ARTICLE 63. Rules for the Application of Indivisible Penalties. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

. . . . . .

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[77] REV. PEN. CODE, Art. 68, par. 2 provides:

ARTICLE 68. Penalty to Be Imposed Upon a Person Under Eighteen Years of Age. — When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:

. . . . . .

2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

Applying the Indeterminate Sentence Law, the indeterminate penalty has a minimum period within the range of *prision mayor*—the penalty one (1) degree lower to that provided in Article 249-and a maximum period within the range of *reclusion temporal* in its medium period. Hence, the indeterminate sentence of 10 years and one (1) day of *prision mayor*, as minimum, to 17 years and four (4) months of *reclusion temporal*, as maximum, should be imposed.

In accordance with *People v. Jugueta*,[78] the proper amount of damages for the special complex crime of rape with homicide when the penalty imposed is *reclusion perpetua* should be ₱75,000.00 each for civil indemnity, moral damages, and exemplary damages. This Court also affirms the award of actual damages of ₱20,000.00. In addition, the damages awarded shall earn legal interest at the rate of six percent (6%) per annum from the finality of the judgment until fully paid.

WHEREFORE, the Court of Appeals' February 29, 2016 Decision in CA-G.R. CR-HC No. 06486 is **AFFIRMED with MODIFICATION**. Accused-appellant ZZZ is found **GUILTY** beyond reasonable doubt of the special complex crime of rape with homicide and is sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

Accused-appellant is ordered to pay the heirs of AAA the amounts of: (1) Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity; (2) Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; (3) Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages; and (4) Twenty Thousand Pesos (₱20,000.00) as actual damages.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid

SO ORDERED.

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

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[78] 783 Phil. 806 (2016) [Per *J.* Peralta, *En Banc*].

THIRD DIVISION

[G.R. No. 232094. July 24, 2019]

PARINA R. JABINAL, *petitioner, vs.* **HON. OVERALL DEPUTY OMBUDSMAN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; THE SUPREME COURT MAINTAINS THE POLICY OF NON-INTERFERENCE IN THE OMBUDSMAN'S DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE EXCEPT WHEN THERE IS A CHARGE OF ABUSE OF DISCRETION.— Both the Constitution and R.A. No. 6770 or *The Ombudsman Act of 1989,* give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. Since the Ombudsman is armed with the power to investigate, it is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, We defer to the sound judgment of the Ombudsman. This Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause. Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or in contemplation of law.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT DULY ESTABLISHED IN CASE AT BAR.— In order for the instant petition for *certiorari* to succeed, it is incumbent upon petitioner to sufficiently establish her allegations that the Ombudsman committed grave abuse of discretion in finding probable cause for her violation of Section 7(b)(2) of R.A. 6713 x x x Section 7(b)(2) of R.A. 6713, in relation to Section 11

of the same law, provides x x x [that] public officials and employees during their incumbency are prohibited from engaging in the private practice of their profession unless authorized by law or the Constitution and such practice should not be in conflict with their official functions. Memorandum Circular No. 17 of the Executive Department allows government employees to engage directly in the private practice of their profession provided there is a written permission from the Department head. In this case, petitioner admitted having notarized a Deed of Sale and a Deed of Assignment in August and September 2008, respectively. It appears that she was paid the amount of ₱30,000.00 for notarizing said documents. The acts of notarization are within the ambit of the term "practice of law," thus, a prior request and approval thereof by the NHA are required. However, there is no showing of any written authority from the NHA issued in 2008 allowing petitioner to engage in notarial practice. In fact, she was not a commissioned notary public in Quezon City in 2008. x x x We found that petitioner failed to substantiate her allegations of grave abuse of discretion on the part of the Ombudsman's finding of probable cause. The evidence presented during the preliminary investigation on which the Ombudsman based its conclusion proved that the act complained of constituted the offense charged x x x.

3. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; NOT THE OCCASION FOR FULL AND EXHAUSTIVE DISPLAY OF THE PARTIES' EVIDENCE, FOR IT IS FOR THE PRESENTATION OF SUCH EVIDENCE ONLY AS MAY ENGENDER A WELL-GROUNDED BELIEF THAT AN OFFENSE HAS BEEN COMMITTED AND THAT THE ACCUSED IS PROBABLY GUILTY THEREOF.— Petitioner claims good faith in notarizing the two documents as she believed in all honesty that she was a commissioned notary public for that year; and that her acts do not constitute habituality. Such claim is evidentiary in nature and a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits. It is not for the public prosecutor to decide whether there is evidence beyond reasonable doubt of the guilt of the person charged. A preliminary investigation is conducted for the purpose of determining whether a crime has been committed, and whether there is probable cause to believe that the accused is guilty thereof and should be held

for trial. It is not the occasion for full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.

APPEARANCES OF COUNSEL

Allan Agnol Pasamonte for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to reverse and set aside the Resolution[1] dated May 16, 2016 and the Joint Order[2] dated December 2, 2016 issued by the Office of the Ombudsman in OMB-C-C-15-0487.

On December 4, 2015, the Field Investigation Office of the Ombudsman, represented by Teddy F. Parado, filed a complaint against petitioner Atty. Parina R. Jabinal, Division Manager, Legal Services Department, National Housing Authority *(NHA),* for violation of Section 7(b)(2) of Republic Act No. *(R.A.)* 6713, otherwise known as the *Code of Conduct and Ethical Standards for Public Officials and Employees,* which prohibits all public officials and employees from engaging in the private practice of their profession unless authorized. The complaint alleged that petitioner, a legal officer of the NHA in 2008, had notarized two documents, *i.e.,* a Deed of Sale dated August

[1] Per Graft Investigation and Prosecution Officer III Myla Teona N. Teologio and approved by Overall Deputy Ombudsman Melchor Arthur H. Carandang; *rollo,* pp. 49-54.

[2] Per Graft Investigation and Prosecution Officer III Myla Teona N. Teologio and approved by Ombudsman Conchita Carpio Morales; *id.* at 61-66.

20, 2008 between the NHA and Milagros Daez, Rosauro D. Villaluz and K-Bon Construction Corporation, and a Deed of Assignment dated September 30, 2008 between Milagros Daez and Rosauro D. Villaluz (First Party), K-Bon Construction Corporation (Second Party) and Alex Uson and Ernesto Yao (Third Party), and she was paid the amount of ₱30,000.00 for both documents;[3] that as petitioner's acts of notarization were within the ambit of the term private practice of law, there should have been a prior request made by her to the NHA for authority to engage in the practice of her profession and the NHA's approval thereof, however, there was no document on file of such written authority in 2008;[4] and that the Branch Clerk of Court of the Regional Trial Court of Quezon City also certified that petitioner was not a commissioned notary public for Quezon City in 2008.[5]

In her counter affidavit, petitioner alleged that on April 17, 2006, while she was a Legal Staff at the Office of the General Manager of the NHA, she filed a petition for appointment as a notary public for and in Quezon City, attaching the authority issued by the NHA to engage in private practice, which was granted by the Executive Judge of RTC Quezon City on May 4, 2006, covering the period from 2006-2007. On February 9, 2008, she filed another petition for a notarial commission, attaching a letter of authority issued by the NHA, but the certificate for notarial commission was issued by the RTC Judge on March 3, 2009 for the period from 2009-2010; that she claimed inadvertence made in good faith when she notarized the two above-mentioned documents in August and September 2008 when her notarial commission was still on petition; and her act was based on her customary notarial practice in 2006-2007.

On May 16, 2016, the Ombudsman found probable cause against petitioner, the dispositive portion of which reads:

WHEREFORE, finding probable cause to indict PARINA R. JABINAL, for violation of Section 7, (b), (2), R.A. 6713 (2 counts)

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[3] *Id.* at 50.

[4] *Id.*

[5] *Id.* at 51.

for engaging in notarial practice while employed as Legal Officer of NHA in 2008 without prior authority from the NHA, let the corresponding Informations be filed against her in the Metropolitan Trial Court of Quezon City.[6]

Petitioner filed a motion for reconsideration and a supplemental motion for reconsideration. In a Joint Order dated December 2, 2016, petitioner's motion for reconsideration, with regard to the instant criminal case, was denied, and the May 16, 2016 Resolution was affirmed.

The corresponding Informations for two (2) counts of violation of Section 7(b)(2) of R.A. 6713 were subsequently filed before the Metropolitan Trial Court of Quezon City.

Petitioner files the instant petition for *certiorari* on the following grounds:

> The Hon. Over-All Deputy Ombudsman gravely erred and abused his discretion, amounting to lack or excess of jurisdiction, in factually assuming that petitioner's acts in notarizing the two (2) documents in August and September 2008 constituted habitual and/or unauthorized private practice of law contemplated under Section 7(b)(2) of R.A. 6713.
>
> The Hon. Overall Deputy Ombudsman gravely erred and abused his discretion, amounting to lack or excess of jurisdiction, in finding that probable cause exists against the petitioner and that she should be criminally indicted before the court for violation of Section 7(b)(2), R.A. 6713, in utter disregard of existing judicial pronouncements by the Supreme Court.[7]

Petitioner avers that there is no contest that she notarized the two documents, but she did so in good faith believing in all honesty that she was a commissioned notary public for the year 2008; that it was an honest mistake or oversight to assume that she had filed her petition for notary for the year 2008-2009; and that she has been a notary public in Quezon City from 2004 to 2010. She claims that she had been notarizing

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

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

documents involving NHA as it was part of her duties and responsibilities, hence, it would be a mistaken factual conclusion for the Ombudsman to deem that notarial practice at NHA *ipso facto* constitutes private practice of law. Petitioner contends that under jurisprudential pronouncements, private practice referred to in Section 7(b)(2) of R.A. 6713 contemplates a succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer and demanding payment for such services, which does not obtain under the circumstances of this case. She claims that she had served the government with utmost dedication and integrity from 2005 until her dismissal from work.

The sole issue for resolution is whether the Ombudsman committed grave abuse of discretion in finding that probable cause exists against petitioner.

We dismiss the petition.

Both the Constitution[8] and R.A. No. 6770[9] or *The Ombudsman Act of 1989,* give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. Since the Ombudsman is armed with the power to investigate, it is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause.[10] As this Court is not a trier of facts, We defer to the sound judgment of the Ombudsman. This Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause.[11]

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[8] 1987 CONSTITUTION, Article XI. Section 12 provides:

The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

[9] *An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes (1989).*

[10] *Villarosa v. The Honorable Ombudsman,* G.R. No. 221418, January 23, 2019.

[11] *Id.*

Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion.[12] Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or in contemplation of law.[13]

In order for the instant petition for *certiorari* to succeed, it is incumbent upon petitioner to sufficiently establish her allegations that the Ombudsman committed grave abuse of discretion in finding probable cause for her violation of Section 7(b)(2) of R.A. 6713. Probable cause, for the purpose of filing a criminal information, has been defined to constitute such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof.[14] Probable cause does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. It does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.[15]

Section 7(b)(2) of R.A. 6713, in relation to Section 11 of the same law, provides:

> Section 7. *Prohibited Acts and Transactions.* - In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:
>
> x x x x x x x x x

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[12] *Id.*

[13] *Fuentes Jr. v. Office of the Ombudsman,* 511 Phil. 402, 413 (2005).

[14] *Philippine Deposit Insurance Corporation v. Casimiro,* 768 Phil. 429, 436 (2015).

[15] *Id.*

(b) Outside employment and other activities related thereto.—Public officials and employees during their incumbency shall not:

x x x x x x x x x

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or

x x x x x x x x x

Section 11. *Penalties.* – x x x Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (₱5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

Clearly, public officials and employees during their incumbency are prohibited from engaging in the private practice of their profession unless authorized by law or the Constitution and such practice should not be in conflict with their official functions. Memorandum Circular No. 17[16] of the Executive

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[16] Issued by the Office of the President, entitled Revoking Memorandum Circular No. 1025 Dated November 25, 1977.

Memorandum Circular No. 17:

The authority to grant permission to any official or employee shall be granted by the head of the ministry or agency in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules, which provides:

Sec. 12. "No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without a written permission from the head of Department; *Provided,* That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government: *Provided, further,* That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not impair in any way the efficiency of the other officer or employee: *And provided, finally,* That no permission is necessary in the case of investments, made by an officer or employee, which do not involve any real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge

Department allows government employees to engage directly in the private practice of their profession provided there is a written permission from the Department head.

In this case, petitioner admitted having notarized a Deed of Sale and a Deed of Assignment in August and September 2008, respectively. It appears that she was paid the amount of ₱30,000.00 for notarizing said documents. The acts of notarization are within the ambit of the term "practice of law,"[17] thus, a prior request and approval thereof by the NHA are required. However, there is no showing of any written authority from the NHA issued in 2008 allowing petitioner to engage in notarial practice. In fact, she was not a commissioned notary public in Quezon City in 2008.

In *Abella v. Atty. Cruzabra,*[18] the respondent, who was then the Deputy Register of Deeds of General Santos City, had notarized around 3,000 documents without obtaining prior authority from the Secretary of Justice to engage in the private practice of his profession. She was found guilty of engaging in notarial practice without the written authority from the Secretary of Justice. Thus:

> It is clear that when respondent filed her petition for commission as a notary public, she did not obtain a written permission from the Secretary of the DOJ. Respondent's superior, the Register of Deeds, cannot issue any authorization because he is not the head of the Department. And even assuming; that the Register of Deeds authorized her, respondent failed to present any proof of that written permission. Respondent cannot feign ignorance or good faith because respondent filed her petition for commission as a notary public after Memorandum Circular No. 17 was issued in 1986.[19]

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of his duties, and he shall not take part in the management of the enterprise or become an officer or member of the board of directors", subject to any additional conditions which the head of the office deems necessary in each particular case in the interest of the service, as expressed in the various issuances of the Civil Service Commission.

[17] *Yumol, Jr. v. Atty. Ferrer Sr.,* 496 Phil. 363, 376 (2005).

[18] 606 Phil. 200 (2009).

[19] *Id.* at 206-207.

We found that petitioner failed to substantiate her allegations of grave abuse of discretion on the part of the Ombudsman's finding of probable cause. The evidence presented during the preliminary investigation on which the Ombudsman based its conclusion proved that the act complained of constituted the offense charged, to wit:

> The pieces of evidence on record show that, on two occasions, respondent engaged in notarial service while being employed as Legal Officer of the NHA in 2008. On August 20, 2008, she notarized the Deed of Absolute Sale and entered the same in her Notarial Register as document number 742 on page 79, Book No. II, series of 2008. On September 30, 2008, she notarized the Deed of Assignment and entered the same in her Notarial Register as document number 805 on page 81, Book No. II, series of 2008.
>
> Respondent disclosed that her 2006 petition for Notarial Commission with authority issued by NHA was granted on May 4, 2006 by Executive Judge Natividad Giron-Dizon and was issued on May 5, 2006, covering the period 2006-2007. On the other hand, her February 9, 2008 Petition for Notarial Commission with authority issued by NHA, was granted and issued on March 3, 2009 by Executive Judge Teodor A. Bay covering the period 2009-2010. She stressed that when she notarized the alluded documents in August and September 2008, her Notarial Commission was still on petition.
>
> A closer look on the alleged 2008 petition shows that the petition bears the date February 9, 2008. However, it was stamped received by the Office of the Clerk of Court on February 10, 2009. It also appears on the signature page of the petition that the petitioner was issued IBP No. 751924 on January 14, 2009 and PTR No. 0472089 on January 12, 2009. From the foregoing, it can be deduced that the petition prepared on February 9, 2008, was only filed on February 10, 2009. Clearly, there is no pending petition for notarial commission when the alluded documents were notarized in August and September 2008, respectively. Since there was no petition filed on the said dates, and the authority given by the NHA comes as an attachment to the petition, the logical conclusion is that there was no authority given by the NHA in order for respondent to engage in the limited practice of notarial services when she notarized the documents in August and September 2008.

Section 7, paragraph b(2), R.A. 6713, prohibits any public official and employee to engage in the private practice of their profession unless authorized by the Constitution or law. Respondent is a government employee and is prohibited from engaging in the private practice of her profession unless authorized by the NHA.

Complainant has established that on two occasions respondent engaged in notarial practice while employed as Legal Officer of [the] NHA in 2008, without prior authority from the NHA.[20]

Petitioner claims good faith in notarizing the two documents as she believed in all honesty that she was a commissioned notary public for that year; and that her acts do not constitute habituality. Such claim is evidentiary in nature and a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits. It is not for the public prosecutor to decide whether there is evidence beyond reasonable doubt of the guilt of the person charged.[21] A preliminary investigation is conducted for the purpose of determining whether a crime has been committed, and whether there is probable cause to believe that the accused is guilty thereof and should be held for trial. It is not the occasion for full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.[22]

WHEREFORE, the Petition for *Certiorari* is **DISMISSED.** The Resolution dated May 16, 2016 and the Joint Order dated December 2, 2016 issued by the Office of the Ombudsman in OMB-C-C-15-0487 are hereby **AFFIRMED.**

SO ORDERED.

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

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[20] *Rollo,* pp. 52-53. (Citations omitted)

[21] See *Nava v. Commission on Audit,* 419 Phil. 544, 554 (2001).

[22] *Id.,* citing *Deloso v. Desierto,* 372 Phil. 805, 814 (1999); *Olivarez v. Sandiganbayan,* 319 Phil. 45, 62 (1995).

THIRD DIVISION

[G.R. No. 232863. July 24, 2019]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **MUNICIPAL AGRARIAN REFORM OFFICER ROMERICO DATOY,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; THE COMPREHENSIVE AGRARIAN REFORM LAW; AGRARIAN REFORM COVERAGE; LANDS FORECLOSED BY GOVERNMENT FINANCIAL INSTITUTIONS, LIKE THE GOVERNMENT SERVICE INSURANCE SYSTEM, ARE SUBJECT TO AGRARIAN REFORM AND ARE NOT INCLUDED IN THE EXCLUSIVE LIST OF EXEMPTIONS AND EXCLUSIONS FROM AGRARIAN REFORM COVERAGE.— *Roman Catholic Archbishop of Caceres v. Secretary of Agrarian Reform* has settled that the exemptions from agrarian reform coverage are contained in *"an **exclusive** list,"* which are enumerated under Section 10 of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law x x x. In *Hospicio de San Jose de Barili, Cebu City v. Department of Agrarian Reform,* this Court emphasized the need for a strict application of the Comprehensive Agrarian Reform Law's exceptions x x x. Petitioner's suggestion that an exception exists outside Section 10's exclusive list runs afoul of this Court's pronouncements in *Roman Catholic Archbishop of Caceres* and *Hospicio de San Jose de Barili, Cebu City.* Section 7 of the Comprehensive Agrarian Reform Law is even more specific. It explicitly states that "lands foreclosed by government financial institutions" are subject to agrarian reform x x x. Section 3(m) of Republic Act No. 10149, or the GOCC Governance Act of 2011, defines government financial institutions x x x. Petitioner does not only meet Section 3(m)'s definition; it is even cited as the exemplar of a government financial institution. This, *vis-á-vis* Section 7 of the Comprehensive Agrarian Reform Law, negates any doubt on its being covered by the Comprehensive Agrarian Reform Law.

APPEARANCES OF COUNSEL

GSIS Legal Service Group for petitioner.
Bureau of Agrarian Legal Assistance for respondent.

D E C I S I O N

LEONEN, *J.*:

Lands foreclosed by the Government Service Insurance System, a government financial institution, are subject to agrarian reform and are not among the Comprehensive Agrarian Reform Law's exclusive list of exemptions and exclusions.

This Court resolves a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the assailed October 13, 2016 Decision[2] and July 19, 2017 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 134933 be reversed and set aside.

The Court of Appeals affirmed the September 27, 2013 Decision[4] and March 18, 2014 Resolution[5] of the Office of the President, which had sustained the November 17, 2008 Order[6]

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[1] *Rollo*, pp. 15-37.

[2] *Id*. at 47-60. The Decision was penned by Associate Justice Victoria Isabel A. Paredes, and concurred in by Associate Justices Magdangal M. De Leon and Elihu A. Ybañez of the Seventh Division, Court of Appeals, Manila.

[3] *Id*. at 62-63. The Resolution was penned by Associate Justice Victoria Isabel A. Paredes, and concurred in by Associate Justices Magdangal M. De Leon and Elihu A. Ybañez of the Former Seventh Division, Court of Appeals, Manila.

[4] *Id*. at 64-71. The Decision was signed by Executive Secretary Paquito N. Ochoa, Jr.

[5] *Id*. at 72-73. The Resolution was signed by Executive Secretary Paquito N. Ochoa, Jr.

[6] *Id*. at 84-88. The Order was signed by Agrarian Reform Secretary Nasser C. Pangandaman.

and June 16, 2009 Resolution[7] of Agrarian Reform Secretary Nasser C. Pangandaman (Agrarian Reform Secretary Pangandaman). Agrarian Reform Secretary Pangandaman denied the Government Service Insurance System's appeal and sustained the October 16, 2006[8] and December 21, 2006 Orders[9] of Regional Director Rodolfo T. Inson (Regional Director Inson) of Department of Agrarian Reform Regional Office XI. Regional Director Inson denied the Government Service Insurance System's Petition asking that a piece of agricultural land be excluded from compulsory agrarian reform coverage.

In February 1996, the Metro Davao Agri-Hotel Corporation obtained a ₱20 million commercial loan from the Government Service Insurance System. This loan was secured by a mortgage over two (2) parcels of land. The first parcel was covered by Transfer Certificate of Title No. T-234689, while the second, an agricultural land, was covered by Transfer Certificate of Title No. T-54074.[10]

As the Metro Davao Agri-Hotel Corporation was unable to pay its loan obligations, the Government Service Insurance System foreclosed both properties. After the lapse of the redemption period, ownership of the two (2) properties was consolidated in the Government Service Insurance System.[11]

On August 10, 2004, Municipal Agrarian Reform Officer Romerico Datoy issued a Notice of Coverage concerning the agricultural land covered by Transfer Certificate of Title No. T-54074. Subsequently, the Department of Agrarian Reform offered to pay the Government Service Insurance System ₱2,343,370.24 for the property. The latter, in turn, sent a letter

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[7] *Id*. at 89-94. The Resolution was signed by Agrarian Reform Secretary Nasser C. Pangandaman.

[8] *Id.* at 75-81.

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

[10] *Id*. at 48 and 84.

[11] *Id*.

to the Provincial Agrarian Reform Office protesting the coverage.[12]

On May 12, 2006, the Government Service Insurance System filed before the Department of Agrarian Reform Regional Director a Petition asking that the property be excluded from compulsory agrarian reform coverage.[13]

In his October 16, 2006 Order,[14] Regional Director Inson denied the Government Service Insurance System's Petition. He further denied its Motion for Reconsideration in his December 21, 2006 Order.[15]

The Government Service Insurance System appealed the Order, but its appeal was denied by Agrarian Reform Secretary Pangandaman in his November 17, 2008 Order.[16] It filed a Motion for Reconsideration, which was similarly denied in a June 16, 2009 Resolution.[17]

The Government Service Insurance System elevated the case to the Office of the President, but its appeal was denied in a September 27, 2013 Decision.[18] Its subsequent Motion for Reconsideration was denied in a March 18, 2014 Resolution.[19]

The Government Service Insurance System then filed before the Court of Appeals a Petition for Review. In its October 13, 2016 Decision,[20] however, the Court of Appeals sustained the rulings of the Office of the President, the Agrarian Reform Secretary, and Regional Director Inson. In its July 19, 2017

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

[13] *Id*. at 49.

[14] *Id*. at 75-81.

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

[16] *Id*. at 84-88.

[17] *Id*. at 89-94.

[18] *Id*. at 64-71.

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

[20] *Id.* at 47-60.

Resolution,[21] the Court of Appeals denied the subsequent Motion for Reconsideration.

Thus, the Government Service Insurance System filed this Petition,[22] assailing the Court of Appeals Decision.

For this Court's resolution is the issue of whether or not the property covered by Transfer Certificate of Title No. T-54074 may be excluded from compulsory agrarian reform coverage.

Petitioner insists that under Section 39 of Republic Act No. 8291, or The Government Service Insurance System Act of 1997, its properties cannot be utilized for agrarian reform purposes.[23] It adds that the same provision exempts its properties from agrarian reform coverage.[24]

Section 39 of Republic Act No. 8291 states:

> SECTION 39. Exemption from Tax, Legal Process and Lien. — It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the GSIS shall be preserved and maintained at all times and that contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the GSIS and their employers. Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act. *Accordingly, notwithstanding any laws to the contrary, the GSIS, its assets, revenues including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds.* These exemptions shall continue unless expressly and specifically revoked and any assessment against the GSIS as of the approval of this Act are hereby considered paid. Consequently, all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect.

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

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

[23] *Id*. at 20-23.

[24] *Id*. at 23-28.

Moreover, these exemptions shall not be affected by subsequent laws to the contrary unless this section is expressly, specifically and categorically revoked or repealed by law and a provision is enacted to substitute or replace the exemption referred to herein as an essential factor to maintain or protect the solvency of the fund, notwithstanding and independently of the guaranty of the national government to secure such solvency or liability.

The funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be *exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial agencies or administrative bodies including Commission on Audit (COA) disallowances* and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS. (Emphasis supplied)

Petitioner's insistence on Republic Act No. 8291's supposed exemption is plain error.

Roman Catholic Archbishop of Caceres v. Secretary of Agrarian Reform[25] has settled that the exemptions from agrarian reform coverage are contained in "*an **exclusive** list*"[26] which are enumerated under Section 10 of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law:

Section 4 of RA 6657 states, "The Comprehensive Agrarian Reform Law of 1988 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture," The lands in Archbishop's name are agricultural lands that fall within the scope of the law, and do not fall under the exemptions.

The exemptions under RA 6657 form an *exclusive list*, as follows:

SEC. 10. Exemptions and Exclusions. —

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[25] 565 Phil. 598 (2007) [Per *J.* Velasco, Jr., Second Division].

[26] *Id.* at 610.

(a) Lands actually, directly and exclusively used for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds and mangroves shall be exempt from the coverage of this Act.

(b) Private lands actually, directly and exclusively used for prawn farms and fishponds shall be exempt from the coverage of this Act: Provided, That said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued under the Agrarian Reform Program.

In cases where the fishponds or prawn farms have been subjected to the Comprehensive Agrarian Reform Law, by voluntary offer to sell, or commercial farms deferment or notices of compulsory acquisition, a simple and absolute majority of the actual regular workers or tenants must consent to the exemption within one (1) year from the effectivity of this Act. When the workers or tenants do not agree to this exemption, the fishponds or prawn farms shall be distributed collectively to the worker-beneficiaries or tenants who shall form cooperative or association to manage the same.

In cases where the fishponds or prawn farms have not been subjected to the Comprehensive Agrarian Reform Law, the consent of the farmworkers shall no longer be necessary; however, the provision of Section 32-A hereof on incentives shall apply.

(c) Lands actually, directly and exclusively used and found to be necessary for national defense, school sites and campuses, including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production center, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent (18%) slope and over, except those already developed, shall be exempt from the coverage of this Act. (As amended by R.A. 7881)[27]

[27] *Id*. at 610-611.

In *Hospicio de San Jose de Barili, Cebu City v. Department of Agrarian Reform*,[28] this Court emphasized the need for a strict application of the Comprehensive Agrarian Reform Law's exceptions:

> To begin with, the terms "charitable purposes" and "charitable organizations" do not appear in Section 10 of the [Comprehensive Agrarian Reform Law]. For its part, Hospicio unduly assumes that charity is integrally wedded to religiosity, despite the fact that there are charitable institutions that are avowedly secular in orientation. We disagree that there is a clear intent or spirit to include properties held by charitable institutions, even those directly utilized for charitable purposes, in the list of exempted properties under the [Comprehensive Agrarian Reform Law]. Section 10 does not include properties which are generally used for charitable purposes, such as orphanages, from the exemption. Not even all properties owned by religious institutions are exempt, save for those places of worship and the convents/Islamic centers appurtenant thereto. Even assuming that the Hospicio were actually owned and operated by the Catholic Church, it still would not be exempted from the [Comprehensive Agrarian Reform Law].
>
> It is axiomatic that where a general rule is established by a statute with exceptions, the Court will not curtail nor add to the latter by implication, and it is a rule that an express exception excludes all others. We cannot simply impute into a statute an exception which the Congress did not incorporate. Moreover, general welfare legislation such as land reform laws is to be construed in favor of the promotion of social justice to ensure the well-being and economic security of the people. Since a broad construction of the provision listing the properties exempted under the [Comprehensive Agrarian Reform Law] would tend to denigrate the aims of agrarian reform, a strict application of these exceptions is in order.[29] (Citations omitted)

Petitioner's suggestion that an exception exists outside Section 10's exclusive list runs afoul of this Court's pronouncements in *Roman Catholic Archbishop of Caceres* and *Hospicio de San Jose de Barili, Cebu City*.

Section 7 of the Comprehensive Agrarian Reform Law is even more specific. It explicitly states that "lands foreclosed

[28] 507 Phil. 585 (2005) [Per *J*. Tinga, Second Division].

[29] *Id*. at 601.

by government financial institutions" are subject to agrarian reform:

> SECTION 7. Priorities. — The Department of Agrarian Reform (DAR) in coordination with the Presidential Agrarian Reform Council (PARC) shall plan and program the acquisition and distribution of all agricultural lands through a period often (10) years from the effectivity of this Act. Lands shall be acquired and distributed as follows:
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> > Phase One: Rice and corn lands under Presidential Decree No. 27; all idle or abandoned lands; all private lands voluntarily offered by the owners for agrarian reform; ***all lands foreclosed by government financial institutions***; all lands acquired by the Presidential Commission on Good Government (PCGG); and all other lands owned by the government devoted to or suitable for agriculture, which shall be acquired and distributed immediately upon the effectivity of this Act, with the implementation to be completed within a period of not more than four (4) years[.] (Emphasis supplied)

Section 3(m) of Republic Act No. 10149, or the GOCC[30] Governance Act of 2011, defines government financial institutions:

> SECTION 3. Definition of Terms. —
>
> . . . . . .
>
> (m) Government Financial Institutions (GFIs) refer to financial institutions or corporations in which the government directly or indirectly owns majority of the capital stock and which are either: (1) registered with or directly supervised by the Bangko Sentral ng Pilipinas; or (2) collecting or transacting funds or contributions from the public and places them in financial instruments or assets such as deposits, loans, bonds and equity including, but not limited to, *the Government Service Insurance System* and the Social Security System. (Emphasis supplied)

Petitioner does not only meet Section 3(m)'s definition; it is even cited as the exemplar of a government financial

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[30] GOCC stands for government-owned or -controlled corporation. See Republic Act No. 10149 (2011).

institution. This, *vis-à-vis* Section 7 of the Comprehensive Agrarian Reform Law, negates any doubt on its being covered by the Comprehensive Agrarian Reform Law.

WHEREFORE, the Petition is **DENIED**. The assailed October 13, 2016 Decision and July 19, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 134933 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 234446. July 24, 2019]

VICTORIA MANUFACTURING CORPORATION EMPLOYEES UNION, *petitioner, vs.* **VICTORIA MANUFACTURING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; IN ORDER TO VALIDLY TRY A CIVIL CASE, A COURT MUST POSSESS JURISDICTION OVER THE SUBJECT MATTER AND JURISDICTION OVER THE PARTIES; JURISDICTION OVER THE SUBJECT MATTER, EXPLAINED.— Jurisdiction is the power of a court, tribunal, or officer to hear, try, and decide a case. The seminal *ponencia* in *El Banco Español-Filipino v. Palanca* instructs that a court, in order to validly try a civil case, must be possessed of two types of jurisdiction: (1) jurisdiction over the subject matter; and (2) jurisdiction over the parties. Relevant to the resolution of the issue raised in this case is the first, which, broadly defined,

is "the power to hear and determine the general class to which the proceedings in question belong" or, in the words of *Palanca*, "the authority of the court to entertain a particular kind of action or to administer a particular kind of relief." Emanating from the sovereign authority that organizes courts, jurisdiction over the subject matter is conferred by law. It is determined by the allegations in the complaint based on the character of the relief sought. Verily, if the relief sought is the payment of a certain sum of money, the complaint must be filed before the court on which the law bestows the power to grant money judgments of that amount. If the complaint is filed before any other court, the only power that court has is to dismiss the case. It is axiomatic that a judgment rendered by a court without jurisdiction over the subject matter produces no legal effect.

2. ID.; ID.; ID.; LACK OF JURISDICTION IS A SERIOUS DEFECT THAT MAY BE RAISED ANYTIME, EVEN FOR THE FIRST TIME ON APPEAL SINCE IT IS A DEFENSE THAT IS NOT SUBJECT TO WAIVER; BY WAY OF EXCEPTION, THE DOCTRINE OF ESTOPPEL BY LACHES, MAY OPERATE TO BAR JURISDICTIONAL CHALLENGES, EXPLAINED.— At this juncture, it should be stated that lack of jurisdiction is a serious defect that may be raised anytime, even for the first time on appeal, since it is a defense that is not subject to waiver. However, by way of exception, the doctrine of estoppel by laches, pursuant to the ruling in *Tijam, et al. v. Sibonghanoy*, may operate to bar jurisdictional challenges. In that case, lack of jurisdiction was raised for the first time only in a motion for reconsideration filed before the CA fifteen (15) years after the commencement of the action. Prior thereto, the party that belatedly raised the jurisdictional issue had actively participated in the proceedings before the trial and appellate courts, seeking affirmative relief and, thereafter, submitting the case for adjudication on the merits. Based on public policy considerations, it was ruled that jurisdiction could no longer be questioned. The Court held that no tolerance should be afforded to the practice of submitting a case for resolution, only to accept a favorable judgment, and to raise a jurisdictional issue in case of a decision that is adverse. Estoppel by laches has been broadly defined as "failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier." As applied to jurisdictional challenges, it is the

failure to timely raise a court's lack of jurisdiction, ultimately resulting in a binding judgment, not because said judgment is valid as an adjudication, but because public policy looks with disfavor on the belated invocation of jurisdictional issues.

3. ID.; ID.; ID.; ID.; IT MUST BE EMPHASIZED THAT THE GENERAL RULE REMAINS TO BE THAT JURISDICTION IS NOT TO BE LEFT TO THE WILL OR STIPULATION OF THE PARTIES, IT CANNOT BE LOST BY ESTOPPEL, AND THE COURTS MUST EXERCISE THE HIGHEST DEGREE OF CAUTION IN THEIR APPLICATION OF ESTOPPEL TO BAR JURISDICTIONAL CHALLENGES.— Notwithstanding the unequivocal dictum in *Sibonghanoy*, it must be emphasized that the general rule remains to be that jurisdiction is not to be left to the will or stipulation of the parties; it cannot be lost by estoppe1. Such emphasis is called for because, as the Court pointed out in *Calimlim, et al. v. Hon. Ramirez, etc., et al.*, a jurisprudential trend was starting to emerge where estoppel was applied to bar jurisdictional challenges even in situations not contemplated by *Sibonghanoy*. Consequently, *Figueroa v. People* sought to elucidate on the proper application of *Sibonghanoy*, x x x [I]t is clear that estoppel will not operate to confer jurisdiction upon a court, save in the most exceptional of cases. Without a law that grants the power to hear, try, and decide a particular type of action, a court may not, regardless of what the parties do or fail to do, afford any sort of relief in any such action filed before it. It follows then that, in those cases, any judgment or order other than one of dismissal is void for lack of jurisdiction. This must be the rule since no less than the Constitution provides that it is a function of the Congress to define, prescribe, and apportion the jurisdiction of courts. Nevertheless, jurisprudence has recognized that situations may arise where parties, as a matter of public policy, must be bound by judgments rendered even without jurisdiction. Such situations, however, are exceptional, and courts must exercise the highest degree of caution in their application of estoppel to bar jurisdictional challenges. That said, where the circumstances of a particular case are comparable to those attendant in *Sibonghanoy*, jurisdictional issues may no longer be entertained, and the doctrine of estoppel by laches will effectively bind the parties to the judgment rendered therein regardless of whether the dispensing court was vested with jurisdiction by statute. In such situations, lack of jurisdiction must be invoked so belatedly

so as to give rise to "a presumption that the party entitled to assert it either has abandoned it or declined to assert it." The rule that estops a party from assailing the jurisdiction of a court finds like application in proceedings before administrative boards and officers that possess quasi-judicial power. This approach is sensible, as no germane differences exist between such bodies, on one hand, and courts, on the other, when it comes to belated jurisdictional challenges. It cannot be gainsaid that it is just as deplorable to tardily raise a jurisdictional issue before a court as it is to do so before an administrative tribunal.

APPEARANCES OF COUNSEL

Conchingyan & Partners Law Offices for respondent.

D E C I S I O N

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

Like courts, administrative boards and officers vested with quasi-judicial power may only exercise jurisdiction over matters that their enabling statutes confer in them. This rule applies even though the parties hold out to the administrative agency concerned that it has jurisdiction over a particular dispute. Generally, lack of jurisdiction may be raised at any time, and is a defense that cannot be lost. However, by way of narrow exception, the doctrine of estoppel by laches, which rests on considerations of public policy, may effectively bar jurisdictional challenges. But it must be emphasized that the doctrine finds application only where the jurisdictional issue is so belatedly raised that it may be presumed o have been waived by the invoking party.

This is a petition for review on *certiorari*[1] questioning the May 26, 2017 Decision[2] and the August 30, 2017 Resolution[3]

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[1] *Rollo*, pp. 3-14.

[2] Penned by Associate Justice Amy C. Lazaro-Javier (now a member of the Court), with Associate Justices Manuel M. Barrios and Pedro B. Corales concurring; *id*. at 16-30.

[3] *Id*. at 32.

rendered by the Court of Appeals (CA) in CA-G.R. SP No. 146672, through which the May 26, 2016 Decision[4] of Voluntary Arbitrator (VA) Renato Q. Bello was set aside insofar as the respondent, Victoria Manufacturing Corporation (VMC), was ordered to reimburse the income tax withheld from the salaries of the members of the petitioner, Victoria Manufacturing Corporation Employees Union (VMCEU).

The Factual Antecedents

VMC is a domestic corporation engaged in the textile business. Aside from dyeing and finishing fabrics, it manufactures laces, embroidered and knitted fabrics, and hooks and eyes.[5]

On the other hand, VMCEU is the sole and exclusive bargaining agent of the permanent and regular rank-and-file employees within the pertinent bargaining unit of VMC.[6]

Through a letter dated March 14, 2014, VMC sought the opinion of the Bureau of Internal Revenue (BIR) on the tax implications of the wage structure that was stipulated in the collective bargaining agreement (CBA) between the company and VMCEU. At the time, the applicable minimum wage was ₱466.00, broken down into a basic wage of ₱451.00 and a cost of living allowance (COLA) of ₱15.00, as mandated by Wage Order No. NCR-18. This was different from the company's wage structure, which integrated the COLA into the total wage it paid VMCEU's members, *viz*.:[7]

	VMC wage structure pursuant to the CBA	Minimum wage mandated by Wage Order No. NCR-18
Basic wage	₱466.00	₱ 415.00
COLA	n/a	₱ 51.00
TOTAL	₱466.00	₱ 466.00

[4] *Id*. at 122-132.

[5] *Id*. at 122.

[6] *Id.*

[7] *Id*. at 19-20.

In response to VCM's letter, the BIR opined that VMCEU's members were not exempt from income tax, as what they were earning was above the statutory minimum wage mandated by Wage Order No. NCR-18.[8]

As a result, VMC withheld the income tax due on the wages of VMCEU's members.

On May 8, 2015, VMC and VMCEU held a grievance meeting to settle various issues, including the company's decision to withhold income tax from the wages of the union members who were earning the statutory minimum wage. Unfortunately, the parties failed to resolve the issue.[9]

After failing to reach an amicable settlement before the National Conciliation and Mediation Board, VMC and VMCEU executed a Submission Agreement,[10] designating AVA Renato Q. Bello to resolve whether the company properly withheld the income tax due from the union's members, among other issues.

After VMC and VMCEU submitted their respective position papers and replies, the case was submitted for decision.

The VA's Ruling

On May 26, 2016, the VA rendered a Decision in favor of VMCEU, ruling that VMC erroneously withheld income tax from the wages of the union's members. Ratiocinating that the subject employees were statutory minimum wage earners, it was held that they were exempt from the payment of income tax, pursuant to Republic Act (R.A.) No. 9504.[11] As such, the ruling contained an order directing the company to reimburse the withheld income tax, *viz*.:

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[8] *Id*. at 107.

[9] *Id*. at 20.

[10] *Id*. at 106.

[11] *Id*. at 128-129.

WHEREFORE, premises considered, a decision is hereby rendered **ORDERING respondent VICTORIA MANUFACTURING CORPORATION** to:

x x x x x x x x x

2.) reimburse all its rank-and-file minimum wage earners who are exempt from income taxes with the amounts it erroneously withheld.

x x x x x x x x x

SO DECIDED.[12]

Aggrieved, VMC sought relief before the CA through a petition for *certiorari*.[13]

The CA's Ruling

On May 26, 2017, the CA rendered the challenged Decision, reversing the VA's ruling. The appellate court, after brushing aside VMC's resort to the wrong remedy,[14] held that the jurisdiction of VAs is limited to labor disputes.[15] As such, the VA could not validly rule on the propriety of VMC's decision to withhold the income taxes of VMCEU's members, a matter properly within the competence of the BIR.[16] Hence, the CA set aside the VA's decision, *viz*.:

ACCORDINGLY, the petition is **GRANTED** and the assailed Decision dated May 26, 2016, **NULLIFIED**.

SO ORDERED.[17] (Emphasis in the original)

After the denial of its motion for reconsideration, VMCEU filed the instant petition, arguing that the CA should not have allowed VMC to question the VA's jurisdiction because the

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[12] *Id*. at 131.

[13] *Id*. at 133-156.

[14] *Id*. at 25.

[15] *Id*. at 27.

[16] *Id*. at 28.

[17] *Id*. at 29.

company: (1) actively participated in the arbitration proceedings and, at the time, never raised lack of jurisdiction; and (2) voluntarily bound itself, through the Submission Agreement, to abide by the VA's decision.[18] Essentially, the union contends that the company was estopped from challenging the VA's jurisdiction.

The Issue

Whether or not the CA correctly set aside the VA's decision on the ground of lack of jurisdiction.

The Court's Ruling

The CA's decision is sustained.

Jurisdiction is the power of a court, tribunal, or officer to hear, try, and decide a case.[19]

The seminal *ponencia* in *El Banco Español-Filipino v. Palanca*[20] instructs that a court, in order to validly try a civil case, must be possessed of two types of jurisdiction: (1) jurisdiction over the subject matter; and (2) jurisdiction over the parties.[21] Relevant to the resolution of the issue raised in this case is the first, which, broadly defined, is "the power to hear and determine the general class to which the proceedings in question belong"[22] or, in the words of *Palanca*, "the authority of the court to entertain a particular kind of action or to administer a particular kind of relief."[23]

Emanating from the sovereign authority that organizes courts,[24] jurisdiction over the subject matter is conferred by law. It is

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[18] *Id*. at 11.

[19] *Anama v. Citibank, N.A. (formerly First National City Bank)*, G.R. No. 192048, December 13, 2017, 848 SCRA 459, 469.

[20] 37 Phil. 921 (1918).

[21] *Perkins v. Dizon*, 69 Phil. 186, 189 (1939).

[22] *Bilag, et al. v. Ay-Ay, et al.*, 809 Phil. 236, 243 (2017).

[23] *El Banco Español-Filipino v. Palanca*, *supra* note 20, at 927.

[24] *Id*.

determined by the allegations in the complaint based on the character of the relief sought.[25] Verily, if the relief sought is the payment of a certain sum of money, the complaint must be filed before the court on which the law bestows the power to grant money judgments of that amount. If the complaint is filed before any other court, the only power that court has is to dismiss the case.[26] It is axiomatic that a judgment rendered by a court without jurisdiction over the subject matter produces no legal effect.[27]

The above principles apply analogously to administrative boards and officers exercising quasi-judicial power,[28] such as VAs constituted under the Labor Code.

Relevantly, the Labor Code vests in VAs the power to hear and decide labor disputes, *viz*.:

Art. 261. *Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators.* The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies x x x.

Art. 262. *Jurisdiction over other labor disputes.* The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.[29]

Did the VA, pursuant to the above provisions, have jurisdiction to rule on the legality of VMC's act of withholding income tax from the salaries of VMCEU's members?

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[25] *Padlan v. Sps. Dinglasan*, 707 Phil. 83, 91 (2013).

[26] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, 760 Phil. 954, 960 (2015).

[27] *Imperial, et al. v. Judge Armes, et al.*, 804 Phil. 439, 459 (2017).

[28] See *Machado, et al. v. Gatdula, et al.*, 626 Phil. 457 (2010).

[29] LABOR CODE, Book V, Title VII-A, Arts. 261-262.

The answer is in the negative.

In *Honda Cars Philippines, Inc. v. Honda Cars Technical Specialist and Supervisors Union*,[30] the Court ruled that VAs have no competence to rule on the propriety of withholding of tax. That case concerned the withholding of income tax from union members relative to unused gasoline allowance. The company claimed that the benefit was tied up to a similar company policy enjoyed by managers and assistant vice-presidents, who were allowed to convert the unutilized portion of their monthly gasoline allowance into cash, subject to whatever tax may be applicable. Since the union and the company could not agree on the proper tax treatment of the converted allowance, the dispute was submitted to a Panel of VAs. In the arbitration proceedings, it was held that the company's act of withholding was improper since the cash conversion was not subject to income tax. When the case eventually reached the Court, the panel's decision was declared null and void on the ground that VAs have no jurisdiction to settle tax matters. Ruling that the jurisdiction of VAs is limited to labor disputes, the Court declared that the company and the union should have submitted the question to the Commissioner of Internal Revenue (CIR),[31] *viz.*:

> The [VA] has no competence to rule on the taxability of the gas allowance and on the propriety of the withholding of tax. These issues are clearly tax matters, and do not involve labor disputes. To be exact, they involve tax issues within a labor relations setting, as they pertain to questions of law on the application of Section 33 (A) of the [Tax Code]. They do not require the application of the Labor Code or the interpretation of the [Memorandum of Agreement] and/or company personnel policies. Furthermore, the company and the union cannot agree or compromise on the taxability of the gas allowance. Taxation is the State's inherent power; its imposition cannot be subject to the will of the parties.
>
> Under paragraph 1, Section 4 of the [Tax Code], the CIR shall have the exclusive and original jurisdiction to interpret the provisions of the [Tax Code] and other tax laws, subject to review by the Secretary

[30] 747 Phil. 542 (2014).

[31] *Id.* at 549.

of Finance. Consequently, if the company and/or the union desire/s to seek clarification of these issues, it/they should have requested for a tax ruling from the Bureau of Internal Revenue (BIR). x x x

x x x x x x x x x

On the other hand, if the union disputes the withholding of tax and desires a refund of the withheld tax, it should have filed an administrative claim for refund with the CIR. Paragraph 2, Section 4 of the [Tax Code] expressly vests the CIR original jurisdiction over refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other tax matters.[32] (Citations omitted)

Honda Cars espouses a sound view. The *ponencia* recognized that the jurisdiction of an administrative body must be confined to matters within its specialized competence. Since the withholding of tax from employees' salaries is governed by the Tax Code, disputes involving the propriety or legality of withholding should be submitted to the CIR, the administrative body vested with the power to interpret tax laws, and not the VA, whose jurisdiction is limited to labor disputes. After all, quasi-judicial bodies only possess jurisdiction over matters that are conferred upon them by their enabling statutes.[33]

Turning now to VMCEU's arguments, did VMC's execution of the Submission Agreement and active participation in the arbitration proceedings operate to rectify the VA's lack of jurisdiction?

Again, the answer is in the negative.

As mentioned above, jurisdiction is conferred by law. As a result, absent a statutory grant, the actions, representations, declarations, or omissions of a party will not serve to vest jurisdiction over the subject matter in a court, board, or officer.[34] Simply put, "judicial or quasi-judicial jurisdiction cannot be

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[32] *Id*. at 549-550.

[33] *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*, 800 Phil. 721 , 743 (2016).

[34] *Machado, et al. v. Gatdula, et al.*, 626 Phil. 457, 468 (2010).

conferred upon a tribunal by the parties alone."[35] As the Court explained in *La Naval Drug Corporation v. Court of Appeals*:[36]

> x x x Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside.[37] (Citations omitted)

At this juncture, it should be stated that lack of jurisdiction is a serious defect that may be raised anytime, even for the first time on appeal, since it is a defense that is not subject to waiver.[38]

However, by way of exception, the doctrine of estoppel by laches, pursuant to the ruling in *Tijam, et al. v. Sibonghanoy*,[39] may operate to bar jurisdictional challenges. In that case, lack of jurisdiction was raised for the first time only in a motion for reconsideration filed before the CA fifteen (15) years after the commencement of the action. Prior thereto, the party that belatedly raised the jurisdictional issue had actively participated in the proceedings before the trial and appellate courts, seeking affirmative relief and, thereafter, submitting the case for adjudication on the merits. Based on public policy considerations, it was ruled that jurisdiction could no longer be questioned. The Court held that no tolerance should be afforded to the practice of submitting a case for resolution, only to accept a favorable judgment, and to raise a jurisdictional issue in case of a decision that is adverse.[40]

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[35] *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*, *supra* at 748.

[36] 306 Phil. 84 (1994).

[37] *Id*. at 96.

[38] *Boston Equity Resources, Inc. v. Court of Appeals*, 711 Phil. 451, 466 (2013).

[39] 131 Phil. 556 (1968)

[40] *Id*.

Estoppel by laches has been broadly defined as "failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier."[41] As applied to jurisdictional challenges, it is the failure to timely raise a court's lack of jurisdiction, ultimately resulting in a binding judgment, not because said judgment is valid as an adjudication, but because public policy looks with disfavor on the belated invocation of jurisdictional issues.[42]

Notwithstanding the unequivocal dictum in *Sibonghanoy*, it must be emphasized that the general rule remains to be that jurisdiction is not to be left to the will or stipulation of the parties; it cannot be lost by estoppel.[43] Such emphasis is called for because, as the Court pointed out in *Calimlim, et al. v. Hon. Ramirez, etc., et al.*,[44] a jurisprudential trend was starting to emerge where estoppel was applied to bar jurisdictional challenges even in situations not contemplated by *Sibonghanoy*. Consequently, *Figueroa v. People*[45] sought to elucidate on the proper application of *Sibonghanoy*, *viz.*:

> The Court, thus, wavered on when to apply the exceptional circumstance in *Sibonghanoy* and on when to apply the general rule x x x expounded at length in *Calimlim*. The general rule should, however, be, as it has always been, that the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel. Estoppel by laches, to bar a litigant from asserting the court's absence or lack of jurisdiction, only supervenes in exceptional cases similar to the factual milieu of [*Sibonghanoy*]. Indeed, the fact that a person attempts to invoke unauthorized jurisdiction of a court does not estop him from thereafter challenging its jurisdiction over the subject matter, since such jurisdiction must arise by law and not by mere consent of the parties. This is especially true where the person seeking to invoke unauthorized

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[41] *Regalado v. Go*, 543 Phil. 578, 598 (2007), citing *Oca v. Court of Appeals*, 428 Phil. 696, 702 (2002).

[42] *Tijam, et al. v. Sibonghanoy*, *supra* note 39, at 563-564.

[43] *Figueroa v. People*, 580 Phil. 58, 74 (2008).

[44] 204 Phil. 25, 35 (1982).

[45] *Supra* note 43, at 76.

jurisdiction of the court does not thereby secure any advantage or the adverse party does not suffer any harm.[46] (Emphasis supplied)

The above pronouncement was more recently reiterated in *Adlawan v. Joaquino, et al.*[47] *viz.*:

We emphasize that our ruling in *Sibonghanoy* establishes an exception which is to be applied only under extraordinary circumstances or to those cases similar to its factual situation. The rule to be followed is that the lack of a court's jurisdiction is a non-waivable defense that a party can raise at any stage of the proceedings in a case, even on appeal; the doctrine of estoppel, being the exception to such non-waivable defense, must be applied with great care and the equity must be strong in its favor.[48] (Emphasis supplied)

Taking the foregoing into account, it is clear that estoppel will not operate to confer jurisdiction upon a court, save in the most exceptional of cases.[49] Without a law that grants the power to hear, try, and decide a particular type of action, a court may not, regardless of what the parties do or fail to do, afford any sort of relief in any such action filed before it. It follows then that, in those cases, any judgment or order other than one of dismissal is void for lack of jurisdiction.[50] This must be the rule since no less than the Constitution provides that it is a function of the Congress to define, prescribe, and apportion the jurisdiction of courts.[51] Nevertheless, jurisprudence has recognized that situations may arise where parties, as a matter of public policy, must be bound by judgments rendered even

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[46] *Id.*

[47] 787 Phil. 599 (2016).

[48] *Id.* at 611.

[49] *Duero v. Court of Appeals*, 424 Phil. 12, 23 (2002).

[50] *Figueroa v. People*, *supra* note 43, at 77-78.

[51] Pursuant to Article VIII, Section 2 of the Constitution, the Congress has the power to define, prescribe, and apportion the jurisdiction of various courts, except the Supreme Court, which may not be deprived of its jurisdiction over the cases defined under Section 5 of the same article. Further, pursuant to Article VI, Section 30, the Congress, with the Supreme Court's advice and concurrence, may increase the latter's appellate jurisdiction.

without jurisdiction.[52] Such situations, however, are exceptional, and courts must exercise the highest degree of caution in their application of estoppel to bar jurisdictional challenges.[53] That said, where the circumstances of a particular case are comparable to those attendant in *Sibonghanoy*, jurisdictional issues may no longer be entertained, and the doctrine of estoppel by laches will effectively bind the parties to the judgment rendered therein regardless of whether the dispensing court was vested with jurisdiction by statute. In such situations, lack of jurisdiction must be invoked so belatedly so as to give rise to "a presumption that the party entitled to assert it either has abandoned it or declined to assert it."[54]

The rule that estops a party from assailing the jurisdiction of a court finds like application in proceedings before administrative boards and officers that possess quasi-judicial power. This approach is sensible, as no germane differences exist between such bodies, on one hand, and courts, on the other, when it comes to belated jurisdictional challenges. It cannot be gainsaid that it is just as deplorable to tardily raise a jurisdictional issue before a court as it is to do so before an administrative tribunal.[55] Thus, the Court must apply the preceding tenets to the case at bar.

Here, the Court cannot conclude that VMC was estopped from assailing the VA's jurisdiction.

First, lack of jurisdiction was timely raised. The record discloses that (1) the proceedings before the VA commenced with the execution of the Submission Agreement dated August 7, 2015;[56] and (2) the case was submitted for resolution on December 22, 2015, when VMC and VMCEU filed their

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[52] *Spouses Gonzaga v. Court of Appeals*, 442 Phil. 735, 742 (2002).

[53] *Duero v. Court of Appeals*, *supra* note at 49, at 21.

[54] *Sps. Erorita v. Sps. Dumlao*, 779 Phil. 23, 30 (2016), citing *Figueroa v. People*, *supra* note 43.

[55] *Far East Bank and Trust Company v. Chua*, 763 Phil. 289, 304-305 (2015).

[56] *Rollo*, p. 20.

respective replies.[57] As soon as the VA rendered his Decision on May 26, 2016,[58] the company, through a petition for *certiorari* dated July 18, 2016,[59] immediately raised the jurisdictional issue before the CA. To be sure, not even a year had elapsed between the commencement of the arbitration proceedings and the invocation of the jurisdictional issue. By no stretch of the imagination can this be compared to the factual milieu of *Sibonghanoy*, where lack of jurisdiction was raised only 15 years after the case was filed. Hence, the temporal element of estoppel by laches *vis-a-vis* jurisdiction does not obtain in the case at bar.

Second, VMC never prayed for affirmative relief. In *Sibonghanoy*, the party that raised lack of jurisdiction, a bonding company, prayed that it be relieved of its liability under the bond subject of that case.[60] On the other hand, VMC, in the position paper that it filed before the VA, merely prayed that "the complaint of [VMCEU] be dismissed with prejudice for utter lack of merit."[61] Since all the company sought was the dismissal of the union's complaint, the former's prayer cannot be considered as one seeking affirmative relief.

Taking the foregoing into account, the public policy considerations attendant in *Sibonghanoy* find no application here so as to estop VMC from questioning the VA's jurisdiction.

WHEREFORE, the May 26, 2017 Decision and August 30, 2017 Resolution rendered by the Court of Appeals in CA-G.R. SP No. 146672 are **AFFIRMED.**

SO ORDERED.

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

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[57] *Id.* at 21.

[58] *Id.* at 16.

[59] *Id.* at 155.

[60] *Tijam, et al. v. Sibonghanoy*, *supra* note 39.

[61] *Rollo*, p. 71.

SECOND DIVISION

[G.R. No. 235662. July 24, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **XXX,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; THERE IS NO STANDARD FORM OF REACTION FOR A WOMAN WHEN FACING A SHOCKING AND HORRIFYING EXPERIENCE SUCH AS SEXUAL ASSAULT, HENCE, FAILURE TO SHOUT OR OFFER TENUOUS RESISTANCE DOES NOT MAKE VOLUNTARY THE VICTIM'S SUBMISSION TO THE CRIMINAL ACTS OF THE ACCUSED; CASE AT BAR.—** Rape victims react differently. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. There is no standard form of reaction for a woman when facing a shocking and horrifying experience such as a sexual assault. The workings of the human mind placed under emotional stress are unpredictable. People react differently - - - some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion. But any of these reactions does not impair the credibility of a rape victim. Additionally, failure to physically resist the attack does not detract from the established fact that a reprehensible act was done to a child-woman by her own biological father. Lastly, failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused. Indeed, just because AAA or BBB did not offer tenacious resistance nor even shout whenever their father sexually ravished them did not make them less credible as witnesses.

2. **ID.; QUALIFIED RAPE; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** The elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen [18] years of age at the time of the rape; (5) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent

of the victim. x x x AAA narrated in detail that appellant ordered her to go inside a room, lay on the bed beside her, and inserted his penis in her vagina. Although appellant did not threaten or force AAA to engage in sexual congress with him, it is settled that where the rape is committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.

3. ID.; ID.; A MEDICAL CERTIFICATE IS MERELY CORROBORATIVE AND NOT INDISPENSABLE TO THE PROSECUTION OF RAPE CASES.— The absence of medical certificates indicating the extent of the injury sustained by AAA and BBB as a result of their father's wicked bestiality does not diminish their worth as witnesses. A medical certificate is merely corroborative and not indispensable to the prosecution of rape cases. Where the testimony of a rape victim is credible, natural, convincing and otherwise consistent with human nature, it is sufficient to support a verdict of conviction.

4. ID.; REPUBLIC ACT 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT); SEXUAL ABUSE; ELEMENTS.— The elements of sexual abuse under Section 5(b) of RA No. 7610 are as follows: 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.

5. ID.; ID.; ID.; SEXUAL ABUSE DISTINGUISHED FROM LASCIVIOUS CONDUCT.— "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. Meanwhile, "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.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

Prefatory

This appeal assails the Decision[1] dated August 3, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08486 entitled "*People of the Philippines v. XXX*," convicting appellant XXX of two (2) counts of qualified rape and one (1) count of lascivious conduct.

The Proceedings Before the Trial Court

The Charges

Appellant XXX was indicted for two (2) counts of rape in Criminal Case Nos. 08-0581-2013 (rape of his daughter AAA) and 08-0631-2013 (rape of his daughter BBB), *viz*:

Criminal Case No. 08-0581-2013

That on or about the 14th day of March, 2009 in [redacted], Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, through force, threat, or intimidation, being the father of AAA and who was charged for the crime of Attempted Rape docketed under Criminal Case No. 02-0127-2013, motivated by lust and lewd designs and taking advantage of the vulnerability of said AAA, a fifteen (15) year old minor, without any justifiable cause, did then and there fully, unlawfully, and feloniously have carnal knowledge with said minor, against her will and consent, which acts debased, degraded or demeaned her intrinsic worth and dignity as a human being.

Contrary to law.[2]

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[1] Penned by Associate Justice Normandie B. Pizarro with the concurrence of Associate Justices Danton Q. Bueser and Marie Christine Azcarraga-Jacob, all members of the Eleventh Division, CA *rollo*, pp. 102-120.

[2] CA *rollo*, p. 47.

x x x x x x x x x

Criminal Case No. 08-0631-2013

That sometime in 2009 at [redacted], Lipa City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, the biological father of BBB, without any justifiable cause with intent to abuse, arouse and gratify for sexual desire, through force, threat and intimidation or grave abuse of authority, did then and there willfully, unlawfully and feloniously have carnal knowledge of said BBB, a fourteen (14) years old minor, against her will and consent, which acts, debase, humiliate, degrade and demean the intrinsic worth and dignity of said BBB.

The aggravating/qualifying circumstance of minority, the victim being under 18 years of age and the offender being the biological father of the victim, attended the commission of the offense.

Contrary to law.[3]

Additionally, in Criminal Case No. 08-0630-2013, appellant was indicted for lascivious conduct on his daughter BBB, *viz*:

Criminal Case No. 08-0630-2013

That sometime in 2009 at [redacted], Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of BBB, without any justifiable cause, with intent to abuse, arouse and gratify his sexual desire, did then and there willfully, unlawfully and feloniously commit lascivious conduct upon said BBB, a fourteen (14) year old minor, by touching her private parts, kissing her lips and breast and trying to insert his penis into her vagina, which acts debase, humiliate, degrade and demean the intrinsic worth and dignity of said BBB.

Contrary to law.[4]

The three (3) cases were consolidated before the Regional Trial Court, Branch 13, Lipa City.

On arraignment, appellant pleaded not guilty to all three (3) charges.[5] The cases were, thereafter, jointly tried.

[3] *Id.*

[4] *Id.*

[5] *Id.* at 48.

The Prosecution's Evidence

Complainants AAA and BBB are appellant's daughters with MMM. AAA was born on August 12, 1993,[6] and BBB, on February 7, 1996.[7] Appellant was a tricycle driver while their mother, MMM, was an Overseas Filipino Worker.[8]

AAA testified that on March 14, 2009, she was alone with appellant in their home. He brought her to a room, laid her down on the bed, and undressed her. Appellant took off his shorts and inserted his penis into her vagina. She felt pain and blood came out of her vagina and she could not do anything. After sexually ravishing her, appellant told her to put on her dress while he also put on his shorts. Appellant also promised to give her money.[9]

AAA further recounted that appellant sexually abused her many times more but she could not remember the dates. In some instances, her younger sister BBB was even in the room. She kept her silence for three (3) years because her mother MMM did not believe her. Eventually, she left their house and told her aunt what appellant had done to her. Her aunt rescued her.[10]

While intensely crying, BBB testified that sometime in 2009, she and appellant were left alone in their house. Appellant asked her if she wanted money then suddenly pulled down her shorts and panty and raised her t-shirt, exposing her breasts. She resisted but appellant did not stop touching and kissing her private parts. He then took off his t-shirt, shorts, and brief. As he was about to insert his penis into her vagina, CCC, her younger brother arrived. Appellant hurriedly dressed and told her to do the same.[11]

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[6] RTC Record (Folder 1), p. 10.

[7] RTC Record (Folder 2), p. 132.

[8] CA *rollo*, p. 48.

[9] *Id.* at 49.

[10] *Id.*

[11] *Id.*

BBB added that appellant would usually move from his room into theirs while they were asleep. Appellant would usually lie beside them and touch her and AAA's private parts. Eventually, he would have carnal knowledge of her even though AAA and CCC were in the same room. She knew that appellant also raped AAA. Appellant would wake her up by holding her hands while raping AAA. They could not do anything because they were so scared of appellant.[12]

The prosecution and the defense stipulated that AAA and BBB are appellant's legitimate children.[13]

The Defense's Evidence

Appellant denied the charges. He claimed he was at work during those times when he allegedly raped and sexually molested his daughters. His daughters were very mad at him because he had another woman. His wife was also mad at him so she asked their daughters to concoct the charges against him.[14]

The Trial Court's Ruling

By Decision[15] dated June 21, 2016, the trial court found appellant guilty of two (2) counts of rape and one (1) count of lascivious conduct. The trial court gave full faith and credence to the respective testimonies of AAA and BBB on how each of them was sexually ravished by their own father. BBB was also credited for giving credible and positive testimony on how appellant performed lascivious conduct on her sometime in 2009. In light of the positive and categorical testimonies of these children, the trial court rejected appellant's unsubstantiated defense of alibi. The trial court decreed:

> WHEREFORE, in view of all the foregoing and the prosecution having established to a moral certainty the guilt of the accused **XXX**, the Court hereby finds said accused GUILTY beyond reasonable doubt

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[12] *Id.* at 49-50.

[13] *Id.* at 50.

[14] *Id.*

[15] *Id.* at 46-56.

as principal, for two (2) counts of *Rape* under Article 266-A of the *Revised Penal Code* and for *Lascivious Conduct* under *Section 5 (b) of Republic Act No. 7610* otherwise known as the "*Special Protection of Children against Abuse, Exploitation, and Discrimination Act*" and hereby sentences him as follows:

1. In **Criminal Case No. 08-0581-2013** to suffer the penalty of *Reclusion Perpetua* without eligibility of parole and to pay the minor victim AAA the sum of Seventy Five Thousand Pesos (Php 75,000.00) as civil indemnity, Seventy Five Thousand Pesos (Php 75,000.00) as moral damages and Thirty Thousand Pesos (Php 30,000.00) as exemplary damages.

2. In **Criminal Case No. 08-0630-2013**, to suffer the penalty of imprisonment of Ten (10) years and One (1) day of *Prision Mayor*, as minimum, to Seventeen (17) years and Four (4) months of *Reclusion Temporal*, as maximum. Accused is likewise ordered to pay **BBB** the sum of Fifteen Thousand Pesos (Php 15,000.00) as moral damages.

3. In **Criminal Case No. 08-0631-2013**, to suffer the penalty of *Reclusion Perpetua* without eligibility of parole and to pay the minor victim **BBB** the sum of Seventy Five Thousand Pesos (Php 75,000.00) as civil indemnity, Seventy Five Thousand Pesos (Php 75,000.00) as moral damages and Thirty Thousand Pesos (Php 30,000.00), as exemplary damages.

The period which the accused has undergone preventive imprisonment during the pendency of these cases shall be credited to him provided he agreed in writing to abide by and comply strictly with the rules and regulations imposed upon committed prisoners.

The Jail Warden of the Bureau of Jail Management and Penology (BJMP), Lipa City, Batangas, is hereby directed to immediately commit herein accused to the National Penitentiary, Muntinlupa City, for him to serve his sentence.

SO ORDERED.[16]

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction against him despite the following alleged

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

circumstances: a) he was not armed when the alleged incidents happened; b) mere moral ascendancy should not prevail over his presumption of innocence; and c) the comportment of AAA and BBB in resuming their usual routines and not asking for help belies the charges against him. They did not fight back, shout, or strongly resist his supposed sexual advances. It was also remarkable that AAA and BBB did not immediately report what they had experienced to their mother MMM.[17]

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General John Emmanuel Madamba and Associate Solicitor Dominic Victor C. De Alban, riposted that complainants' failure to immediately report the sex crimes perpetrated on them by appellant is not enough to discredit them. The truth is, they reported the same to their mother way before but the latter did not believe them. Their three (3) years of suffering in silence before they jointly mustered the courage to report appellant's despicable crimes is understandable. To begin with, it was unreasonable to demand a standard rational reaction to a rather irrational experience, especially from young victims of incestuous rape. Actual force or intimidation need not be employed in cases of incestuous rape of minors for moral dominion is sufficient to cow victims to submission. Young rape victims should not be expected to act like mature individuals do.[18]

The Court of Appeals' Ruling

By its assailed Decision[19] dated August 3, 2017, the Court of Appeals found appellant guilty of two (2) counts of qualified rape. The Court of Appeals correspondingly increased the monetary awards given to the two (2) minor victims. It also noted that appellant's lascivious conduct was aggravated by the alternative circumstance of relationship, thus, making *reclusion perpetua* as the proper imposable penalty. The Court of Appeals decreed:

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[17] *Id.* at 27-45.

[18] *Id.* at 71-89.

[19] *Id.* at 102-120.

WHEREFORE, the appeal is DENIED. The assailed RTC Decision dated June 21, 2016 is **AFFIRMED** with **MODIFICATIONS** in that: 1) In Criminal Case Nos. 08-0581-2013 and 08-0631-2013, the award of civil indemnity is increased from Seventy-Five Thousand Pesos (Php75,000.00) to One Hundred Thousand Pesos(Php100,000.00), moral damages of Seventy-Five Thousand Pesos(Php75,000.00) is increased to One Hundred Thousand Pesos(Php100,000.00), and exemplary damages of Thirty Thousand Pesos(Php30,000.00) is increased to One Hundred Thousand(Php100,000.00); and 2) In Criminal Case No. 08-0630-2013, the Accused-Appellant is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay BBB the amounts of Fifty Thousand Pesos(Php50,000.00) as civil indemnity, Thirty Thousand Pesos(Php30,000.00) as exemplary damages, and Fifty Thousand Pesos(Php50,000.00) as moral damages.

All awards for damages shall earn legal interest at the rate of six percent(6%) per annum from the date of the finality of this decision until fully paid. Costs against the Accused-Appellant.

SO ORDERED.[20]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. For the purpose of this appeal, the OSG[21] and appellant[22] both manifested that in lieu of supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction against appellant for two (2) counts of qualified rape and one (1) count of lascivious conduct?

Ruling

The appeal must fail.

Appellant essentially assails the credibility of AAA and BBB for not acting in accordance with his personal standard of

[20] *Id.* at 119.

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

[22] *Id.* at 34-36.

behavior for victims of incestuous rape, *i.e.* 1) their behavior after their alleged rape or sexual molestation was not the behavior of victims who had experienced trauma; 2) they did not exert any effort to defend their honor; and 3) they waited three (3) years before they finally reported on what they had allegedly suffered in his hands.

The Court is not convinced.

AAA and BBB are credible witnesses

First. The fact that AAA and BBB still went on with their respective daily routines should not dent their credibility. ***People v. Prodenciado***[23] is apropos:

> This hardly convinces. It has been held that "different people react differently to different situations and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience," such as rape. Verily, some victims choose to suffer in silence; while others may be moved to action out of a need to seek justice for what was done to them. Then there are those who opt not to dwell on their experience and try to live as though it never happened. To the Court's mind, this is how "AAA" tried to cope with the harrowing experience that befell her. Moreover, since she was just a young girl when all these rapes were committed against her, "AAA" simply knew no other way of life than what she was accustomed to.

Second. Rape victims react differently. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. There is no standard form of reaction for a woman when facing a shocking and horrifying experience such as a sexual assault. The workings of the human mind placed under emotional stress are unpredictable. People react differently — some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion. But any of these reactions does not impair the credibility of a rape victim. Additionally, failure to physically resist the attack

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[23] 749 Phil. 746, 763 (2014).

does not detract from the established fact that a reprehensible act was done to a child-woman by her own biological father. Lastly, failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused.[24]

Indeed, just because AAA or BBB did not offer tenacious resistance nor even shout whenever their father sexually ravished them did not make them less credible as witnesses.

Third. It is not true that AAA and BBB took three (3) years before they reported the sex crimes appellant perpetrated on them. As aptly observed by the trial court, AAA confided in their mother their sexual ravishment in appellant's hands but their mother did not believe her. They were young and helpless victims of their own father's bestiality. He treated them like sex slaves in never ending horrendous ways. The person they thought would protect them did not even care to believe them. Where else would they go? Who else could help them? They were obviously driven into helplessness and cowed silence.

But things did change. Young girls also grow up. So did AAA and BBB. After going through innumerable counts of sexual violence through all the three (3) traumatic years of their lives, the grown-up girls can take no more. AAA left their home and went to her aunt who rescued her. Then she was vindicated; so was her sister, BBB. On this score, ***People v. Lantano***[25] instructs:

> To begin with, the prosecution is under no burden to establish acceptable reasons or satisfactory explanation for the delay in reporting a rape. Settled is the rule that delay or hesitation in reporting a case of rape due to threats of the assailant is justified and must not be taken against the victim. Neither does such delay indicate deceit or a fabricated insinuation inasmuch as it is common that a rape victim prefers silence because of fear of her aggressor and the lack of courage to face the public stigma stemming from the abuse. With particular regard to incestuous rapes, since the perpetrator in these cases is a

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[24] See *People v. Palanay*, 805 Phil. 116, 124 (2017).

[25] 566 Phil. 628, 638-639 (2008).

parent of the victim, he is able to pervert whatever moral ascendancy and influence he has over the victim in order to intimidate the latter. Hence, even in the absence of verbal threats against the victim's life, the parent molester's moral ascendancy and influence take the place of intimidation, especially so when they are living under the same roof.

So must it be.

Appellant is guilty of two (2) counts of qualified rape in Criminal Case Nos. 08-0581-2013 and 08-0631-2013

On qualified rape, Article 266-A and 266-B of the Revised Penal Code ordain:

Article 266-A. Rape: When And How Committed. — Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

Article 266-B Penalty — 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;

x x x x x x x x x

The elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen [18] years of age at the time of the rape; (5) 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.

At the outset, AAA and BBB were young girls under the age of eighteen (18) when they were sexually ravished by appellant in 2009. All three (3) Informations bore the twin circumstances of minority and relationship. As proven by the prosecution's documentary evidence.[26] AAA was born on August 12, 1993 and BBB, on February 7, 1996. In 2009, AAA was fifteen (15) and BBB, fourteen (14). As for the element of relationship, the prosecution and the defense stipulated that AAA and BB were appellant's legitimate children.

Regarding the elements of carnal knowledge and force or intimidation, or exertion of moral ascendancy, the trial court aptly summarized AAA's testimony on how she was sexually ravished by appellant on March 14, 2009, thus:

> There is adequate and satisfactory evidence that on March 14, 2009, at around 1:00 o'clock in the afternoon, **AAA** was resting on the *sofa* after washing clothes, when her father ordered her to go to the room. While inside the room, accused lied (sic) down on the bed beside her and undressed her. Accused then took off his shorts and inserted his penis into her vagina. **AAA** felt pain and blood came out of her private part but she could not do anything other than cry. After the sexual act, accused told **AAA** to put on her dress. (*TSN, February 26, 2014, pp. 5-10*)[27]

AAA narrated in detail that appellant ordered her to go inside a room, lay on the bed beside her, and inserted his penis in her

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[26] Exhibits "D" and "G".

[27] CA *rollo*, p. 51.

vagina. Although appellant did not threaten or force AAA to engage in sexual congress with him, it is settled that where the rape is committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.[28]

Too, the trial court summed up BBB's vivid testimony on how appellant had carnal knowledge of her against her will sometime in 2009 and on so many more occasions she already lost count of, thus:

> There is likewise sufficient evidence that sometime in the year 2009, herein accused would transfer from his room to the room where BBB was sleeping. Initially, said accused would lie down beside BBB and would touch her private parts. Eventually, he will have carnal knowledge of her, even at (sic) the presence of his other daughter AAA and son CCC. BBB cannot do anything out of fear of his (sic) father-accused. (*TSN, March 26, 2014, pp. 9-10*)[29]

The trial court keenly noted that BBB was intensely crying while she narrated the sordid details of her sexual devastation in the hands of her own father. She described how appellant shamelessly satiated his lust, sexually ravishing her even in the presence of his other children, AAA and CCC. BBB also recalled that she could not do anything whenever appellant had his way with her because she was so scared of him. To repeat, although there is no showing of force, threat or intimidation, appellant's moral ascendancy over BBB took the place of violence or intimidation.

Appellant was only charged with a single count of rape in each of the twin cases below. This is because both AAA and BBB could no longer recall the dates and the details of the so many rape incidents they experienced in the hands of their own father. AAA could only vividly recall the rape incident on March

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[28] *People v. Padua*, 661 Phil. 366, 370 (2011).

[29] CA *rollo*, p. 52.

14, 2009, and BBB, only the rape incident which happened sometime in 2009.

Even then, the testimonies of AAA and BBB pertaining to the twin rape incidents are clear, categorical, and consistently convincing. They are credible witnesses. These two (2) minor girls would not have publicly accused their father of the despicable act of incestuous rape if it were not true. On this score, ***People v. Marmol***[30] enunciated:

> More importantly, it is highly inconceivable for a daughter like AAA to impute against her own father a crime as serious and despicable as incest rape, unless the imputation was the plain truth. In fact, it takes a certain amount of psychological depravity for a young woman to concoct a story that would put her own father to jail for the rest of his remaining life and drag the rest of the family including herself to a lifetime of shame. Filipino children have great respect and reverence for their elders. For this reason, great weight is given to an accusation a child directs against a close relative, especially the father. A rape victim's testimony against her father goes against the grain of Filipino culture as it yields unspeakable trauma and social stigma on the child and the entire family.

The absence of medical certificates indicating the extent of the injury sustained by AAA and BBB as a result of their father's wicked bestiality does not diminish their worth as witnesses. A medical certificate is merely corroborative and not indispensable to the prosecution of rape cases.[31] Where the testimony of a rape victim is credible, natural, convincing and otherwise consistent with human nature, it is sufficient to support a verdict of conviction.[32]

Appellant's defense of denial is the weakest of all defenses. It easily crumbles in the face of complainant's positive identification of the accused as the perpetrator of the crime.[33]

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[30] 800 Phil. 813, 827 (2016).

[31] *People v. Tuboro*, 792 Phil. 580, 592 (2016).

[32] See *People v. Pascual*, 428 Phil. 1038, 1046 (2002).

[33] *People v. Glino*, 564 Phil. 396, 419-420 (2007).

All told, the Court of Appeals correctly convicted appellant of two (2) counts of qualified rape. Under Article 266-B of the Revised Penal Code, the imposable penalty is death where the victim is below eighteen (18) years of age and the violator is the victim's own biological father, thus:

> Article 266-B. Penalty. — x x x
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> x x x x x x x x x
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> 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;

By virtue of RA 9346, however, the death penalty is reduced to *reclusion perpetua*.

Appellant is liable for ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for each count of qualified rape in conformity with prevailing jurisprudence.[34]

Appellant is guilty of lascivious conduct in Criminal Case No. 08-0630-2013

The elements of sexual abuse under Section 5(b) of RA No. 7610 are as follows: 1) the accused commits the act of sexual

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[34] *People v. Jugueta*, 783 Phil. 806, 848 (2016):

> x x x x x x x x x
>
> II. For Simple Rape/Qualified Rape:
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> 1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346:
>
> Private parts
>
> Civil indemnity - ₱100,000.00
> Moral damages - ₱100,000.00
> Exemplary damages - ₱100,000.00

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.[35]

"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.[36] Meanwhile, "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.[37]

BBB recalled an instance in 2009 when appellant commenced to sexually ravish her and was about to penetrate her vagina but was abruptly interrupted when CCC arrived home. The trial court accurately synthesized BBB's testimony, in this wise:

> It is evident from the testimony of herein private complainant **BBB** that all the above-mentioned elements and requirements of the law for the crime of *Lascivious Conduct* under *Section 5(b) of Republic Act No. 7610* have been fully established by the prosecution. BBB maintained that sometime in the year 2009, while at home for being sick, accused suddenly put down her shorts and underwear to her knee and raised her t-shirt up to her breast. Accused then proceeded to touch and kiss her on her private parts despite her resistance. Not satisfied, accused took off his t-shirt, shorts and brief and was about to insert his penis into her vagina, when her younger brother CCC

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[35] *Roallos v. People*, 723 Phil. 655, 667-668 (2013).

[36] Pursuant to Sec. 32 of RA No. 7610, Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.

[37] *Id.*

arrived and abruptly stopped the advances of the accused. (TSN, March 26, 2014, pp. 7-9)[38]

Indubitably, appellant committed lascivious conduct when he performed acts of lasciviousness by pulling down AAA's shorts and underwear, touching and kissing her private parts, and attempting to insert his penis into her vagina. Notably, BBB was a minor, being only fourteen (14) years old at that time.

We reiterate that appellant's denial and alibi cannot prevail over the positive and categorical testimony of BBB. Bare assertion of alibi and denial cannot prevail over the categorical testimony of a victim.[39] Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law, as in this case. Likewise, alibi is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut.[40]

Since appellant is BBB's father, the alternative circumstance of relationship should be credited against him in Criminal Case No. 08-0630-2013. Consequently, appellant should suffer *reclusion perpetua* and fine of ₱15,000.00. Section 5(b) and Section 31 (f) of RA 7610 provide:

> SEC. 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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> x x x x x x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: Provided, That when the victim is under twelve (12)

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[38] CA *rollo*, p. 53.

[39] See *People v. Gaduyon*, 720 Phil. 750, 779 (2013).

[40] *People v. Molejon*, G.R. No. 208091, April 23, 2018.

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 x x x x x x

Sec. 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.

People v. Caoili[41] applied the foregoing provisions in this wise:

Considering that AAA was over 12 but under 18 years of age at the time of the commission of the lascivious act, the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.

Since the crime was committed by the father of the offended party, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as acts of lasciviousness, relationship is always aggravating. With the presence of this aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period, i.e., *reclusion perpetua*, without eligibility of parole. 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, *inter alia*, the parent of the victim.

Likewise, Section 31 (f) of R.A. No. 7610 imposes a fine upon the perpetrator, which jurisprudence pegs in the amount of Php 15,000.

As for the appropriate monetary awards, ***Caoili*** decreed:

Parenthetically, considering the gravity and seriousness of the offense, taken together with the evidence presented against *Caoili*, this Court finds it proper to award damages.

[41] 815 Phil. 839, 896-897 (2017).

In light of recent jurisprudential rules, when the circumstances surrounding the crime call for the imposition of *reclusion perpetua*, the victim is entitled to civil indemnity, moral damages and exemplary damages each in the amount of Php 75,000.00, regardless of the number of qualifying aggravating circumstances present.

The fine, civil indemnity and all damages thus imposed shall be subject to interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

All told, the Court of Appeals correctly sentenced appellant to *reclusion perpetua*. Appellant should be ordered to pay BBB ₱75,000.00 as civil indemnity, ₱75,000.00 as exemplary damages, and ₱75,000.00 as moral damages.

ACCORDINGLY, the appeal is **DISMISSED**. The Decision dated August 3, 2017 is **AFFIRMED** with **MODIFICATION**.

In Criminal Case Nos. 08-0581-2013 and 08-0631-2013, appellant XXX is found **GUILTY** of **QUALIFIED RAPE** and sentenced to ***RECLUSION PERPETUA*** without eligibility of parole for each count.

He is further required **TO SEPARATELY PAY** AAA and BBB each ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

In Criminal Case No. 08-0630 2013, appellant XXX is found **GUILTY** of **LASCIVIOUS CONDUCT** and sentenced to ***RECLUSION PERPETUA*** and to pay a **FINE** of ₱15,000.00. He is required **TO PAY** BBB ₱75,000.00 as civil indemnity, ₱75,000.00 as exemplary damages, and ₱75,000.00 as moral damages.

All monetary awards in Criminal Case Nos. 08-0581-2013, 08-0631-2013, and 08-0630-2013 are subject to six percent (6%) interest from finality of this decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 237063. July 24, 2019]

FRANCIVIEL[*] DERAMA SESTOSO, *petitioner, vs.* **UNITED PHILIPPINE LINES, INC., CARNIVAL CRUISE LINES, FERNANDINO T. LISING,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; 2010 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); THE COMPENSABILITY OF AN ILLNESS OR INJURY DOES NOT DEPEND ON WHETHER THE INJURY OR DISEASE WAS PRE-EXISTING AT THE TIME OF EMPLOYMENT BUT RATHER ON WHETHER THE INJURY OR ILLNESS IS WORK-RELATED OR HAS AGGRAVATED THE SEAFARER'S CONDITION.— In ***More Maritime Agencies, Inc. v. NLRC,*** the Court held that compensability of an illness or injury does not depend on whether the injury or disease was pre-existing at the time of employment but rather on whether the injury or illness is work-related or has aggravated the seafarer's condition.x x x Under the 2010 POEA-SEC, "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied" is deemed to be a "work-related illness."Section 20 (A) (4) further provides that "Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related." This provision speaks of a legal presumption of work-relatedness in favor of the seafarer. As such, the employer, and not the seafarer, has the burden of disproving the presumption by substantial evidence.

2. ID.; ID.; ID.; NO LEGAL PRESUMPTION OF COMPENSABILITY IS ACCORDED TO THE SEAFARER, AS SUCH, THE SEAFARER BEARS THE BURDEN TO PROVE SUBSTANTIAL EVIDENCE THAT THE CONDITIONS OF COMPENSABILITY HAVE BEEN

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[*] Also spelled as "Franciveil" in some parts of the *Rollo*.

SATISFIED.— It must be emphasized, though, that the presumption under Section 20-B (4) is only limited to "work-relatedness" of an illness and does not cover or extend to "compensability." x x x Unlike "work-relatedness," no legal presumption of compensability is accorded to the seafarer. As such, the seafarer bears the burden to prove substantial evidence that the conditions of compensability have been satisfied. This applies for both listed occupational disease and non-listed illness. x x x If the employer fails to successfully dispute the work-relatedness of the seafarer's illness, and the latter, in turn, has established compliance with the conditions for compensability, the issue now shifts to a determination of the nature of the disability (*i.e.*, permanent and total or temporary and total) and the amount of disability benefits due the seafarer.Here, respondents mainly rely on the alleged pre-existence of petitioner's illness and have failed to refute the presumption of its work-relatedness or aggravation by reason of his work. The presumption, therefore, remains in place in petitioner's favor, *i.e.* his injury or illness was work-related or was aggravated by his work condition.

3. **ID.; LABOR CODE; DISABILITY BENEFITS; PERMANENT DISABILITY DISTINGUISHED FROM TOTAL DISABILITY.—**Permanent disability is the inability of a worker to perform his job for more than one hundred twenty (120) days, regardless of whether he loses the use of any part of his body. Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.

4. **ID.; ID.; ID.; PERMANENT TOTAL DISABILITY, BY OPERATION OF LAW; BEFORE THE EMPLOYER MAY AVAIL OF THE ALLOWABLE 240-DAY EXTENDED TREATMENT PERIOD, THE COMPANY-DESIGNATED PHYSICIAN MUST PERFORM A SIGNIFICANT ACT TO JUSTIFY THE EXTENSION OF THE ORIGINAL 120-DAY PERIOD, OTHERWISE, THE LAW GRANTS THE SEAFARER THE RELIEF OF PERMANENT TOTAL DISABILITY BENEFITS DUE TO SUCH NON-COMPLIANCE; CASE AT BAR.— *Pastor v. Bibby Shipping Philippines, Inc.*** teaches:Notably, during the 120-day period

within which the company-designated physician is expected to arrive at a definitive disability assessment, the seafarer shall be deemed on **temporary total disability** and shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company-designated physician to be permanent, either partially or totally, as defined under the 2010 POEA-SEC and by applicable Philippine laws. However, if the 120-day period is exceeded and no ***definitive 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. But before the employer may avail of the allowable 240-day extended treatment period, the company-designated physician must perform some significant act to justify the extension of the original 120-day period. Otherwise, **the law grants the seafarer the relief of permanent total disability benefits due to such non-compliance**. If this significant act is performed and an extension was duly made, the obligation of the company-designated physician to issue a final assessment is nevertheless retained, albeit in this instance may be discharged within the extended period of not exceeding 240 days reckoned from the seafarer's repatriation. **The consequence for non-compliance within the extended period of the required assessment is likewise the *ipso jure* grant to the seafarer of permanent and total disability benefits, regardless of any justification**.Here, the records are bereft of any showing that the company-designated physician gave petitioner a final and definite disability rating within the 120/240 days prescribed. Petitioner was repatriated on February 13, 2015. He was referred to the company-designated physician who gave him medical attention and treatment up to June 26, 2015 or for more than 120 days from his repatriation. Since petitioner in fact required further treatment and medical attention beyond the 120-day period, his total and temporary disability was deemed extended. The company-designated physician then had until two hundred forty (240) days from repatriation within which to issue his final assessment of disability on petitioner. As it was, the company-designated physician failed to do so. x x x Verily, by operation of law, petitioner's disability became total and permanent for which he is entitled to the corresponding benefits.

APPEARANCES OF COUNSEL

Bantog & Andaya Law Offices for petitioner.
Tillmann and Marquez Law Offices for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari* assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 149802, *viz*:

1) Decision[1] dated August 24, 2017 reversing the NLRC's grant of total and permanent disability benefits to petitioner Franciviel Derama Sestoso; and

2) Resolution[2] dated January 25, 2018 denying petitioner's motion for reconsideration.

The Proceedings before the Labor Arbiter

In his Complaint dated January 18, 2016, petitioner Franciviel Derama Sestoso sued respondents United Philippine Lines, Inc. (UPLI), Carnival Cruise Lines, and UPLI's owner Fernandino T. Lising for total and permanent disability benefits, moral and exemplary damages, and attorney's fees.[3]

Petitioner essentially alleged:

On July 2014, respondent UPLI in behalf of its foreign principal Carnival Cruise Lines hired him as Team Headwaiter on board M/V Carnival Inspiration for a period of 6 months.[4]

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[1] Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Danton Q. Bueser and Marie Christine Azcarraga-Jacob, *rollo*, pp. 11-21.

[2] *Rollo*, pp. 23-25.

[3] *Id*. at 13.

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

On October 31, 2014, he did his usual task of cleaning the dining table. But this time, when he knelt to clean the dining table, a sharp pain radiated down his right knee. Hence, as soon as the vessel docked at Los Angeles, California, he underwent a Magnetic Resonance Imaging (MRI) at a shore side clinic. The result showed a complex tear of the medial meniscus and degenerative joint changes. It also revealed the arthroscopy or knee surgery he had in February 2014.[5] He, nevertheless, continued working while on pain relievers until he finished his contract and got repatriated on February 13, 2015.[6]

Upon his arrival in the country, company-designated physician Dr. Mylene Cruz-Balbon subjected him to a series of examinations and treatments and eventually referred him to orthopedic surgeon Dr. William Chuasuan, Jr., for further evaluation and management.

On June 25, 2015, Dr. Chuasuan, Jr. recommended him for surgery and suggested a disability rating of Grade 10 – stretching of knee ligaments. Dr. Chuasuan, Jr. opined he had already reached the maximum medical improvement level.[7] In her Medical Report[8] dated June 25, 2015, Dr. Cruz-Balbon noted and referred to Dr. Chuasuan, Jr.'s findings and recommendation. On July 28, 2015, Dr. Cruz-Balbon issued a certification[9] and letter[10] bearing her final diagnosis on him as of June 4, 2015, *i.e. Osteoarthritis, Medial Meniscal Tear, Right Knee; S/P Arthroscopic Partial Menisectomy and Debridement of Osteophytes, Rights Knee*.[11] Notably, neither of the two

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[5] Annex "G", *rollo*, pp. 81-82.

[6] *Rollo*, pp. 12-13.

[7] *Id*. at 13 and 92.

[8] *Id*. at 91.

[9] Annex "H", *rollo*, pp. 83.

[10] Annex "H-1", *id*. at 84.

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

documents dated July 28, 2015 contained any disability rating or certificate of fitness to work.

Dr. Cruz-Balbon stopped giving him medical treatment since June 26, 2015 despite his need for further treatment. Neither Dr. Cruz-Balbon nor Dr. Chuasuan, Jr. gave him a final and definite disability rating within the 120/240-day window.[12]

He was constrained to consult another orthopedic – Dr. Victor Gerardo E. Pundavela, who diagnosed him with *Severe Degenerative Osteoarthritis, right knee; Degenerative Osteoarthritis, left knee; Medial Meniscal Tear, right knee s/p Arthroscopic Meniscectomy and Debridement*. The latter assessed him to be partially and permanently disabled/unfit to work as a seafarer.[13]

For their part, respondents countered that petitioner was not entitled to disability benefits since his recurrent knee pain was, as found by his own specialist, a pre-existing illness, hence, not compensable. If at all, petitioner was entitled only to Grade 10 rating per Dr. Chuasuan, Jr.'s recommendation. For this rating was more reflective of petitioner's real health condition. They, nonetheless, offered Grade 10 disability benefits to petitioner out of sheer goodwill. But, as it was, petitioner refused it.[14]

The Labor Arbiter's Ruling

By Decision dated May 24, 2016, the labor arbiter awarded Grade 10 disability benefits to petitioner. The labor arbiter ruled that although petitioner's illness was found to be pre-existing, he was still entitled to the Grade 10 disability grading given by company-designated Dr. Cruz-Balbon who closely monitored and treated him for months.[15]

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

[13] Annexes "J" to "J-1", *id*. at 89-90.

[14] *Rollo*, p. 14.

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

The Ruling of the National Labor Relations Commission

On petitioner's appeal, the National Labor Relations Commission (NLRC) awarded him permanent and total disability benefits through its Decision dated August 31, 2016. The NLRC ruled that the grading assigned by Dr. Cruz-Balbon was a mere suggestion, hence, it was not a valid and final disability assessment. Dr. Cruz-Balbon's failure to issue a definite and final disability assessment within two hundred forty (240) days rendered petitioner's disability permanent and total. It, therefore, ordered respondents to pay petitioner US$60,000.00 plus ten percent (10%) as attorney's fees.[16]

Respondents' motion for reconsideration was denied through Resolution dated December 22, 2016.[17]

The Proceedings Before the Court of Appeals

Dissatisfied, respondents sought to nullify the NLRC dispositions *via* a petition for *certiorari* before the Court of Appeals. They argued that petitioner's illness was not compensable because it was pre-existing. If at all, petitioner was only entitled to Grade 10 rating per Dr. Chuasuan, Jr.'s recommendation. This rating was in accordance with the schedule of disability grading under the POEA Contract. Finally, the award of attorney's fees was improper since there was no showing of bad faith on their part.[18]

Court of Appeals' Ruling

By Decision[19] dated August 24, 2017, the Court of Appeals reversed. It ruled that petitioner's disability was not compensable for it was a pre-existing illness, *i.e. Osteoarthritis*. Too, petitioner allegedly failed to allege and prove that his illness was aggravated by his working conditions. Thus, the 120/240 window was found to be inapplicable.

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[16] *Id* at 15.

[17] *Id*. at 12 and 16.

[18] *Id*. at 11 and 16-17.

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

Petitioner's motion for reconsideration was denied under Resolution[20] dated January 25, 2018.

The Present Petition

Petitioner now implores the Court to review and reverse the Decision dated August 24, 2017 and Resolution dated January 25, 2018 of the Court of Appeals both denying his claim for total and permanent disability benefits on the ground that his illness was pre-existing and did not appear to have been aggravated by his employment with respondents. The fact that the company-designated physician gave petitioner a Grade 10 disability rating shows his illness is work-related.[21]

On the other hand, respondents maintain that petitioner is not entitled to disability benefits since his illness was pre-existing, hence, not-work related, nor compensable. For this reason, the 120/240 window does not apply. Assuming petitioner's disability was compensable, he is only entitled to disability benefit corresponding to Grade 10.

Issue

Did the Court of Appeals commit reversible error when it denied the award of total and permanent disability benefits to petitioner?

Ruling

The petition is meritorious.

Petitioner's illness is work-related and compensable.

In ***More Maritime Agencies, Inc. v. NLRC***[22] the Court held that compensability of an illness or injury does not depend on whether the injury or disease was pre-existing at the time of employment but rather on whether the injury or illness is work-related or has aggravated the seafarer's condition, thus:

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

[21] *Id*. at 27-51.

[22] 366 Phil. 646, 654-655 (1999).

But even assuming that the ailment of Homicillada was contracted prior to his employment with the MV Rhine, this fact would not exculpate petitioners from liability. Compensability of an ailment does not depend on whatever the injury or disease was pre-existing at the time of the employment but rather if the disease or injury is work-related or aggravated his condition. It is indeed safe to presume that, at the very least, the arduous nature of Homicillada's employment had contributed to the aggravation of his injury, if indeed it was pre-existing at the time of his employment. Therefore, it is but just that he be duly compensated for it. It is not necessary, in order for an employee to recover compensation, that he must have been in perfect condition or health at the time he received the injury, or that he be from disease. Every workman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of his employees, he takes them as he finds them, and assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person. If the injury is the proximate cause of his death or disability for which compensation is sought, the previous physical condition of the employee is unimportant and recovery may be had for injury independent of any pre-existing weakness or disease. (Emphasis supplied)

This brings to fore the following question: Who has the burden of proving that petitioner's illness is work-related or has aggravated his condition at work?

Under the 2010 POEA-SEC, "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied" is deemed to be a "work-related illness."[23] Section 20 (A) (4) further provides that "Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related." This provision speaks of a legal presumption of work-relatedness in favor of the seafarer. As such, the employer, and not the seafarer, has the burden of disproving the presumption by substantial evidence. ***Romana v. Magsaysay Maritime Corporation***[24] is in point:

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[23] See Item 12, Definition of Terms, 2010 POEA-SEC.

[24] 816 Phil. 194, 204 (2017).

Thus, in *Racelis v. United Philippine Lines, Inc. and David v. OSG Shipmanagement Manila, Inc.,* the Court held that **the legal presumption of** work-relatedness **of a non-listed illness should be overturned only when the employer's refutation is found to be supported by substantial evidence,** which, as traditionally defined, is "such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion."

It must be emphasized, though, that the presumption under Section 20-B (4)[25] is only limited to "work-relatedness" of an illness and does not cover or extend to "compensability." ***Atienza v. Orophil***[26] elucidates:

> Nonetheless, the presumption provided under Section 20 (B) (4) is only limited to the "work-relatedness" of an illness. **It does not cover and extend to *compensability*. In this sense, there exists a fine line between the work-relatedness of an illness and the matter of compensability**. The former concept merely relates to the assumption that the seafarer's illness, albeit not listed as an occupational disease, may have been contracted during and in connection with one's work, whereas compensability pertains to the entitlement to receive compensation and benefits upon a showing that his work conditions caused or at least increased the risk of contracting the disease. **This can be gathered from Section 32-A of the 2000 POEA-SEC which already qualifies the listed disease as an "occupational disease" (in other words, a "work-related disease"), but nevertheless, mentions certain conditions for said disease to be compensable:**
>
> SECTION 32-A. OCCUPATIONAL DISEASES
>
> For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:
>
> 1. The seafarer's work must involve the risks described herein;
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
> 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and

[25] Section 20 (B) (4) in the 2000 POEA-SEC.

[26] 815 Phil. 480, 493-494 (2017).

4. There was no notorious negligence on the part of the seafarer. (Emphasis supplied)

Unlike "work-relatedness," no legal presumption of compensability is accorded to the seafarer. As such, the seafarer bears the burden to prove substantial evidence that the conditions of compensability have been satisfied. This applies for both listed occupational disease and non-listed illness.[27] ***Atienza v. Orophil***[28] lucidly decrees:

> Therefore, it is apparent that for both listed occupational disease and a non-listed illness and their resulting injury to be compensable, the seafarer must sufficiently show by substantial evidence compliance with the conditions for compensability.

If the employer fails to successfully dispute the work-relatedness of the seafarer's illness, and the latter, in turn, has established compliance with the conditions for compensability, the issue now shifts to a determination of the nature of the disability (*i.e.*, permanent and total or temporary and total) and the amount of disability benefits due the seafarer.[29]

Here, respondents mainly rely on the alleged pre-existence of petitioner's illness and have failed to refute the presumption of its work-relatedness or aggravation by reason of his work. The presumption, therefore, remains in place in petitioner's favor, *i.e*. his injury or illness was work-related or was aggravated by his work condition.

Both the company-designated doctor and Dr. Chuasuan, Jr. agreed that petitioner suffered from *Osteoarthritis* and got repatriated after finishing his employment contract. *Osteoarthritis* is listed as an occupational disease which is presumed to be work-related. Under Section 32-A (21) of the

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[27] See *Romana v. Magsaysay Maritime Corporation*, *supra* note 24, at 205.

[28] G.R. No. 191049, August 7, 2017, *supra* note 26, at 496.

[29] See *Romana v. Magsaysay Maritime Corporation*, *supra* note 24, at 211.

2010 POEA-SEC, for *Osteoarthritis* to be considered as an occupational disease, it must have been contracted in any occupation involving:

a. Joint strain from carrying heavy load, or unduly heavy physical labor, as among laborers and mechanics;

b. Minor or major injuries to the joint;

c. Excessive use or constant strenuous usage of a particular joint, as among sportsmen, particularly those who have engaged in the more active sports activities;

d. Extreme temperature changes (humidity, heat and cold exposures) and;

e. Faulty work posture or use of vibratory tools.

In ***Centennial Transmarine, Inc. V. Quiambao,***[30] where the seafarer was diagnosed with *Osteoarthritis*, the Court ruled that since the seafarer's work involved carrying heavy loads and the performance of other strenuous activities, it can reasonably be concluded that his work caused or at least aggravated his illness. The Court declared the seafarer's ailment to be work-related and compensable or was aggravated by his work condition.

Further, in ***De Leon v. Maunlad Trans., Inc.***,[31] the Court considered the headwaiter's work as a contributory factor in the development of his illness because he had already experienced its symptoms during his employment contract with respondents therein prior to his last employment contract with them.

Here, it cannot be denied that petitioner's work was contributory in causing or, at least, increasing the risk of contracting his illness.

For one, a headwaiter's tasks involve carrying heavy food provisions; cleaning the galley, pantries, and store rooms; washing, cleaning and preparing tables; serving food; restocking

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[30] 763 Phil. 411, 424-425 (2015).

[31] See 805 Phil. 531, 542-543 (2017).

supplies in pantries, and exposure to extreme temperature changes. Surely, under these prevailing conditions at work, petitioner's osteoarthritis could be considered as having arisen in the course of his employment either by direct causation or aggravation due to the nature of his work.

For another, petitioner had been performing the same tasks and exposed to the same risks during his employment with respondents, not just under the last but even under his prior contract of employment with them. As shown in his private physician's medical report, petitioner had been working for respondents as headwaiter for a long time even before his last employment contract with them in July 2014. It also reveals that symptoms of his illness had already manifested as early as January 2014 while he was working for respondents as team headwaiter in his last assignment on board the same ship, M/V Carnival Inspiration. A sharp pain also radiated down his knee when he knelt down to clean the dining table. Due to the recurrent knee pain despite medication, he was certified unfit to work and eventually repatriated on January 17, 2014.

Upon repatriation, he was referred to the company-designated physician. He underwent arthroscopy or knee surgery in February 2014, followed by a series of physical therapy and regular medical evaluation until he was certified fit to work on May 2014. Thereafter, he resumed his work with respondents in July 2014 under the subject contract of employment, during which, he got injured again in his right knee in October 2014. Despite his persistent and worsening knee pain and the shore side doctor's advice for surgery, petitioner continued with his tasks, taking only pain relievers to get him through. He eventually got repatriated on February 13, 2015 after finishing his contract. At that time, his right knee pain already belonged to Grade 9 category.[32] Based on these findings and after physical examination and ancillary tests, the private physician found that petitioner's condition could have been caused by the repeated stress and strains in petitioner's knees and the unavoidable faulty

[32] *Rollo*, pp. 89-90.

work posture he suffered while performing his tasks, especially when bending down while cleaning tables or floors and lifting heavy food provisions.

Petitioner's illness had become total and permanent in view of the lapse of the 120/240 window.

Petitioner claims to be entitled to total and permanent disability benefits due to the company-designated physician's failure to issue a definite and final disability assessment within the 120/240 window. Respondents, on the other hand, counter that petitioner is not entitled to disability benefits. They argue that 120/240 window does not apply here because petitioner's illness being pre-existing is not work-related. If at all, petitioner is only allegedly entitled to Grade 10 disability rating assigned by the company-designated physician.[33]

Permanent disability is the inability of a worker to perform his job for more than one hundred twenty (120) days, regardless of whether he loses the use of any part of his body. Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.[34]

Under Article 192 (c) (1) of the Labor Code, as amended, in relation to Rule VII, Section 2 (b) and Rule X, Section 2 (a) of the Amended Rules on Employees' Compensation (AREC), the following disabilities shall be deemed as total and permanent:

Art. 192. Permanent Total Disability. - x x x.

x x x x x x x x x

[33] *Id*. at 124.

[34] *Hanseatic Shipping Philippines Inc. v. Ballon*, 769 Phil. 567, 583-584 (2015); see *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234, 244 (2015); see *Maersk Filipinas Crewing, Inc. v. Mesina*, 710 Phil. 531, 547-548 (2013) citing *Fil-Star Maritime Corporation v. Rosete*, 677 Phil. 262, 273-274 (2011).

(c)**The following disabilities shall be deemed total and permanent:**

(1)Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules.

Rule VII
Benefits

Sec. 2. Disability - x x x.

x x x x x x x x x

(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

Rule X
Temporary Total Disability

x x x x x x x x x

Sec. 2. Period of entitlement - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. **However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System**. (Emphases supplied)

But when may a seafarer's disability be considered total and permanent by operation of law? ***Pastor v. Bibby Shipping Philippines, Inc.***[35] teaches:

Notably, during the 120-day period within which the company-designated physician is expected to arrive at a definitive disability assessment, the seafarer shall be deemed on **temporary total disability** and shall receive his basic wage until he is declared fit to work or his

[35] G.R. No. 238842, November 19, 2018.

temporary disability is acknowledged by the company-designated physician to be permanent, either partially or totally, as defined under the 2010 POEA-SEC and by applicable Philippine laws. However, if the 120-day period is exceeded and no ***definitive 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. But before the employer may avail of the allowable 240-day extended treatment period, the company-designated physician must perform some significant act to justify the extension of the original 120-day period. Otherwise, **the law grants the seafarer the relief of permanent total disability benefits due to such non-compliance**. If this significant act is performed and an extension was duly made, the obligation of the company-designated physician to issue a final assessment is nevertheless retained, albeit in this instance may be discharged within the extended period of not exceeding 240 days reckoned from the seafarer's repatriation. **The consequence for non-compliance within the extended period of the required assessment is likewise the *ipso jure* grant to the seafarer of permanent and total disability benefits, regardless of any justification**. (Emphasis supplied)

Here, the records are bereft of any showing that the company-designated physician gave petitioner a final and definite disability rating within the 120/240 days prescribed. Petitioner was repatriated on February 13, 2015. He was referred to the company-designated physician who gave him medical attention and treatment up to June 26, 2015 or for more than 120 days from his repatriation. Since petitioner in fact required further treatment and medical attention beyond the 120-day period, his total and temporary disability was deemed extended. The company-designated physician then had until two hundred forty (240) days from repatriation within which to issue his final assessment of disability on petitioner. As it was, the company-designated physician failed to do so.

The letter[36] issued by the company-designated physician on July 28, 2015 is hardly the final assessment required by law. It merely stated that petitioner underwent thorough treatment

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[36] Annexes "H" to "H-1", *rollo*, pp. 83-84.

from February 27, 2015 to June 4, 2015 due to his *Osteoarthritis*. The same holds true for his Medical Report dated June 25, 2015, merely noting Dr. Chuasuan, Jr.'s "comments" on petitioner's medical condition, sans any definite, nay final disability rating. None of the letters and reports issued by the company-designated physician and by Dr. Chuasuan, Jr. can be treated as definite and conclusive because petitioner remains incapacitated beyond the 240-day period. He still feels recurrent pain in his knee which renders him incapable to perform his usual task as team head waiter[37] in any vessel. Too, there is no showing that he had been re-employed by respondents or in any vessel for that matter. Indeed, petitioner's continued unemployment until this very day clearly indicate his total and permanent disability.

Verily, by operation of law, petitioner's disability became total and permanent for which he is entitled to the corresponding benefits.[38]

Considering that petitioner was forced to litigate and incur expenses to protect his rights under the law, the award of ten percent (10%) attorney's fees is in order.[39]

Lastly, pursuant to ***C.F. Sharp Crew Management, Inc. v. Santos***[40] **and** ***Nacar v. Gallery Frames***,[41] the Court imposes on the monetary awards legal interest at six percent (6%) per annum from the date of finality of this decision until full payment.

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[37] *Rollo*, p. 90.

[38] *Carcedo v. Maine Marine Phils., Inc.*, 758 Phil. 166, 184 (2015); *Libang, Jr. v. Indochina Ship Management, Inc.*, 743 Phil. 286, 300 (2014); *United Philippine Lines, Inc. v. Sibug*, 731 Phil. 294, 302 (2014); *Fil-Pride Shipping Company, Inc., et al. v. Balasta*, 728 Phil. 297, 312 (2014); *Magsaysay Maritime Corporation v. Lobusta*, 680 Phil. 137, 151-152 (2012) and *Oriental Shipmanagement Co., Inc. v. Bastol*, 636 Phil. 358, 393 (2010).

[39] *United Philippine Lines, Inc. v. Sibug*, 731 Phil. 294, 303 (2014) and *Fil-Pride Shipping Company, Inc., et al. v. Balasta*, 728 Phil. 297, 314 (2014).

[40] See G.R. No. 213731, August 1, 2018.

[41] 716 Phil. 267, 283 (2013).

ACCORDINGLY, the petition is **GRANTED**. The Decision dated August 24, 2017 and Resolution dated January 25, 2018 of the Court of Appeals in CA-G.R. SP No. 149802 are **REVERSED** and **SET ASIDE**. Respondents are **ORDERED** to jointly and severally pay petitioner Franciviel Derama Sestoso the aggregate amount of US$60,000.00 or its peso equivalent at the time of payment, representing total and permanent disability benefits, and ten percent (10%) attorney's fees. This amount shall earn six percent (6%) interest per annum from the date of finality of this decision until full payment.

SO ORDERED.

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

SECOND DIVISION

[G.R. Nos. 238579-80. July 24, 2019]

WILFREDO M. BAUTISTA, GERRY C. MAMIGO, and ROWENA C. MANILA-TERCERO, *petitioners, vs.* **THE HONORABLE SANDIGANBAYAN, SIXTH DIVISION, and the OFFICE OF THE OMBUDSMAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; SHOULD BE UNDERSTOOD TO BE A RELATIVE OR FLEXIBLE CONCEPT THAT A MERE MATHEMATICAL RECKONING OF THE TIME INVOLVED WOULD NOT BE SUFFICIENT.— A person's right to the speedy disposition of his case is guaranteed under Section 16, Article III of the

1987 Philippine Constitution x x x. This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial. In this accord, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice. Notably, it is settled that the right to speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient. Pertinent jurisprudence dictates that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.

2. ID.; ID.; ID.; ID.; FACTORS TO BE CONSIDERED IN DETERMINING WHETHER THE RIGHT TO SPEEDY DISPOSITION OF A CASE IS DENIED.— [I]n the determination of whether the defendant has been denied his right to a speedy disposition of a case, the following factors may be considered and balanced: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay. In this regard, the Court laid down the parameters in establishing the existence of inordinate delay, which, in turn, is conclusive as to whether or not the aforesaid right was violated x x x.

3. ID.; ID.; ID.; ID.; THE PERIOD DEVOTED FOR FACT-FINDING INVESTIGATION PRIOR TO THE FILING OF A FORMAL COMPLAINT IS NOT CONSIDERED IN DETERMINING WHETHER OR NOT INORDINATE DELAY EXISTS CONSIDERING THAT SUCH INVESTIGATION IS NON-ADVERSARIAL.— In insisting that their right to speedy disposition of cases was violated, petitioners argue that the SB should have considered the sheer amount of time they were subjected to investigation, *i.e.,* the fact-finding investigations of the DENR and FIO which spanned for almost 12 years x x x. Anent the fact-finding investigation conducted by the DENR, *Cagang v. Sandiganbayan* instructs that the period devoted for fact-finding investigations ***prior to the filing of a formal complaint*** should be excluded in the

determination of whether or not inordinate delay exists x x x. Hence, the period constituting the fact-finding investigation conducted by the DENR and the FIO should not be considered for purposes of determining whether petitioners' right to the speedy disposition of their cases was violated. This is especially considering that such investigation was non-adversarial and was only determinative of whether or not formal charges should be filed against petitioners. As such, it cannot be said that petitioners suffered any vexation during these proceedings.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; REFERS TO SUCH CAPRICIOUS OR WHIMSICAL EXERCISE OF JUDGMENT AS IS EQUIVALENT TO LACK OF JURISDICTION.— [T]he SB did not gravely abuse its discretion in essentially holding that petitioners' right to speedy disposition of cases was not violated. It bears pointing out that grave abuse of discretion refers to such "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility, which does not obtain in this case.

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

POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; COVERS THE PERIODS BEFORE, DURING, AND AFTER TRIAL.— The *ponencia* affirms the Sandiganbayan's ruling on the basis of the Court's decision in *Cagang v. Sandiganbayan (Cagang)*. x x x [I]n line with my dissenting Opinion in *Cagang,* I respectfully register anew my dissent in this case to emphasize the need to revisit *Cagang* and the manner in which to count the reasonableness of the period of "delay". In deciding this case, the Court used the same four-fold test used in *Cagang* to determine whether the several accused had been denied their right to a speedy disposition of cases, to wit: (1) the length of delay; (2) the reason for delay; (3) the defendant's assertion or non-assertion of his or her right; and (4) the prejudice to the defendant as a result of the delay. In turn, in determining the

length of the delay, the Court here uses the principle laid down in *Cagang* that "[t]he period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay." x x x [T]o continue construing the right to speedy disposition of cases in the way that *Cagang* did would continually result in rendering the said right inutile. To rule that, in each and every case, the period of fact-finding prior to the conduct of preliminary investigation need not be considered in determining whether the right was violated would undoubtedly tolerate, if not totally champion, neglect in the performance of duties by the officers involved in fact-finding investigations. **Stated differently, to rule that any delay- regardless of duration or reasons for such delay – as long as that delay was incurred during the period prior to preliminary investigation, is immaterial for purposes of invoking the right to speedy disposition of cases, would effectively render the Constitutional right utterly useless as against the incompetence or inefficiency of the State, particularly its fact-finding officers.** It would thus reward or incentivize delay in the fact-finding process because for as long as the preliminary investigation proper has not started, the State could intentionally or unintentionally delay the case which, in either case, would always be detrimental to the accused. x x x [T]o limit the right to the speedy disposition of cases as a right that may be invoked merely against the prosecutorial arms of the government, and not its investigative ones, would be to render it useless, or worse, to be a complete illusion. Thus, I reiterate the point I raised in my dissent in *Cagang* that "[t]he right to speedy disposition covers the periods 'before, during, and after trial.' Hence, the protection afforded by the right to speedy disposition x x x **covers not only preliminary investigation, but extends further, to cover the fact-finding process.**" x x x I thus once again call upon the Court to reconfigure its understanding of the element of prejudice in the four-fold test. The prejudice caused by the delay in the fact-finding stage cannot simply be brushed aside just because the said period is viewed to be non-adversarial. Delays in this stage cause real and serious prejudice to the accused because facts on which his innocence is hinged would be more difficult, if not impossible, to prove.

APPEARANCES OF COUNSEL

Calalang and Associates for petitioners.
Office of the Special Prosecutor for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for *certiorari*[1] are the Resolutions dated December 15, 2017[2] and February 19, 2018[3] of the Sandiganbayan (SB) in SB-17-CRM-1407 and SB-17-CRM-1408 denying the Urgent Omnibus Motion to Dismiss and Motion to Suspend Arraignment filed by petitioners Wilfredo M. Bautista, Gerry C. Mamigo, and Rowena C. Manila-Tercero (petitioners) praying for the dismissal of the aforementioned cases for violation of their right to speedy disposition of cases.

The Facts

The instant case stemmed from petitioners' involvement in the Pola Watershed, a foreign-assisted project of the Department of Environment and Natural Resources (DENR) funded by the Asian Development Bank, which spanned an area of 15,000 hectares. On November 22, 1999, after purported compliance with the required bidding procedures, the project of conducting the final perimeter survey and mapping of the watershed (project) was awarded to Antonio M. Lacanienta (Lacanienta) through a Contract of Service[4] with a project cost in the amount of ₱5,250,000.00. Thereafter, petitioners were designated as members of the Technical Inspection Committee tasked with

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[1] With prayer for issuance of writ of preliminary injunction or temporary restraining order. *Rollo,* pp. 3-37.

[2] *Id*. at 39-49. Penned by Associate Justice Sarah Jane T. Fernandez with Associate Justices Karl B. Miranda and Bernelito R. Fernandez, concurring.

[3] *Id*. at 51-57.

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

monitoring the project and ensuring Lacanienta's compliance with his contractual obligations.[5] On January 6, 2000, the project was completed and petitioners correspondingly issued a certification[6] stating that they had "inspected [the project] in accordance with the Job Order[7] dated Nov. 3, 1999."[8]

On **September 11, 2001**, a DENR Fact-Finding Team was created to investigate alleged irregularities in the project. In a Fact-Finding Investigation Report[9] dated March 12, 2002, the team concluded that, contrary to petitioners' certification, no perimeter survey or mapping was actually conducted.[10] The report was eventually forwarded to the Office of the Ombudsman (Ombudsman) for its own fact-finding investigation.[11]

On **August 27, 2013**, the Field Investigation Office of the Ombudsman (FIO) filed a complaint[12] alleging that petitioners, in conspiracy with several others, defrauded the government, in the amount of ₱5,250,000.00, by simulating the bidding in favor of Lacanienta and making it appear that the latter had accomplished a perimeter survey and mapping of the project, when none was actually made.[13] Subsequently, the Ombudsman conducted a preliminary investigation and came up with a Resolution[14] dated **August 26, 2016** finding probable cause to indict petitioners for violation of Section 3 (e) of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt

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[5] See *id*. at 40 and 173-175.

[6] Records (Vol. I), p. 110.

[7] *Rollo,* p. 108.

[8] Records (Vol. I), p. 110.

[9] *Rollo,* pp. 124-129.

[10] See *id*. at 129.

[11] See *id*. at 40.

[12] *Id*. at 130-149.

[13] See *id*. at 136-145.

[14] *Id*. at 171-195. Approved by Ombudsman Conchita Carpio Morales.

Practices Act," and Falsification of Public Documents.[15] Later, on **July 14, 2017**, the corresponding Informations[16] were filed before the SB charging petitioners of the foregoing crimes.[17]

On November 7, 2017, petitioners filed an Urgent Omnibus Motion to Dismiss and Motion to Suspend Arraignment,[18] praying for the dismissal of their case for violation of their right to speedy disposition of cases.[19]

The SB's Ruling

In a Resolution[20] dated December 15, 2017, the SB denied petitioners' motion for lack of merit.[21] It held that for purposes of determining inordinate delay, only the period for preliminary investigation – from the filing of the complaint with the Ombudsman on August 27, 2013 until the filing of the Informations on July 14, 2017 – should be aptly considered. Pertinently, it found that a period of almost four (4) years was reasonable in view of the number of respondents[22] impleaded in the complaint.[23]

Aggrieved, petitioners moved for reconsideration,[24] which was denied in a Resolution[25] dated February 19, 2018. Hence, this petition.

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[15] See *id.* at 183-193.

[16] Records (Vol. I), pp. 1-4 and 492-495.

[17] See *rollo,* p. 44.

[18] *Id*. at 58-85.

[19] *Id*. at 83.

[20] *Id*. at 39-49.

[21] *Id*. at 49.

[22] Consisting of 11 respondents, namely: Vicente S. Paragas, Arnulfo Z. Hernandez, Elpidio E. Atienza, Eleuterio V. Recile, Herminia C. Pastrana, Nelson S. Sikat, Lorna O. Borlongan, Wilfredo M. Bautista, Gerry C. Mamigo, Rowena C. Manila-Tercero, and Antonio M. Lacanienta. See *id*. at 171-173.

[23] See *id.* at 47-49.

[24] See motion for reconsideration dated January 4, 2018; *id.* at 86-105.

[25] *Id*. at 51-57.

The Issue Before the Court

The sole issue raised for the Court's resolution is whether the SB gravely abused its discretion in finding that there was no violation of petitioners' right to speedy disposition of their cases.

The Court's Ruling

A person's right to the speedy disposition of his case is guaranteed under Section 16, Article III of the 1987 Philippine Constitution which provides that:

> Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial. In this accord, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice.[26]

Notably, it is settled that the right to speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient.[27] Pertinent jurisprudence dictates that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.[28]

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[26] *Coscolluela v. Sandiganbayan,* 714 Phil. 55, 61 (2013), citing *Capt. Roquero v. The Chancellor of UP- Manila,* 628 Phil. 628, 639 (2010).

[27] *Coscolluela v. Sandiganbayan, id*., citing *Enriquez v. Office of the Ombudsman,* 569 Phil. 309, 316 (2008).

[28] *Coscolluela v. Sandiganbayan, id*., citing *Capt. Roquero v. The Chancellor of UP-Manila, supra* note 26, at 639.

Hence, in the determination of whether the defendant has been denied his right to a speedy disposition of a case, the following factors may be considered and balanced: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[29] In this regard, the Court laid down the parameters in establishing the existence of inordinate delay, which, in turn, is conclusive as to whether or not the aforesaid right was violated, to wit:

> To summarize, inordinate delay in the resolution and termination of a preliminary investigation violates the accused's right to due process and the speedy disposition of cases, and may result in the dismissal of the case against the accused. The burden of proving delay depends on whether delay is alleged within the periods provided by law or procedural rules. If the delay is alleged to have occurred during the given periods, the burden is on the respondent or the accused to prove that the delay was inordinate. If the delay is alleged to have occurred beyond the given periods, the burden shifts to the prosecution to prove that the delay was reasonable under the circumstances and that no prejudice was suffered by the accused as a result of the delay.
>
> The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.[30]

In insisting that their right to speedy disposition of cases was violated, petitioners argue that the SB should have considered the sheer amount of time they were subjected to investigation, *i.e.,* the fact-finding investigations of the DENR and FIO which

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[29] *Coscolluela v. Sandiganbayan, id.*

[30] *Cagang v. Sandiganbayan,* G.R. Nos. 206438, 206458, and 210141-42, July 31, 2018.

spanned for almost 12 years, or from September 11, 2001 to August 27, 2013, plus the preliminary investigation proper before the Ombudsman from August 27, 2013 until July 14, 2017 when the Informations against them were finally filed before the SB, which would account for another four (4) years, or a total of 16 years.[31] Moreover, petitioners contend that they suffered grave and irreparable prejudice during this lengthy period, claiming that the passage of time had impaired their ability to obtain evidence and secure the presence of witnesses in support of their defenses.[32]

Petitioners' contentions are untenable.

Anent the fact-finding investigation conducted by the DENR, *Cagang v. Sandiganbayan*[33] instructs that the period devoted for fact-finding investigations ***prior to the filing of a formal complaint*** should be excluded in the determination of whether or not inordinate delay exists, *viz.*:

> When an anonymous complaint is filed or the Office of the Ombudsman conducts a *motu proprio* fact-finding investigation, **the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint.** At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused.
>
> This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense.
>
> **Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that for the purpose of determining whether**

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[31] See *rollo*, pp. 17-20 and 44.

[32] See *id.* at 25-28.

[33] *Supra* note 30.

inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation. In *People v. Sandiganbayan, Fifth Division* [723 Phil. 444 (2013)], the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned.[34] (Emphases and underscoring supplied)

Hence, the period constituting the fact-finding investigation conducted by the DENR and the FIO should not be considered for purposes of determining whether petitioners' right to the speedy disposition of their cases was violated. This is especially considering that such investigation was non-adversarial and was only determinative of whether or not formal charges should be filed against petitioners. As such, it cannot be said that petitioners suffered any vexation during these proceedings.

As to the proceedings before the Ombudsman, the Court rules that the SB did not gravely abuse its discretion in finding that the period of almost four (4) years, or from August 27, 2013 when the formal complaint was filed until July 14, 2017 when the Informations were finally filed in court, was justified under the circumstances. In view of the considerable number of parties impleaded in the complaint filed before the Ombudsman, which comprised of 11 respondents, the SB correctly observed that it would take more time to properly evaluate the parties' respective arguments and allegations. It is also reasonable to discern that other factors, such as the significant size of the project, which spanned an area of 15,000 hectares, and its technical nature, which necessarily involved scientific expertise, demanded more time in conducting the investigation. Likewise, it bears to stress that the cases against petitioners are not the only ones pending before the Ombudsman. Indeed, the Court has previously taken judicial notice of the fact that the Ombudsman handles a considerable amount of cases as a result of the nature of its office, which encourages individuals who clamor for efficient government service to freely file their

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[34] *Id.*

complaints against alleged/suspected wrongdoings of government personnel.[35]

Furthermore, records are bereft of showing that the delay caused any material prejudice to petitioners which would warrant serious consideration. The SB fittingly held that the alleged loss of documents in the DENR office was not caused by the mere passage of time, but by intervening events such as heavy rains and termite attacks.[36] In any case, the Court observes that the prejudicial circumstances alleged by petitioners had all occurred during the fact-finding stage, which for reasons earlier discussed, are irrelevant for purposes of determining the existence of inordinate delay.

In sum, the SB did not gravely abuse its discretion in essentially holding that petitioners' right to speedy disposition of cases was not violated. It bears pointing out that grave abuse of discretion refers to such "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility,[37] which does not obtain in this case.

WHEREFORE, the petition is **DENIED.** The Resolutions dated December 15, 2017 and February 19, 2018 of the Sandiganbayan in SB-17-CRM-1407 and SB-17-CRM-1408 are hereby **AFFIRMED.**

SO ORDERED.

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

Caguioa, J., dissents, see dissenting opinion.

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[35] See *Salcedo v. The Honorable Third Division of the Sandiganbayan,* G.R. Nos. 223869-960, February 13, 2019.

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

[37] *Disini v. Sandiganbayan,* 637 Phil. 351, 376 (2010).

DISSENTING OPINION

CAGUIOA, *J.*:

At the heart of the present petition is the right of an accused to the speedy disposition of cases.

The case stemmed from the Pola Watershed project by the Department of Environment and Natural Resources (DENR) in 1999, where the petitioners worked as members of the Technical Inspection Committee in charge of monitoring the project and ensuring that the contractor performed his contractual obligations. The project was completed in 2000, and petitioners issued a certification that they had "inspected the project in accordance with the Job Order dated November 3, 1999."[1]

The DENR then constituted a fact-finding team in 2001 to investigate the alleged irregularities in the project. The fact-finding team issued its report in 2002 and it concluded that "contrary to the petitioners' certification, no perimeter survey or mapping was actually conducted."[2] The report was then forwarded to the Office of the Ombudsman (Ombudsman).

The Field Investigation Office (FIO) of the Ombudsman, however, only filed its complaint **11 years after,** or on August 27, 2013. In its complaint, the FIO alleged principally that the bidding which resulted in the award to the contractor was only a simulation, and that the petitioners did not conduct the required survey or mapping they certified to have done. The Ombudsman, in turn, finished its preliminary investigation almost exactly three years after, or on August 26, 2016. The corresponding Informations were then filed almost one year after, or only on July 14, 2017.

In the Sandiganbayan, the petitioners filed an Urgent Omnibus Motion to Dismiss and Motion to Suspend Arraignment (Motion), arguing that their right to speedy disposition of cases had been violated. The Sandiganbayan, however, denied the Motion, and

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[1] *Rollo,* p. 40.

[2] *Id*.

ruled that the delay should be counted only from the time of the filing of the complaint by the FIO to the date of filing of the Informations in court. It then concluded that the total time period consumed by the Ombudsman was only four years – 2013 to 2017 – and this period was reasonable in light of the number of respondents involved.

The *ponencia* affirms the Sandiganbayan's ruling on the basis of the Court's decision in *Cagang v. Sandiganbayan*[3] *(Cagang).*

This case, to my mind, highlights how the ruling in *Cagang* as to how to count the period of delay can, and does, result to a substantial deprivation of an accused's right to the speedy disposition of a case. This case demonstrates how the unexplained delay in the fact finding made by, and the ineptitude of, the FIO is rewarded to the utter detriment of an accused whose right to defend himself is severely damaged by the length of time that has lapsed from the transaction in question to the time the complaint is filed with the Ombudsman.

Thus, in line with my dissenting Opinion in *Cagang,* I respectfully register anew my dissent in this case to emphasize the need to revisit *Cagang* and the manner in which to count the reasonableness of the period of "delay."

In deciding this case, the Court used the same four-fold test used in *Cagang* to determine whether the several accused had been denied their right to a speedy disposition of cases, to wit: (1) the length of delay; (2) the reason for delay; (3) the defendant's assertion or non-assertion of his or her right; and (4) the prejudice to the defendant as a result of the delay.

In turn, in determining the length of the delay, the Court here uses the principle laid down in *Cagang* that "[t]he period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay."[4] The *ponencia* expounds:

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[3] G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, accessed at < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581 >.

[4] *Id*.

Hence, the period constituting the fact-finding investigation concluded by the DENR and the FIO should not be considered for purposes of determining whether petitioners' right to the speedy disposition of their cases was violated. **This is especially considering that such investigation was non-adversarial and was only determinative of whether or not formal charges should be filed against petitioners. As such, it cannot be said that petitioners suffered any vexation during these proceedings.**[5] (emphasis and underscoring supplied)

I disagree.

To rule that the delay in the fact-finding proceedings brought no vexation upon the petitioners simply because the investigation was non-adversarial fails to properly consider the real prejudice visited upon the petitioners. Indeed, the present case is the perfect illustration of the ***real prejudice*** suffered by the petitioners, or any other accused in the same situation, and that is the impairment of one's defense. As the petitioners in this case themselves directly and pointedly raised, the delay that occurred prior to the conduct of the preliminary investigation — which spanned **12 years** — had led to the loss of material documents that they could have used in their defense. The petitioners stated:

> x x x Lamentably, due to the inordinate delay in the fact-finding stage of the investigation, they already suffered immeasurable damage and prejudice. Owing to the long passage of time, the relevant [files at] DENR PENRO Office in Calapan City, Oriental Mindoro were damaged by heavy rains last October 28-29, 2005 as evidenced by the Memorandum to the Regional Director, Regional IV MIMAROPA dated November 7, 2005 and photographs. This was followed by a termite attack in the Records Room in 2007 which further destroyed the files at DENR PENRO in Calapan City, Oriental Mindoro as shown in the Memorandum to the Regional Director Region IV MIMAROPA dated September 24, 2007.[6]

In this regard, the *ponencia* ruled:

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[5] *Ponencia,* p. 6.

[6] *Rollo,* p. 10.

Furthermore, records are bereft of showing that the delay caused any material prejudice to petitioners which would warrant serious consideration. The [Sandiganbayan] fittingly held that the alleged loss of documents in the DENR office was not caused by the mere passage of time, **but by intervening events such as heavy rains and termite attacks. In any case, the Court observes that the prejudicial circumstances alleged by petitioners had all occurred during the fact-finding stage, which for reasons earlier discussed, are irrelevant for purposes of determining the existence of inordinate delay.**[7] (emphasis and underscoring supplied)

With due respect to my esteemed colleague, the above disquisition — brought, in part, by its reliance on *Cagang* — is unfair. To be candid, the Court is being ***unreasonable*** in expecting the petitioners to present any other proof of material prejudice, for what could the petitioners possibly present in court that would prove that the ensuing **lack** or **absence** of documents ***brought about by the delay*** has prejudiced them? In other words, the Court is asking for positive proof or evidence of something that no longer exists precisely because it has already been lost or destroyed through the passage of time. Only to stress, the "passage of time" in this case refers to a delay which spanned 12 years, all of which were left **unexplained** by the State.

The gravity of the prejudice is further illustrated by the fact that one of the grounds relied upon by the Ombudsman in finding probable cause against the petitioners is their supposed failure to provide "evidence that the said Invitation to Bid was published in a newspaper of general circulation, as required by the IRR of PD 1594."[8] Again, and even prescinding on who has the burden of proving compliance with this requirement, how could the petitioners furnish proof or evidence when these pieces of evidence have already been lost or destroyed due to the passage of time?

The *ponencia* also draws a distinction between loss of documents through the passage of time, on the one hand, and

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[7] *Ponencia,* p. 6.

[8] *Rollo,* p. 185.

loss of documents through supervening events, on the other. I submit that the distinction is more illusory than real, **for it is precisely the passage of time that allowed the supervening events, *i.e.,* heavy rains and termite attacks, to cause the destruction of the documents.**

At this juncture, I reiterate anew that to continue construing the right to speedy disposition of cases in the way that *Cagang* did would continually result in rendering the said right inutile. To rule that, in each and every case, the period of fact-finding prior to the conduct of preliminary investigation need not be considered in determining whether the right was violated would undoubtedly tolerate, if not totally champion, neglect in the performance of duties by the officers involved in fact-finding investigations. **Stated differently, to rule that <u>any delay</u> — regardless of duration or reasons for such delay — as long as that delay was incurred during the period prior to preliminary investigation, is immaterial for purposes of invoking the right to speedy disposition of cases, would effectively render the Constitutional right utterly useless as against the incompetence or inefficiency of the State, particularly its fact-finding officers.** It would thus reward or incentivize delay in the fact-finding process because for as long as the preliminary investigation proper has not started, the State could intentionally or unintentionally delay the case which, in either case, would always be detrimental to the accused.

I submit that the foregoing construction of the right to speedy disposition of cases unwarrantedly tilts even further to the side of the State the already uneven relationship between it and its citizens. To stress, the State has immense resources it can utilize at its disposal against the individual citizen at any time. Just to provide perspective, the investigative arms of the government, namely the National Bureau of Investigation, the Department of Justice, and the Ombudsman, have a combined number of 198,189 key permanent personnel as of 2018[9] such as uniformed

[9] Staffing summary as of 2018 by the Department of Budget and Management, accessed at < https://www.dbm.gov.ph/index.php/budget-documents/2018/staffing-summary-2018 >.

personnel, prosecutors, and investigation agents. This number does not even include administrative or support staff, those who hold casual or contractual positions, those whose items are under local government units, and even personnel of the prosecutorial arms of the government like the Office of the Solicitor General.

Against this overwhelming number — against this armada — the individual only has himself, his counsel, and the Bill of Rights to rely on in guarding his freedoms. Borrowing the words of the Court in the case of *Secretary of Justice v. Lantion,*[10] "[t]he individual citizen is but a speck of particle or molecule *vis-a-vis* the vast and overwhelming powers of government. **His only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need."**[11]

The right to speedy disposition of cases is one of such fundamental liberties. **The Court cannot thus construe the said right in a way that would render it nugatory, like in the way that it did so in *Cagang*.** It bears emphasis that the Bill of Rights reserves certain areas for "the individual as constitutionally protected spheres where even the awesome powers of Government may not enter at will."[12] And to limit the right to the speedy disposition of cases as a right that may be invoked merely against the prosecutorial arms of the government, and not its investigative ones, would be to render it useless, or worse, to be a complete illusion.

Thus, I reiterate the point I raised in my dissent in *Cagang* that "[t]he right to speedy disposition covers the periods 'before, during, and after trial.' Hence, the protection afforded by the right to speedy disposition, as detailed in the foregoing provision, **covers not only preliminary investigation, but extends further, to cover the fact-finding process."**[13] Moreover:

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[10] 379 Phil. 165-251 (2000) [*En Banc,* Per *J.* Melo].

[11] *Id.* at 185.

[12] *Salonga v. Paño,* 219 Phil. 402, 429 (1985).

[13] Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Cagang, supra* note 3. Emphasis in the original.

[I]n *Torres v. Sandiganbayan (Torres)* the Court categorically stated that the speedy disposition of cases covers "not only the period within which the preliminary investigation was conducted, but also all stages to which the accused is subjected, **even including fact-finding investigations conducted prior to the preliminary investigation proper."**

Unreasonable delay incurred during fact-finding and preliminary investigation, like that incurred during the course of trial, is equally prejudicial to the respondent, as it results in the impairment of the very same interests which the right to speedy trial protects — against oppressive pre-trial incarceration, unnecessary anxiety ***and the impairment of one's defense.*** To hold that such right attaches only upon the launch of a formal preliminary investigation would be to sanction the impairment of such interests at the first instance, and render respondent's right to speedy disposition *and* trial nugatory. Further to this, it is oppressive to require that for purposes of determining inordinate delay, the period is counted only from the filing of a formal complaint or when the person being investigated is required to comment (in instances of fact-finding investigations).

Prejudice is not limited to when the person being investigated is notified of the proceedings against him. Prejudice is more real in the form of denial of access to documents or witnesses that have been buried or forgotten by time, and in one's failure to recall the events due to the inordinately long period that had elapsed since the acts that give rise to the criminal prosecution. Inordinate delay is clearly prejudicial when it impairs one's ability to mount a complete and effective defense. Hence, contrary to the majority, **I maintain that *People v. Sandiganbayan* and *Torres* remain good law in this jurisdiction.** The scope of right to speedy disposition corresponds *not* to any specific phase in the criminal process, but rather, attaches the very moment the respondent (or accused) is exposed to prejudice, which, in turn, may occur as early as the fact-finding stage.[14] (emphasis in the original; underscoring and italics supplied)

I thus once again call upon the Court to reconfigure its understanding of the element of prejudice in the four-fold test. The prejudice caused by the delay in the fact-finding stage cannot simply be brushed aside just because the said period is viewed to be non-adversarial. Delays in this stage cause real

[14] Dissenting Opinion of Justice Caguioa in *Cagang, supra* note 3.

and serious prejudice to the accused because facts on which his innocence is hinged would be more difficult, if not impossible, to prove.

In sum, the last of the four-fold test in determining whether an accused had been denied the right to speedy disposition of cases *(i.e.,* the prejudice caused by the delay) would have tilted the scales of justice in favor of the petitioners in this case had the Court taken into consideration the **12-year delay** before the preliminary investigation proper.

In any event, even if the Court were to continue using the framework laid down in *Cagang,* it is my view that the result should nevertheless be the same. By the Ombudsman's own admission, the period of preliminary investigation took a total of three years and nine months.[15] Of these, the period between April 30, 2013 to January 8, 2014 was excusable because this period was spent giving opportunities to the petitioners-defendants to file their respective counter-affidavits. However, the period from January 9, 2014 to August 26, 2016, or the time it took before the Ombudsman came out with a resolution finding probable cause against the petitioners, was still left insufficiently explained by the State. The Ombudsman tried to explain this period of a total of two years and seven months as brought about by: (1) the technical nature of the project involved; (2) the fact that there were 11 respondents; and (3) the steady stream of cases reaching the Ombudsman.

The second reason — the number of respondents — was already taken into consideration when the period for filing counter-affidavits was excluded in determining the length of delay.

With regard to the first reason, or the so-called technical nature of the project involved, it is my view that this is not a valid justification for the delay. A perusal of the Ombudsman's resolution finding probable cause reveals that they completely relied on the administrative findings of the fact-finding team of the DENR:

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[15] *Rollo,* p. 324.

Investigations on the financial and technical aspects of the projects conducted by Franco and Serna, respectively, of the DENR, established that the Pola Watershed Project was actually a "ghost project" and that Lacanienta did not actually render services, yet, A.M Lacanienta was still paid the amount of PhP5,250,000.00, as evidenced by a Request for Obligation of Allotment, computed as follows:

x x x x x x x x x

There is no reason for this Office to question the findings of Franco and Serna. It is an oft-repeated rule that findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.[16]

Thus, the Ombudsman did not conduct its own survey or investigation that required technical knowledge of the project. It cannot therefore use the nature of the case as justification for the two-year delay in resolving the case. In addition, the fact-finding team of the DENR only took two months to finish investigating the supposed irregularities in the project, thereby completely and definitively debunking the Ombudsman's excuse that the significant size of the project spanning 15,000 hectares and its technical nature caused the delay in the preliminary investigation.

Lastly, as regards the steady stream of cases to the Ombudsman, I reiterate the point I raised in *Cagang* regarding the reality of institutional delay. As I had said, although "this 'reality' may exist, as it exists in any government, it does not, as it should not, in any way justify the State's act of subjecting its citizens to unreasonable delays that impinge on their fundamental rights."[17]

All told, it is my view that the delays incurred by the State both in the fact-finding and the preliminary investigation stage violated the right to speedy disposition of cases of the petitioners in this case.

In view of the foregoing, I vote to **GRANT** the Petition.

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[16] *Rollo,* pp. 187-188.

[17] Dissenting Opinion of Justice Caguioa in *Cagang, supra* note 3.

THIRD DIVISION

[G.R. No. 239416. July 24, 2019]

MELCHOR J. CHIPOCO, CHRISTY C. BUGANUTAN, CERIACO P. SABIJON, THELMA F. ANTOQUE, GLENDA G. ESLABON, and AIDA P. VILLAMIL, *petitioners, vs.* **THE HONORABLE OFFICE OF THE OMBUDSMAN, represented by HONORABLE CONCHITA CARPIO-MORALES, in her official capacity as Tanodbayan, HONORABLE RODOLFO M. ELMAN, in his official capacity as Deputy Ombudsman for Mindanao, HONORABLE HILDE C. DELA CRUZ-LIKIT, in her official capacities as Graft Investigation and Prosecution Officer III and Officer-in-Charge, Evaluation and Investigation Bureau-A, Office of the Ombudsman-Mindanao, and HONORABLE JAY M. VISTO, in his official capacity as Graft Investigation and Prosecution Officer II, and ROBERTO R. GALON,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* MAY LIE ONLY TO RECTIFY ERRORS OF JURISDICTION AND NOT ERROR OF JUDGMENT.—** Well settled is the rule that a petition for *certiorari* is a special civil action that may lie only to rectify errors of jurisdiction and not error of judgment. In this regard errors of jurisdiction arise from grave abuse of discretion or such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. Here, petitioners fault the Ombudsman for allegedly having gravely abused its discretion.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; THE OFFICE OF THE OMBUDSMAN; THE OMBUDSMAN ACT OF 1989 (REPUBLIC ACT NO. 6770); THE PLENARY POWERS OF THE OMBUDSMAN TO INVESTIGATE AND PROSECUTE CRIMINAL COMPLAINTS AGAINST PUBLIC OFFICIALS AND EMPLOYEES DO NOT**

EXEMPT IT FROM THE COURT'S POWER OF REVIEW, FOR WHEN THE ACT OF THE OMBUDSMAN IS TAINTED WITH GRAVE ABUSE OF DISCRETION, THAT IS, WHEN IT UNDULY DISREGARDED CRUCIAL FACTS AND EVIDENCE IN THE DETERMINATION OF PROBABLE CAUSE OR IT BLATANTLY VIOLATED THE CONSTITUTION, THE LAW, OR PREVAILING JURISPRUDENCE, THE COURT MAY STRIKE DOWN THE SAME UNDER ITS EXPANDED JURISDICTION.— The 1987 Philippine Constitution and R.A. No. 6770, otherwise known as "The Ombudsman Act of 1989," vest the Ombudsman with great autonomy in the exercise of its investigatory and prosecutorial powers in resolving criminal complaints against public officials and employees. Said discretion of the Ombudsman is unqualified so as to shield it from external demands and persuasion. Nonetheless, the said plenary powers of the Ombudsman do not exempt it from the Court's power of review. When the act of the Ombudsman is tainted with grave abuse of discretion, the court may strike down the same under its expanded jurisdiction. The Ombudsman is considered to have gravely abused it discretion when it unduly disregarded crucial facts and evidence in the determination of probable cause or when it blatantly violated the Constitution, the law, or prevailing jurisprudence. Observing the foregoing principles, the Court finds that the Ombudsman did not gravely abuse its discretion when it issued the resolution and the order. The issuance of the resolution and the order was properly grounded on probable cause to charge petitioners for their respective violations of Section 3(e) of R.A. No. 3019 and Article 171 (2) of the RPC.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PROBABLE CAUSE, DEFINED; PROBABLE CAUSE DOES NOT DEMAND AN INQUIRY INTO THE SUFFICIENCY OF EVIDENCE TO SECURE A CONVICTION, AS THE BELIEF THAT THE ACT OR OMISSION COMPLAINED OF CONSTITUTES THE CRIME CHARGED IS ENOUGH.— Time and again, probable cause is defined as "the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation." As probable cause is simply based on opinion and reasonable belief, it does not require absolute certainty. Probable cause does not demand an inquiry into the sufficiency

of evidence to secure a conviction. In determining probable cause, the belief that the act or omission complained of constitutes the crime charged is enough. It is acceptable that the elements of the crime charged should be present in all practical probability. A meticulous scrutiny of the records readily shows that the Ombudsman was able to substantiate its finding of probable cause against petitioners. The Ombudsman pointed out that the acts and/or omissions of petitioners satisfied the elements of Section 3(e) of R.A. No. 3019 and Article 171(2) of the RPC.

4. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3019); VIOLATION OF SECTION 3(E) OF R.A. NO. 3019, ELEMENTS.— As to the violation of Section 3(e) of R.A. No. 3019, the following are the elements of this crime: (1) that the accused is a public officer discharging administrative, judicial or official functions; (2) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

5. ID.; REVISED PENAL CODE, ARTICLE 171 THEREOF; FALSIFICATION OF DOCUMENTS BY A PUBLIC OFFICER, EMPLOYEE, OR A NOTARY PUBLIC; ELEMENTS.— With *respect* to the falsification by a public officer, employee, or a notary public under Article 171 of the RPC, the following are the elements of this crime: (1) the offender is a public officer, employee, or a notary public; (2) the offender takes advantage of his or her official position; and (3) the offender falsifies a document by committing any of the acts of falsification under Article 171. Article 171 (2) provides that "[c]ausing it to appear that persons have participated in any act or proceeding when they did not in fact so participate" is an act of falsification.

6. POLITICAL LAW; CONSTITUTIONAL LAW; THE OFFICE OF THE OMBUDSMAN; THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE WILL NOT BE DISTURBED SO LONG AS IT HAS FACTUAL AND LEGAL BASIS. — As resolved by the Ombudsman, the x x x elements were met when it seemingly appeared in the Notice of Award, Abstract of Bids as Read, and Minutes of Opening of Bids that Oro Cars, Eves Display Center, and Catmon Car Sales participated in the procurement of the subject vehicle yet these establishments

categorically denied participation in the bidding process. The Ombudsman elucidated that petitioners had control over the said documents in their respective capacities and that they signed these notwithstanding the utter falsities therein. Clearly, the Ombudsman duly performed its mandate in ascertaining facts and circumstances that will reasonably warrant a belief that petitioners are probably guilty of violations of Section 3(e) of R.A. No. 3019 and Article 171(2) of the RPC. At that point in the proceedings, it was not incumbent upon the Ombudsman to require a modicum of evidence that will ensure the conviction of petitioners. The Court will not disturb the finding of probable cause of the Ombudsman so long as it has factual and legal basis, as in the instant case.

7. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; ISSUES WHICH ARE EVIDENTIARY IN NATURE ARE BEST THRESHED OUT IN THE FULL-BLOWN TRIAL OF THE CASE.—As correctly pointed out by the Ombudsman, the arguments raised in this petition, *i.e.*, the non-existence of unwarranted benefits, the bearing of the rescission of the contract of sale, and the probative value of the testimony of Vallinas, are evidentiary in nature that are best threshed out in the full-blown trial of the case. These are matters of defense involving factual issues that petitioners have the burden to prove.

8. ID.; PROVISIONAL REMEDIES; INJUNCTION; COURTS SHOULD AVOID GRANTING INJUNCTIVE RELIEFS THAT CONSEQUENTLY DISPOSE OF THE MAIN CASE WITHOUT TRIAL; OTHERWISE, IT WILL RESULT IN THE PREJUDGMENT OF THE MAIN CASE AND A REVERSAL OF THE RULE ON THE BURDEN OF PROOF AS IT WOULD ADOPT THE ALLEGATIONS WHICH PETITIONERS OUGHT TO PROVE.— Anent the application for injunctive relief, this Court finds it inappropriate to grant the same given that it may result to the prejudgment of the main case. Jurisprudence dictates that courts should avoid granting injunctive reliefs that consequently dispose of the main case without trial. Otherwise, it will result in the prejudgment of the main case and a reversal of the rule on the burden of proof as it would adopt the allegations which petitioners ought to prove. In their application for TRO, petitioners merely reiterated their defenses as discussed in the main petition as grounds for the

issuance thereof. Granting the application for TRO based on these grounds would effectively confirm the validity and strength of their defenses thereby prejudging the merits of the main case. Thus, this Court is constrained to deny the application for injunctive relief.

APPEARANCES OF COUNSEL

BPB Law Offices for petitioners.
Office of the Solicitor General for respondents.

D E C I S I O N

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

This resolves a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court with Prayer for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction assailing the Resolution[2] dated December 8, 2017 and the Order[3] dated March 5, 2018 issued by the Office of the Ombudsman (Ombudsman) in OMB-M-C-16-0112.

Factual Antecedents

On November 26, 2010, then Mayor Wilfredo S. Balais (Balais) sold his Nissan Patrol Wagon 2001 model (subject vehicle) to Eduardo A. Ayunting (Ayunting) for ₱500,000.00. On January 28, 2011, Ayunting sold the subject vehicle to the local government unit of the Municipality of Labason, Zamboanga del Norte, represented by then Vice Mayor Virgilio J. Go (Go), for ₱960,000.00.[4]

On August 1, 2011, the Sangguniang Bayan of Labason passed Resolution No. 117, authorizing Balais to negotiate the rescission

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[1] *Rollo*, pp. 3-40.

[2] Penned by Graft Investigation and Prosecution Officer II Jay M. Visto and Approved by the Tanodbayan on January 9, 2018; *id.* at 54-68.

[3] *Id.* at 69-76.

[4] *Id.* at 56.

of the contract of sale of the subject vehicle as it was found that the purchase price of it was quite high compared when it was first sold to the vendor, thus, disadvantageous and prejudicial to the government.[5]

Thereafter, Roberto R. Galon (private respondent) filed a Complaint-Affidavit[6] dated August 22, 2011 with the Ombudsman against petitioners Melchor J. Chipoco (Chipoco), in his capacity as then municipal treasurer and Bids and Awards Committee (BAC) chairperson; Christy C. Buganutan (Buganutan), in her capacity as then municipal accountant; Ceriaco P. Sabijon (Sabijon), Thelma F. Antoque (Antoque), and Aida P. Villamil (Villamil), in their capacity as then BAC members; and Glenda G. Eslabon (Eslabon), in her capacity as then BAC secretariat, charging them with violation of Sections 3(e), 3(g), and 3(h) of Republic Act (R.A.) No. 3019, or the "Anti-Graft and Corrupt Practices Act"; R.A. No. 9184, or the "Government Procurement Reform Act"; Government Auditing Rules and Regulations; R.A. No. 6713; Article 217 of the Revised Penal Code (RPC); and Presidential Decree No. 1829.[7]

Also impleaded were Balais, in his capacity as then municipal mayor; Go, in his capacity as municipal vice mayor; Riza T. Melicor, Shane C. Galon, Alfie L. Roleda, Clark C. Borromeo, Lucio S. Panos, Armony S. Delos Reyes, Allan B. Digamon, Severino Bangcaya, Ma. Michelle M. Chipoco, and Rey B. Josue, in their capacity as then members of the Sangguniang Bayan, Ernesto B. Ramirez, in his capacity as then legislative staff officer of the Sangguniang Bayan; the state auditor; the general services officer; and Ayunting as the vendor of the subject vehicle.[8]

Based on the foregoing facts, in OMB-M-C-11-0356-1, the Ombudsman found probable cause against Balais, Go, and

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

[6] *Id.* at 77-131.

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

[8] *Id.*

Ayunting for violation of Section 3(e) of R.A. No. 3019.[9] While the case was being tried in the Sandiganbayan, Ayunting turned as a state witness.[10] On the basis of Ayunting's letter to the Ombudsman and the attached documents thereto, private respondent filed another Complaint-Affidavit[11] dated February 5, 2016. Private respondent posited that with these new documents, there is sufficient evidence to hold the other local government officials named in his earlier complaint-affidavit as respondents liable as conspirators.[12] This case was docketed as OMB-M-C-16-0112.

The new documents submitted by Ayunting are the: (1) subscribed letter of Ayunting; (2) Disbursement Voucher dated January 26, 2011; (3) Obligation Request dated January 21, 2011; (4) Requisition and Issue Slip dated January 24, 2011; (5) Acceptance and Inspection Report dated January 20, 2011; (6) Purchase Order dated January 20, 2011; (7) Notice of Award dated January 20, 2011; (8) Minutes of Opening of Bids dated January 19, 2011; (9) Abstract of Bids as Read dated January 19, 2011; (10) Purchase Price Request/Price Quotation dated January 11, 2011; (11) Purchase Price Request/Price Quotation dated January 10, 2011; (12) Purchase Price Invitation to Apply for Eligibility and to Bid; (13) Purchase Request dated January 7, 2011; (14) Price Quotation of Oro Cars Display Center (Oro Cars) dated January 10, 2011; (15) Official Receipt dated August 5, 2011 of the refund of the amount to the local government unit of Labason; and (16) the affidavits of Paz G. Tawi of Oro Cars and William B. Nuneza of Catmon Car Sales that they did not participate in the bidding.[13]

Chipoco contended that the BAC members were not negligent in their duties and that they have no knowledge of any scheme

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[9] *Id*. at 57.

[10] *Id*.

[11] *Id*. at 166-188.

[12] *Id*. at 172-174.

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

defrauding the government.[14] Meanwhile, Buganutan, Sabijon, Antoque, and Villamil maintained that the expenditure of the subject vehicle was appropriated in their 2011 budget, that the required public bidding was conducted, and that the abstract of bids was prepared after the bidding and based on the bids submitted.[15] For her part, Eslabon averred that her duty was only to record the proceedings and prepare the minutes as BAC secretariat and that she has no knowledge of the circumstances attendant to the sale.[16]

On December 8,2017, the Ombudsman issued the assailed Resolution[17] disposing the case as follows:

> WHEREFORE, finding probable cause, let the corresponding Informations be filed with the proper court for:
>
> (1) Violation of Section 3(e) of Republic Act No. 3019 against Melchor J. Chipoco, Philip S. Balais, Ceriaco P. Sabijon, Aida P. Villamil, Thelma F. Antoque, Glenda G. Eslabon and Christy C. Buganutan relative to the sham bidding for the purchase of a motor vehicle;
>
> (2) Violation of Article 171(2) of the Revised Penal Code against Wilfredo S. Balais relative to the falsified Notice of Award;
>
> (3) Violation of Article 171(2) of the Revised Penal Code against Melchor J. Chipoco and Glenda G. Eslabon relative to the falsified Minutes of Opening of Bids; and
>
> (4) Violation of Article 171(2) of the Revised Penal Code against Virgilio J. Go, Melchor J. Chipoco, Philip S. Balais, Aida P. Villamil, Ceriaco P. Sabijon, and Christy C. Buganutan relative to the falsified Abstract of Bids as Read.
>
> As to the other respondents, the case is dismissed.
>
> SO ORDERED.[18]

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[14] *Id*. at 58.

[15] *Id*.

[16] *Id*. at 58-59.

[17] *Id*. at 54-68.

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

Chipoco, Philip S. Balais, Sabijon, Villamil, Antoque, and Eslabon filed an Urgent Motion for Reconsideration (to the Resolution dated 08 December 2017)[19] but the Ombudsman denied the same in the assailed Order.

Hence, the present recourse.

Petitioners argue that the Ombudsman gravely abused its discretion amounting to lack or excess of jurisdiction: (1) when it ruled that the BAC members gave "unwarranted benefits" to "Ayunting and/or Oro Cars" when they themselves have judicially admitted not having received anything of value from the BAC members or from Balais himself; (2) when it ruled that the BAC members gave "unwarranted benefits" to "Ayunting and/or Oro Cars" when there is allegedly no conspiracy linking the BAC with the negotiations of the sale; (3) when it refused to dismiss the complaint on the basis of the rescission of the contract of sale by virtue of Resolution No. 117; and (4) when it found basis to charge the BAC members with falsification of public documents contrary to the evidence on record and the testimony of Gloria Q. Vallinas (Vallinas)[20] "pointing to Balais and Go as the culprits [of] the questioned transaction."[21]

The Ombudsman, however, maintains that there was probable cause against petitioners, among others, for their respective violations of Section 3(e) of R.A. No. 3019 and Article 171(2) of the RPC.[22] The Ombudsman asserts that the issues raised by petitioners are essentially evidentiary in nature, best passed upon in a full-blown trial, and cannot be categorically determined during the preliminary stage of the case.[23]

The Issue

The sole issue for the resolution of this Court is whether or not the Ombudsman committed grave abuse of discretion

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[19] *Id*. at 517-531.

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

[21] *Id*. at 18.

[22] *Id*. at 666.

[23] *Id*. at 669.

amounting to lack or excess of jurisdiction when it found probable cause to charge petitioners for their respective violations of Section 3(e) of R.A. No. 3019 and Article 171(2) of the RPC.

Ruling of the Court

The Court finds the instant petition bereft of merit. The assailed Resolution and the assailed Order of the Ombudsman are not tainted with grave abuse of discretion. Thus, the Court resolves to dismiss the petition on this ground.

While the investigatory and prosecutorial powers of the Ombudsman are plenary in nature, its acts may be reviewed by the Court when tainted with grave abuse of discretion.

Well settled is the rule that a petition for *certiorari* is a special civil action that may lie only to rectify errors of jurisdiction and not errors of judgment.[24] In this regard, errors of jurisdiction arise from grave abuse of discretion or such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.[25] Here, petitioners fault the Ombudsman for allegedly having gravely abused its discretion.

The 1987 Philippine Constitution and R.A. No. 6770, otherwise known as "The Ombudsman Act of 1989," vest the Ombudsman with great autonomy in the exercise of its investigatory and prosecutorial powers in resolving criminal complaints against public officials and employees.[26] Said

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[24] *Public Attorney's Office v. Office of the Ombudsman*, G.R. No. 197613, November 22, 2017, 846 SCRA 90, 100.

[25] *Id*.

[26] *Gov. Garcia, Jr. v. Office of the Ombudsman, et al*., 747 Phil. 445, 457 (2014).

discretion of the Ombudsman is unqualified so as to shield it from external demands and persuasion.[27]

Nonetheless, the said plenary powers of the Ombudsman do not exempt it from the Court's power of review.[28] When the act of the Ombudsman is tainted with grave abuse of discretion, the Court may strike down the same under its expanded jurisdiction.[29] The Ombudsman is considered to have gravely abused its discretion when it unduly disregarded crucial facts and evidence in the determination of probable cause or when it blatantly violated the Constitution, the law, or prevailing jurisprudence.[30]

Observing the foregoing principles, the Court finds that the Ombudsman did not gravely abuse its discretion when it issued the resolution and the order. The issuance of the resolution and the order was properly grounded on probable cause to charge petitioners for their respective violations of Section 3(e) of R.A. No. 3019 and Article 171(2) of the RPC.

The Ombudsman duly exercised its investigatory and prosecutorial powers when it issued the assailed resolution and the assailed order.

Time and again, probable cause is defined as "the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation."[31]

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[27] *Judge Angeles v. Ombudsman Gutierrez, et al.*, 685 Phil. 183, 195 (2012).

[28] *Supra* note 24, at 101.

[29] *Id.*

[30] *Supra* note 26, at 457-458.

[31] *Chan y Lim v. Secretary of Justice,* 572 Phil. 118, 132 (2008).

As probable cause is simply based on opinion and reasonable belief, it does not require absolute certainty.[32] Probable cause does not demand an inquiry into the sufficiency of evidence to secure a conviction.[33] In determining probable cause, the belief that the act or omission complained of constitutes the crime charged is enough.[34] It is acceptable that the elements of the crime charged should be present in all practical probability.[35]

A meticulous scrutiny of the records readily shows that the Ombudsman was able to substantiate its finding of probable cause against petitioners. The Ombudsman pointed out that the acts and/or omissions of petitioners satisfied the elements of Section 3(e) of R.A. No. 3019 and Article 171(2) of the RPC.

As to the violation of Section 3(e) of R.A. No. 3019, the following are the elements of this crime: (1) that the accused is a public officer discharging administrative, judicial or official functions; (2) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[36]

The Ombudsman explained how the said elements were met in this case.

First, Chipoco, Buganutan, Sabijon, Eslabon, and Villamil were public officers performing official functions at the time of the negotiations and sale.[37] Even if Antoque was just an observer during the proceedings in the BAC, she failed to submit

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[32] *Philippine Deposit Insurance Corp. v. Casimiro*, 768 Phil. 429, 437 (2015).

[33] *Id*.

[34] *Id*.

[35] *Gov. Garcia, Jr. v. Office of the Ombudsman, et al*., *supra* note 26, at 459.

[36] *Fuentes v. People of the Philippines*, 808 Phil. 586, 593 (2017).

[37] *Rollo*, p. 60.

a report as legally required thereby assenting to the irregularities.[38]

Second, the Ombudsman found that there was bad faith on the part of Chipoco, Sabijon, Antoque, Eslabon, and Villamil when they specifically procured, in violation of Section 18 of R.A. No. 9184, the subject vehicle previously owned by Balais and when they made it appear in the documents that a bidding was conducted even if there was none.[39] On the part of Buganutan, it was found that she allowed the disbursement and procurement notwithstanding the obvious infirmity of the supporting documents.[40]

Last, it was clarified that there was unwarranted benefit when petitioners recommended the award of the sale of the subject vehicle to Ayunting/Oro Cars even if the latter did not submit its bid.[41] As aptly put by the Ombudsman, "they gave it a benefit without justification."[42]

With *respect* to the falsification by a public officer, employee, or a notary public under Article 171 of the RPC, the following are the elements of this crime: (1) the offender is a public officer, employee, or a notary public; (2) the offender takes advantage of his or her official position; and (3) the offender falsifies a document by committing any of the acts of falsification under Article 171.[43] Article 171 (2) provides that "[c]ausing it to appear that persons have participated in any act or proceeding when they did not in fact so participate" is an act of falsification.

As resolved by the Ombudsman, the foregoing elements were met when it seemingly appeared in the Notice of Award, Abstract of Bids as Read, and Minutes of Opening of Bids that Oro

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[38] *Id.*

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

[40] *Id.* at 61.

[41] *Id.* at 72.

[42] *Id.*

[43] *Malabanan v. Sandiganbayan*, G.R. No. 186329, August 2, 2017, 834 SCRA 21, 38.

Cars, Eves Display Center, and Catmon Car Sales participated in the procurement of the subject vehicle yet these establishments categorically denied participation in the bidding process. The Ombudsman elucidated that petitioners had control over the said documents in their respective capacities and that they signed these notwithstanding the utter falsities therein.[44]

Clearly, the Ombudsman duly performed its mandate in ascertaining facts and circumstances that will reasonably warrant a belief that petitioners are probably guilty of violations of Section 3(e) of R.A. No. 3019 and Article 171 (2) of the RPC. At that point in the proceedings, it was not incumbent upon the Ombudsman to require a modicum of evidence that will ensure the conviction of petitioners. The Court will not disturb the finding of probable cause of the Ombudsman so long as it has factual and legal basis, as in the instant case.

As correctly pointed out by the Ombudsman, the arguments raised in this petition, *i.e.*, the non-existence of unwarranted benefits, the bearing of the rescission of the contract of sale, and the probative value of the testimony of Vallinas, are evidentiary in nature that are best threshed out in the full-blown trial of the case. These are matters of defense involving factual issues that petitioners have the burden to prove.

Anent the application for injunctive relief, this Court finds it inappropriate to grant the same given that it may result to the prejudgment of the main case.

Jurisprudence dictates that courts should avoid granting injunctive reliefs that consequently dispose of the main case without trial.[45] Otherwise, it will result in the prejudgment of the main case and a reversal of the rule on the burden of proof as it would adopt the allegations which petitioners ought to prove.[46]

In their application for TRO, petitioners merely reiterated their defenses as discussed in the main petition as grounds for

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[44] *Rollo*, pp. 63-64.

[45] *Rep. of the Phils. v. Sps. Lazo*, 744 Phil. 367, 401 (2014).

[46] *Id*.

the issuance thereof.[47] Granting the application for TRO based on these grounds would effectively confirm the validity and strength of their defenses thereby prejudging the merits of the main case. Thus, this Court is constrained to deny the application for injunctive relief.

WHEREFORE, the petition is **DISMISSED** and the prayer for temporary restraining order and/or writ of preliminary injunction is **DENIED**. The Resolution dated December 8, 2017 and Order dated March 5, 2018 issued by the Office of the Ombudsman in OMB-M-C-16-0112 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 239727. July 24, 2019]

SPS. JULIAN BELVIS, SR., and CECILIA BELVIS, SPS. JULIAN E. BELVIS, JR., and JOCELYN BELVIS, SPS. JULIAN E. BELVIS III and ELSA BELVIS, and JOUAN E. BELVIS, *petitioners, vs.* **SPS. CONRADO V. EROLA and MARILYN EROLA, as represented by MAUREEN[*] FRIAS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; REPUBLIC ACT NO. 7160 (LOCAL GOVERNMENT CODE OF 1991); PRIOR RESORT TO

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[47] *Rollo*, pp. 37-38.

[*] Spelled as "Maurren" in Petition, *rollo*, p. 3.

BARANGAY CONCILIATION PROCEEDINGS IS A PRE-CONDITION FOR THE FILING OF A COMPLAINT IN COURT, HOWEVER, NON-REFERRAL OF A CASE THERETO IS NOT JURISDICTIONAL IN NATURE AND MAY THEREFORE BE DEEMED WAIVED IF NOT RAISED SEASONABLY IN A MOTION TO DISMISS OR IN A RESPONSIVE PLEADING.— Section 412 of R.A. 7160 requires, when applicable, prior resort to barangay conciliation proceedings as a pre-condition for the filing of a complaint in court. x x x In relation thereto, Section 415 of the same law holds that the parties must personally appear in said proceedings, without the assistance of counsel or any representative. Failure to comply with the barangay conciliation proceedings renders the complaint vulnerable to a motion to dismiss for prematurity under Section 1(j), Rule 16 of the Rules of Court. Although mandatory, the Court, in *Lansangan v. Caisip*, explained that "non-referral of a case for barangay conciliation when so required under the law is ***not jurisdictional in nature***, and may therefore be deemed waived if not raised seasonably in a motion to dismiss or in a responsive pleading." In the instant case, it is undisputed that respondents failed to personally appear during the conciliation proceedings as required by Section 415 of R.A. 7160. They were, however, represented by Maureen. Although dismissible under Section 1(j), Rule 16 of the Rules of Court, the Court finds that respondents have substantially complied with the law.

2. CIVIL LAW; PROPERTY; BUILDERS IN GOOD FAITH; IN EXCEPTIONAL CASES, THE COURT HAS APPLIED ARTICLE 448 OF THE CIVIL CODE TO INSTANCES WHERE A BUILDER, PLANTER, OR SOWER INTRODUCES IMPROVEMENTS ON THE TITLED LAND IF WITH THE KNOWLEDGE AND CONSENT OF THE OWNER; OPTIONS AVAILABLE TO THE LAND OWNER UNDER ARTICLE 448, ENUMERATED.— In the case at bar, the CA properly held that petitioners have no right to retain possession of the property under Article 448 as they were aware that their tolerated possession could be terminated at any time. Thus, they could not have built on the subject property in the concept of an owner. x x x While petitioners cannot be deemed to be builders in good faith, it being undisputed that the land in question is titled land in the name of respondents,

the CA and the lower courts overlooked the fact that petitioners constructed improvements on the subject lot with the knowledge and consent of respondents. In exceptional cases, the Court has applied Article 448 to instances where a builder, planter, or sower introduces improvements on titled land if with the knowledge and consent of the owner. In *Department of Education v. Casibang*, the Court held: x x x However, there are cases where Article 448 of the Civil Code was applied beyond the recognized and limited definition of good faith, *e.g.,* cases wherein the builder has constructed improvements on the land of another with the consent of the owner. The Court ruled therein that the structures were built in good faith in those cases that the owners knew and approved of the construction of improvements on the property. x x x While respondents may have merely tolerated petitioners' possession, respondents never denied having knowledge of the fact that petitioners possessed, cultivated and constructed various permanent improvements on the subject lot for over 34 years. In fact, the records are bereft of any evidence to show that respondents ever opposed or objected, for over 34 years, to the improvements introduced by petitioners, despite the fact that petitioner Cecilia and respondent Conrado are siblings and that both parties reside in Pontevedra, Capiz. As such, the Court finds that respondents likewise acted in bad faith under Article 453 of the Civil Code, x x x Pursuant to the aforementioned article, the rights and obligations of the parties shall be the same as though both acted in good faith. Therefore, Article 448 in relation to Articles 546 and 548 of the Civil Code applies. Under Article 448 in relation to Articles 546 and 548, respondents as landowners have the following options: 1) they may appropriate the improvements, after payment of indemnity representing the value of the improvements introduced and the necessary, useful and luxurious expenses defrayed on the subject lots; or 2) they may oblige petitioners to pay the price of the land, if the value is not considerably more than that of the improvements and buildings. Should respondents opt to appropriate the improvements made, however, petitioners may retain the subject lot until reimbursement for the necessary and useful expenses have been made.

APPEARANCES OF COUNSEL

Ely F. Azarraga, Jr. for petitioners.
Dela Pieza-Layo & Tidong Office for respondents.

D E C I S I O N

CAGUIOA, *J.*:

This is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the August 7, 2017 Decision[2] and the April 16, 2018 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 10632. The CA Decision affirmed the November 14, 2016 Decision[4] of the Regional Trial Court (RTC) of Roxas City, Branch 15, in Civil Case No. V-22-15, which, in turn, affirmed the March 31, 2015 Decision[5] of the Municipal Circuit Trial Court (MCTC) of Pontevedra, Capiz in Civil Case No. 489. The MCTC granted the complaint[6] of Spouses Erola (respondents) for unlawful detainer and damages and ordered the Spouses Julian Belvis, Sr., *et al.,* (petitioners) to vacate the premises, to pay reasonable rental in the amount of ₱1,000.00/month from the date of demand, and to pay litigation expenses and attorney's fees in the amount of ₱20,000.00.

The Facts and Antecedent Proceedings

The instant case stems from a complaint for unlawful detainer and damages filed by respondents, as represented by their

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[1] *Rollo*, pp. 3-13.

[2] *Id*. at 176-184. Penned by Associate Justice Germano Francisco D. Legaspi with Associate Justices Pamela Ann Abella Maxino and Gabriel T. Robeniol, concurring.

[3] *Id*. at 199-201. Penned by Associate Justice Gabriel T. Robeniol with Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino, concurring.

[4] *Id.* at 20-31. Penned by Presiding Judge Alma N. Banias-Delfin.

[5] *Id*. at 14-19. Penned by Presiding Judge Henry B. Avelino.

[6] *Id*. at 42-49.

attorney-in-fact, Maureen Frias (Maureen).[7] In their complaint, respondents alleged that they are owners of a 29,772 sq. m.-lot situated in Barangay Malag-it, Pontevedra, Capiz. Lot 597 (subject property) is covered by Transfer Certificate of Title No. T-26108 and a tax declaration, both in the name of respondent Conrado V. Erola (Conrado), who allegedly purchased the same in October of 1978.[8] As the parties were close relatives, *i.e.*, petitioner Cecilia Erola-Bevis (Cecilia) being the sister of respondent Conrado, respondents allegedly allowed petitioners to possess the lot, subject to the condition that they would vacate the same upon demand.[9]

On July 2, 2012, respondents sent petitioners a letter requiring the latter to vacate the property within 30 days from receipt of the letter.[10] Petitioners, however, refused to comply.[11] After unsuccessful barangay conciliation proceedings, respondents filed the instant complaint.[12]

On the other hand, petitioners claimed that in 1979, the subject property was purchased by the late Rosario V. Erola (Rosario), the mother of petitioner Cecilia and respondent Conrado.[13] Conrado, however, allegedly succeeded in registering the property solely in his name.[14] Hence, an implied trust was allegedly created over ½ the undivided hereditary share of petitioner Cecilia.[15] For over 34 years, petitioners alleged that they possessed and cultivated the lot in the concept of an owner,[16]

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[7] *Id.* at 177.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.* at 178.

[14] *Id.*

[15] *Id.* at 177.

[16] *Id.*

believing in good faith that they were co-owners of the subject lot.[17] In the course of their possession, petitioners allegedly introduced various improvements thereon by planting bamboos, nipa palms and coconut trees, and by constructing fishponds.[18] In their Answer,[19] petitioners further claimed that respondents failed to personally appear during the barangay conciliation proceedings and that their representative, Maureen, had no authority to appear on their behalf.[20]

The MCTC Ruling

After pre-trial and trial, the MCTC granted the complaint. The dispositive portion of the Decision reads:

> Over and above defendant's claim, judgment is hereby rendered by this Court in favor of plaintiffs ordering the following:
>
> 1. Defendants to vacate the premises of Lot No. 597, located at Brgy. Malag-it, Pontevedra, Capiz and to peacefully return the same to its owner Conrado V. and Marilyn F. Erola or attorney-in-fact and the payment of nominal rental of One Thousand (₱1,000.00) Pesos every month reckoned from date of demand which is July 2, 2012 until fully returned; and
>
> 2. The payment of Twenty Thousand (₱20,000.00) Pesos as litigation expenses and attorney's fees.[21]

The MCTC held that although petitioners claimed that respondents failed to personally appear during the mandatory barangay conciliation proceedings, the Office of the Punong Barangay nevertheless issued a Certification to File Action[22] in accordance with Section 412 of Republic Act No. (R.A.)

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[17] *Id*. at 57.

[18] *Id*. at 4.

[19] *Id*. at 56-59.

[20] *Id*. at 57.

[21] *Id*. at 19.

[22] *Id.* at 50.

7160.[23] Further, the case was referred to Philippine Mediation Center (PMC) during pre-trial but the parties still failed to amicably settle the same.[24]

On the issue of possession, the MCTC reasoned that petitioners failed to present any evidence to prove that the property was purchased by the late Rosario and that it was registered solely in the name of respondent Conrado in trust for his co-heir and sister, petitioner Cecilia.[25] The MCTC further held that petitioners were not builders in good faith as their possession of the lot was by mere tolerance, which was subject to an implied promise to vacate the same upon demand.[26] Hence, respondents had the better right to possess the subject property.

Thus, petitioners filed an appeal with the RTC of Roxas City.

The RTC Ruling

In the RTC, petitioners reiterated their claims and further alleged that respondent Conrado never interrupted his sister's possession and cultivation, despite knowledge thereof.[27] Hence, they were builders in good faith under Article 448 of the Civil Code.[28]

In denying the appeal, the RTC held that despite the non-appearance of respondents, the parties failed to arrive at a settlement before the Office of the Punong Barangay, the PMC and even before the court during Judicial Dispute Resolution (JDR) proceedings.[29] In fact, the Certification to File Action was issued upon agreement of the parties.[30] Thus, the RTC

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[23] *Id.* at 15.

[24] *Id*. at 14.

[25] *Id*. at 17.

[26] *Id*. at 18.

[27] *Id*. at 23.

[28] *Id*.

[29] *Id*. at 28.

[30] *Id*. at 27.

relaxed the technical rules of procedure and held that a remand of the case would be unnecessarily circuitous.[31]

On the substantive issue, the RTC held that petitioners failed to prove that petitioner Cecilia was a co-owner of the property or that the same was purchased by Rosario. Further, the RTC held that petitioners could not be deemed builders in good faith as they were aware that the property was registered in the name of respondent Conrado.[32] Hence, they knew that there was a flaw in their supposed title when the improvements were made.[33]

Unfazed, petitioners filed a petition for review[34] before the CA.

The CA Ruling

The CA denied the petition and found that respondents substantially complied with R.A. 7160, that their failure to personally appear was a mere irregularity and that the same did not affect the jurisdiction of the court.[35] In either case, the CA held that it was not disputed that the parties failed to reach an amicable settlement of the dispute.[36]

The CA likewise held that the evidence convincingly showed that petitioners' occupation of the subject property was by mere tolerance of respondents.[37] Hence, petitioners had no right to retain possession of the property under Article 448 as they were aware that their tolerated possession could be terminated at any time.[38] The CA thus concluded that the petitioners could not have built improvements on the subject lot in the concept of owner.[39]

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[31] *Id*. at 27-28.

[32] *Id*. at 24.

[33] *Id*.

[34] *Id.* at 32-41.

[35] *Id* at 181.

[36] *Id*.

[37] *Id*. at 182.

[38] *Id*.

[39] *Id*.

Hence, this Petition.

Issues

The issues for the Court's resolution are: 1) whether respondents complied with the mandatory conciliation proceedings under R.A. 7160; and 2) whether petitioners are builders in good faith under Article 448 and thus have a right to retain the subject lot until payment of necessary useful and luxurious expenses.

The Court's Ruling

The Petition is partly meritorious.

Respondents substantially complied with the mandatory barangay conciliation proceedings under R.A. 7160

Section 412 of R.A. 7160 requires, when applicable, prior resort to barangay conciliation proceedings as a pre-condition for the filing of a complaint in court. In *Lumbuan v. Ronquillo*,[40] the Court explained:

> The primordial objective of the *Katarungang Pambarangay* Rules, is to reduce the number of court litigations and prevent the deterioration of the quality of justice which has been brought about by the indiscriminate filing of cases in the courts. To attain this objective, Section 412(a) of Republic Act No. 7160 requires the parties to undergo a conciliation process before the *Lupon* Chairman or the *Pangkat* as a precondition to filing a complaint in court, thus:
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> SECTION 412. *Conciliation*. — (a) *Pre-condition to Filing of Complaint in Court*. — No complaint, petition, action, or proceeding involving any matter within the authority of the lupon shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the *lupon* chairman or the *pangkat*, and that no conciliation or settlement has been reached as certified by the lupon secretary or

[40] 523 Phil. 317 (2006).

pangkat secretary as attested to by the *lupon* or *pangkat* chairman [or unless the settlement has been repudiated by the parties thereto].[41]

In relation thereto, Section 415[42] of the same law holds that the parties must personally appear in said proceedings, without the assistance of counsel or any representative. Failure to comply with the barangay conciliation proceedings renders the complaint vulnerable to a motion to dismiss for prematurity[43] under Section 1(j),[44] Rule 16 of the Rules of Court.

Although mandatory, the Court, in *Lansangan v. Caisip*,[45] explained that "non-referral of a case for barangay conciliation when so required under the law is **not jurisdictional in nature,** and may therefore be deemed waived if not raised seasonably in a motion to dismiss or in a responsive pleading."[46]

In the instant case, it is undisputed that respondents failed to personally appear during the conciliation proceedings as required by Section 415 of R.A. 7160.[47] They were, however, represented by Maureen.[48] Although dismissible under Section 1(j), Rule 16 of the Rules of Court, the Court finds that respondents have substantially complied with the law.[49]

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[41] *Id.* at 323.

[42] LOCAL GOVERNMENT CODE OF 1991. SEC. 415.— *Appearance of Parties in Person.* — In all katarungang pambarangay proceedings, the parties must appear in person without the assistance of counsel or representative, except for minors and incompetents who may be assisted by their next-of-kin who are not lawyers.

[43] *Lansangan v. Caisip*, G.R. No. 212987, August 6, 2018, accessed at < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64494 >.

[44] SECTION 1. *Grounds*. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

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(j) That a condition precedent for filing the claim has not been complied with.

[45] *Supra* note 43.

[46] *Id*., citing *Bañares II v. Balising*, 384 Phil. 567, 583 (2000).

[47] *Rollo*, p. 181.

[48] *Id.* at 180.

[49] See *Lumbuan v. Ronquillo*, *supra* note 40.

The CA, the RTC, and the MCTC unanimously found that petitioners and respondents' representative underwent barangay conciliation proceedings.[50] Unfortunately, they failed to arrive at any amicable settlement.[51] Thereafter, upon agreement of the parties, the Office of the Punong Barangay issued a Certification to File Action.[52] During pre-trial, the parties again underwent mediation before the PMC and JDR before the court. Still, no settlement was reached.[53] Given the foregoing, the Court finds that the purposes of the law, *i.e.*, to provide avenues for parties to amicably settle their disputes and to prevent the "indiscriminate filing of cases in the courts,"[54] have been sufficiently met. Considering that the instant complaint for unlawful detainer, an action governed by the rules of summary procedure, has been pending for 6 years, the Court finds it proper to relax the technical rules of procedure in the interest of speedy and substantial justice.

Having disposed of the procedural issue, the Court shall now proceed with the substantive issues raised.

Petitioners have the right to retain the subject lot under Article 448 as the improvements were built with the knowledge and consent of respondents.

At the onset, it bears reiterating that a petition for review on *certiorari* "shall raise only questions of law which must be distinctly set forth."[55] In *Angeles v. Pascual*,[56] the Court held:

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[50] *Rollo*, p. 181.

[51] *Id.*

[52] *Id.* at 50.

[53] *Id.*

[54] *Lumbuan v. Ronquillo*, note 40, at 323.

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

[56] 673 Phil. 499 (2011).

x x x In appeal by *certiorari*, therefore, only questions of law may be raised, because the Supreme Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial. The resolution of factual issues is the function of lower courts, whose findings thereon are received with respect and are binding on the Supreme Court subject to certain exceptions. A question, to be one of law, must not involve an examination of the probative value of the evidence presented by the litigants or any of them. There is a question of law in a given case when the doubt or difference arises as to what the law is on certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts.

Whether certain items of evidence should be accorded probative value or weight, or should be rejected as feeble or spurious; or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue; whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight — all these are issues of fact. Questions like these are not reviewable by the Supreme Court whose review of cases decided by the CA is confined only to questions of law raised in the petition and therein distinctly set forth.

Nonetheless, the Court has recognized several exceptions to the rule, including: (*a*) when the findings are grounded entirely on speculation, surmises or conjectures; (*b*) when the inference made is manifestly mistaken, absurd or impossible; (c) when there is grave abuse of discretion; (*d*) when the judgment is based on a misapprehension of facts; (*e*) when the findings of facts are conflicting; (*f*) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (*g*) when the findings are contrary to those of the trial court; (*h*) when the findings are conclusions without citation of specific evidence on which they are based; (*i*) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (*j*) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (*k*) when the Court of Appeals manifestly overlooked certain relevant facts not disputed

by the parties, which, if properly considered, would justify a different conclusion. x x x[57]

In their Petition, petitioners again claim that 1) they have been in possession and cultivation of the subject property for more than 34 years in the concept of being a co-owner by succession of the subject property and not by tolerance of respondents[58] and that 2) even assuming they were not co-owners of the subject property, respondent Conrado never interrupted their possession despite knowledge that petitioners were building substantial improvements on said lot.[59] The foregoing claims are undoubtedly questions of fact that the Court does not ordinarily review.

In the instant case, the CA, the RTC and the MCTC consistently found that petitioners failed to prove that the property was purchased by petitioners' mother or that it was only registered in respondent Conrado's name in trust for the hereditary share of petitioner Cecilia. Rather, the lower courts categorically held that respondents merely tolerated petitioners' possession of the subject property and allowed them to stay, provided the latter would vacate the same upon demand. The lower courts likewise held that petitioners could not be deemed builders in good faith as they never constructed the alleged improvements in the concept of an owner under Article 448.

While the findings of the lower courts deserve great weight and are generally binding on the Court, a review of the facts is proper when "the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion."[60]

The Court agrees with the CA and the lower courts that petitioners cannot be deemed builders in good faith. In *Spouses Macasaet v. Spouses Macasaet*,[61] the Court explained –

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[57] *Id*. at 504-506.

[58] *Rollo*, p. 7.

[59] *Id*.

[60] *Angeles v. Pascual*, *supra* note 56, at 506.

[61] 482 Phil. 853 (2004).

x x x [W]hen a person builds in good faith on the land of another, the applicable provision is Article 448, which reads:

"Article 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof."

This Court has ruled that this provision covers only cases in which the builders, sowers or planters believe themselves to be owners of the land or, at least, to have a claim of title thereto. It does not apply when the interest is merely that of a holder, such as a mere tenant, agent or usufructuary. From these pronouncements, good faith is identified by the belief that the land is owned; or that — by some title — one has the right to build, plant, or sow thereon.[62]

In the case at bar, the CA properly held that petitioners have no right to retain possession of the property under Article 448 as they were aware that their tolerated possession could be terminated at any time. Thus, they could not have built on the subject property in the concept of an owner.

Even assuming that petitioner Cecilia was a co-owner of the subject property, Article 448 would still be inapplicable. In *Ignao v. Intermediate Appellate Court*,[63] citing *Spouses del Ocampo v. Abesia*,[64] the Court held that Article 448 may not generally apply to a co-owner who builds, plants, or sows on a property owned in common, "for then he [(the co-owner)] did not build, plant or sow upon land that exclusively belongs to another but of which he is a co-owner. The co-owner is not

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[62] *Id*. at 871-872.

[63] 271 Phil. 17 (1991).

[64] 243 Phil. 532 (1988).

a third person under the circumstances, and the situation is governed by the rules of co-ownership."[65]

The reason for this rule is clear. Under Article 445[66] of the Civil Code rights of accession with respect to immovable property apply to "[w]hatever' is built, planted or sown on the land of another."[67] A co-owner of a parcel of land, however, builds on his own land and not that of another as "[a] co-owner of an undivided parcel of land is an owner of the whole, and over the whole he exercises the right of dominion[;] but he is at the same time the owner of a portion which is truly ABSTRACT."[68] More importantly, co-ownerships are governed by Articles 484-501 of the Civil Code, which already specify the rights and obligations of a co-owner who builds, plants, and sows on a co- owned property and the rules for the reimbursement thereof.

While petitioners cannot be deemed to be builders in good faith, it being undisputed that the land in question is titled land in the name of respondents, the CA and the lower courts overlooked the fact that petitioners constructed improvements on the subject lot with the knowledge and consent of respondents. In exceptional cases,[69] the Court has applied Article 448 to instances where a builder, planter, or sower introduces improvements on titled land if with the knowledge and consent

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[65] *Ignao v. Intermediate Appellate Court*, *supra* note 63, at 23, citing *id.* at 536.

[66] ART. 445. Whatever is built, planted or sown on the land of another and the improvements or repairs made thereon, belong to the owner of the land, subject to the provisions of the following articles.

[67] *Id.*

[68] Edgardo L. Paras, *CIVIL CODE OF THE PHILIPPINES ANNOTATED*, 17th ed., 2013, Vol. II, p. 316.

[69] See *Spouses del Ocampo v. Abesia*, *supra* note 64; *Spouses Macasaet v. Spouses Macasaet*, *supra* note 61; *Communities Cagayan, Inc. v. Sps. Arsenio (deceased) and Angeles Nanol*, 698 Phil. 648 (2012); *Sps. Aquino v. Sps. Aguilar*, 762 Phil. 52 (2015); *Department of Education v. Casibang*, 779 Phil. 472 (2016).

of the owner. In *Department of Education v. Casibang*,[70] the Court held:

> x x x However, there are cases where Article 448 of the Civil Code was applied beyond the recognized and limited definition of good faith, *e.g.,* cases wherein the builder has constructed improvements on the land of another with the consent of the owner. The Court ruled therein that the structures were built in good faith in those cases that the owners knew and approved of the construction of improvements on the property.
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> Despite being a possessor by mere tolerance, the DepEd is considered a builder in good faith, since Cepeda permitted the construction of building and improvements to conduct classes on his property. Hence, Article 448 may be applied in the case at bar.[71] (Underscoring supplied)

In the instant case, respondents judicially admitted in their Complaint that "being close relatives of the plaintiffs, [the defendants] sought the permission and consent of the plaintiffs to possess lot 597 as they do not have any property or house to stay''[72] and that "[the] plaintiffs agreed that [the] defendants possess lot 597 but with a condition that in case [the] plaintiffs will be needing the property, [the] defendants will vacate the lot in question upon notice to vacate coming from the plaintiffs."[73] While respondents may have merely tolerated petitioners' possession, respondents never denied having knowledge of the fact that petitioners possessed, cultivated and constructed various permanent improvements on the subject lot for over 34 years.[74] In fact, the records are bereft of any evidence to show that respondents ever opposed or objected, for over 34 years, to the improvements introduced by petitioners,[75] despite the fact that petitioner Cecilia and respondent Conrado are siblings

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[70] *Id*.

[71] *Id*. at 488.

[72] *Rollo,* p. 43.

[73] *Id*.

[74] *Id*. at 223-224.

[75] See *Communities Cagayan, Inc. v. Sps. Arsenio (deceased) and Angeles Nanol*, *supra* note 69, at 663.

and that both parties reside in Pontevedra, Capiz.[76] As such, the Court finds that respondents likewise acted in bad faith under Article 453 of the Civil Code, which provides:

> ART. 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.
>
> It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part. (Underscoring supplied)

Pursuant to the aforementioned article, the rights and obligations of the parties shall be the same as though both acted in good faith. Therefore, Article 448 in relation to Articles 546[77] and 548[78] of the Civil Code applies.

Under Article 448 in relation to Articles 546 and 548, respondents as landowners have the following options: 1) they may appropriate the improvements, after payment of indemnity representing the value of the improvements introduced and the necessary, useful and luxurious expenses defrayed on the subject lots; or 2) they may oblige petitioners to pay the price of the land, if the value is not considerably more than that of the improvements and buildings.[79] Should respondents opt to

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[76] *Rollo*, p. 42.

[77] ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

[78] ART. 548. Expenses for pure luxury or mere pleasure shall be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

[79] See *Department of Education v. Casibang*, *supra* note 69, at 489.

appropriate the improvements made, however, petitioners may retain the subject lot until reimbursement for the necessary and useful expenses have been made.[80]

In view of the foregoing, the Court is therefore constrained to remand the instant case to the MCTC for further proceedings to determine the facts essential to the proper application of Articles 448 in relation to Articles 546 and 548 of the Civil Code.[81]

On a final note, it bears emphasis that this is a case for unlawful detainer. Thus, "[t]he sole issue for resolution x x x is [the] physical or material possession of the property involved, independent of any claim of ownership by any of the parties."[82] The determination of the ownership of the subject lot is merely provisional[83] and is without prejudice to the appropriate action for recovery or quieting of title.

WHEREFORE, the Petition is **GRANTED**. The August 7, 2017 Decision and the April 16, 2018 Resolution of the Court of Appeals in CA- G.R. CEB-SP No. 10632 are **REVERSED**. The instant case is **REMANDED** to the court of origin for a determination of the facts essential to the proper application of Articles 448, 546 and 548 of the Civil Code and thereafter, a determination of which between the parties is entitled to the physical possession of the subject lot.

SO ORDERED.

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

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[80] CIVIL CODE, Art. 546.

[81] *Spouses Macasaet v. Spouses Macasaet*, *supra* note 61, at 874.

[82] *Spouses Esmaquel and Sordevilla v. Coprada*, 653 Phil. 96, 104 (2010).

[83] RULES OF COURT, Rule 70, Sec. 16. *Resolving defense of ownership.* — When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

SECOND DIVISION

[G.R. No. 240254. July 24, 2019]

RODESSA QUITEVIS RODRIGUEZ, *petitioner, vs.* **SINTRON SYSTEMS, INC. and/or JOSELITO CAPAQUE,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; THE EMPLOYEE MUST FIRST ESTABLISH BY SUBSTANTIAL EVIDENCE THE FACT OF HIS DISMISSAL FROM SERVICE BEFORE THE EMPLOYER MUST BEAR THE BURDEN OF PROVING THAT THE DISMISSAL WAS LEGAL.— In illegal dismissal cases, before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. Obviously, if there is no dismissal, then there can be no question as to its legality or illegality. As an allegation is not evidence, it is elementary that a party alleging a critical fact must support his allegation with substantial evidence. Bare allegations of dismissal, when uncorroborated by the evidence on record, cannot be given credence. Moreover, the evidence to prove the fact of dismissal must be clear, positive and convincing. Here, the Labor Arbiter, NLRC and CA unanimously found that Rodriguez failed to discharge her burden of proving, with substantial evidence, her allegation that she was dismissed by SSI, constructively or otherwise. x x x The Court has no reason to disturb such factual findings of the labor tribunals, as affirmed by the CA, being that they are supported by substantial evidence on record. Indeed, it is evident that Rodriguez was not dismissed.

2. ID.; ID.; ID.; ABANDONMENT OF EMPLOYMENT; ELEMENTS; ABANDONMENT OF EMPLOYMENT HAS BEEN RECOGNIZED AS A FORM OF, OR AKIN TO, NEGLECT OF DUTY.— Abandonment of employment is a deliberate and unjustified refusal of an employee to resume his employment, without any intention of returning. While it is not expressly enumerated under Article 297 of the Labor Code as

a just cause for dismissal of an employee, it has been recognized by jurisprudence as a form of, or akin to, neglect of duty. It requires the concurrence of two elements: 1) failure to report for work or absence without valid or justifiable reason; and 2) a clear intention to sever the employer-employee relationship as manifested by some overt acts. The rule is that one who alleges a fact bears the burden of proving it. Here, respondents failed to prove that Rodriguez abandoned her work. To be specific, they failed to prove the second element of abandonment — that she had intent to abandon.

3. ID.; ID.; ID.; IN CASES WHERE NEITHER DISMISSAL NOR ABANDONMENT EXISTS, THE REMEDY IS TO REINSTATE THE EMPLOYEE WITHOUT PAYMENT OF BACKWAGES, BUT REINSTATEMENT AS USED IN SUCH CASES IS MERELY AN AFFIRMATION THAT THE EMPLOYEE MAY RETURN TO WORK AS HE WAS NOT DISMISSED IN THE FIRST PLACE.— Indeed, in cases where the parties failed to prove the presence of either dismissal of the employee or abandonment of his work, the remedy is to reinstate such employee without payment of backwages. There is, however, a need to clarify the import of the term "reinstate" or "reinstatement" in the context of cases where neither dismissal nor abandonment exists. The Court has clarified that "reinstatement," as used in such cases, is merely an affirmation that the employee may return to work as he was not dismissed in the first place. It should not be confused with reinstatement as a relief proceeding from illegal dismissal as provided under Article 279 of the Labor Code x x x. Reinstatement under the x x x provision restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his status quo ante dismissal. In the present case, considering that there has been no dismissal at all, there can be no reinstatement as one cannot be reinstated to a position he is still holding. Instead, the Court merely declares that the employee may go back to his work and the employer must then accept him because the employment relationship between them was never actually severed.

4. ID.; ID.; ID.; DOCTRINE OF STRAINED RELATIONS; APPLIES ONLY WHEN THERE IS AN ORDER FOR REINSTATEMENT THAT IS NO LONGER FEASIBLE.— [A]s there can be no reinstatement in the technical sense of

Article 279, the doctrine of strained relations likewise has no application. This doctrine only arises when there is an order for reinstatement that is no longer feasible. It cannot be invoked by the employer to prevent the employee's return to work nor by the employee to justify payment of separation pay. x x x [T]here having been no abandonment nor dismissal, the employee-employer relationship between the parties subsists. Hence, there is no need for reinstatement.

5. ID.; ID.; ID.; ID.; SEPARATION PAY; GENERALLY NOT AWARDED TO AN EMPLOYEE WHOSE EMPLOYMENT WAS NOT TERMINATED.— [T]here can be no payment of separation pay. Separation pay is generally not awarded to an employee whose employment was not terminated. In *Claudia's Kitchen, Inc. v. Tanguin,* the Court has summed up the instances where such award of separation pay is warranted x x x. In the present case, Rodriguez prays for the payment of separation pay in lieu of reinstatement, evidently relying on the alleged strained relations between her and SSI. Under the doctrine of strained relations, such payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On the one hand it liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust. However, x x x the doctrine presupposes that the employee was dismissed. This factor is clearly absent in Rodriguez's case.

6. ID.; ID.; ID.; ID.; SHOULD NOT BE USED RECKLESSLY OR LOOSELY APPLIED, NOR BE BASED ON IMPRESSION ALONE.— [T]he doctrine of strained relations cannot be applied indiscriminately since every labor dispute almost invariably results in "strained relations;" otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of their disagreement. That is human nature. Strained relations must be demonstrated as a fact. The doctrine should not be used recklessly or loosely applied, nor be based on impression alone. In the present case, there is no compelling evidence to support the conclusion that the parties' relationship has gone so sour so as to render reinstatement impracticable. The CA, which was the only tribunal here to have declared the presence of strained relations, failed

to discuss its basis in supporting this conclusion. Instead, in a brief and sweeping statement, it just merely declared the existence of strained relations x x x.

7. ID.; ID.; ID.; BACKWAGES; PAYMENT OF FULL BACKWAGES IS GRANTED TO AN UNJUSTLY DISMISSED EMPLOYEE FOR HIM TO RECOVER FROM THE EMPLOYER THAT WHICH HE HAD LOST BY WAY OF WAGES AS A RESULT OF HIS DISMISSAL.— As regards the prayer for payment of backwages, the same must likewise be denied because there was no dismissal. Article 279 provides for the payment of full backwages, among others, **to unjustly dismissed employees.** The grant of backwages allows the employee to recover from the employer that which he had lost by way of wages **as a result of his dismissal.** Moreover, the Court has held that where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer. Each party must bear his own loss.

APPEARANCES OF COUNSEL

Mary Jemelle L. Obispo-Aguilar for petitioner.
Jose P. Calinao for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated February 26, 2018 (Assailed Decision) and Resolution[3] dated June 22, 2018 (Assailed Resolution) of the Court of Appeals (CA) Special Fifteenth Division and Former Special Fifteenth

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[1] *Rollo*, pp. 10-39.

[2] *Id*. at 43-53. Penned by Associate Justice Ramon Paul L. Hernando (now a member of the Court) with Associate Justices Marlene B. Gonzales-Sison and Rafael Antonio M. Santos concurring.

[3] *Id*. at 68-69.

Division, respectively, in consolidated cases docketed as CA-G.R. SP Nos. 145853 and 145922.

Facts

Petitioner Rodessa Rodriguez (Rodriguez) was hired by respondent Sintron Systems, Inc. (SSI) as Sales Coordinator on July 4, 2001.[4] Her duties included the following: 1) communicating with sales engineers, customers and event organizers; 2) preparing invoices and delivery receipts for delivery schedules; and 3) arranging goods in the stockroom upon the instructions of SSI's president, respondent Joselito Capaque (Capaque).[5]

The conflict between the parties arose when SSI received an invitation letter for a factory visit with training from its supplier in Texas, USA scheduled on October 22-24, 2013.[6] The parties had different versions of the events succeeding this.

Version of Rodriguez:

According to Rodriguez, she attended the training in the USA without any condition imposed upon her attendance.[7] However, when she returned for work on November 7, 2013, SSI asked her to sign a training agreement which required her to remain with SSI for three years, otherwise, she was to pay a penalty of ₱275,500.00.[8] She refused to sign the agreement, arguing that she should have been informed of the same prior to her departure for the training.[9]

Thereafter, in a meeting held on November 18, 2013, Capaque humiliated Rodriguez and shouted at her vindictive words such

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[4] *Id.* at 44.

[5] *Id*.

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

[7] *Id.* at 45.

[8] *Id.*

[9] *Id*.

as "*mayabang*" and "*mahadera*."[10] Rodriguez then went on absences from November 19 to 20, for which she filed requests for leave.[11] When she reported back to work on November 21, 2013, she was surprised to learn that Capaque sent emails to clients stating that Rodriguez had abandoned her job and accused her of intentionally hurting the reputation of SSI to the latter's clients.[12] The following day, Capaque sent Rodriguez an email stating that he did not receive any request for leave and that her absence was "a ground of abandonment of work."[13] Embarrassed, Rodriguez filed for leave to be absent from November 22 to 29, 2013 and from December 2, 2013 to January 2, 2014.[14]

While on leave, on November 19, 2013,[15] Rodriguez filed the present complaint for constructive illegal dismissal, non-payment of Service Incentive Leave (SIL) pay, separation pay, damages and attorney's fees.[16] Rodriguez alleges that she was forced to go on absences in order to avoid the abusive words of Capaque.[17]

On December 20, 2013, Rodriguez went to SSI's office to obtain her half-month salary and 13th month pay.[18] Therein, Capaque verbally informed her that she was dismissed from employment.[19] Moreover, her co-workers forcibly removed the contents of her bag and confiscated documents she intended to use as evidence in her complaint.[20] Only when she contacted

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[10] *Id.*

[11] *Id*. at 91.

[12] *Id*. at 45.

[13] *Id*. at 108.

[14] *Id.* at 109.

[15] *Id*. at 115.

[16] *Id*. at 21.

[17] *Id*. at 30.

[18] *Id*. at 21.

[19] *Id*.

[20] *Id*.

an officer from the Department of Labor and Employment (DOLE), who then talked to Capaque, was she given a check representing her half-month salary and 13th month pay.[21] Thereafter, she reported the incident to the Philippine National Police – Criminal Investigation and Detection Group (PNP – CIDG) in Camp Crame, Quezon City.[22]

Version of SSI:

According to SSI, Rodriguez was never maltreated, verbally or otherwise, and she failed to adduce proof thereof. In contrast, SSI offered in evidence affidavits of employees present in the November 18, 2013 meeting, who all claimed that there was no shouting that took place.[23] In truth, it was Rodriguez who was tardy, inefficient[24] and disrespectful to clients. She failed to respond to emails of clients, forcing Capaque to personally send replies.[25] Due to these events and the decline in sales performances, SSI reorganized the Sales Department and hired an executive assistant (EA) and sales manager.[26] When Rodriguez reported back to work on November 21, 2013, SSI required her to give the newly appointed EA copies of sales documents as well as to share the password to her company-provided email account.[27] She was likewise told not to tamper with the files in her assigned computer. Rodriguez failed to follow these instructions.[28] Hence, Rodriguez was not constructively dismissed. She merely preempted what would have been a valid dismissal by going on unapproved absences.[29]

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[21] *Id*.

[22] *Id*.

[23] *Id*. at 118.

[24] *Id*.

[25] *Id*. at 45.

[26] *Id*.

[27] *Id*.

[28] *Id*.

[29] *Id*. at 118.

As to this absenteeism, SSI denied having received requests for leave from Rodriguez for her absence on November 19 and 20, 2013.[30] As to the succeeding leaves from November 22 to 29, 2013 and December 2, 2013 to January 2, 2014, her request therefor was denied by SSI in a letter dated December 2, 2013.[31] Hence, in an SSI memorandum, Rodriguez was warned that her continued absence may be ground for termination and required her to respond to the memorandum, else her termination would be reported to the DOLE.[32]

On January 3, 2014, SSI sent Rodriguez a letter requiring her to turn over her office computer's password and surrender the keys to her assigned drawers and cabinets. The letter also stated that the 2013 records of sales and other transactions could not be found.[33] When Rodriguez took no action, SSI had her office computer unlocked by an Information Technology (IT) expert.[34] It was then that SSI discovered that the contents of Rodriguez's company-provided email account had been deleted.[35] In a letter dated June 3, 2014, SSI informed Rodriguez that the act of deleting information and files from her company-issued computer and the removal of company documents constitute serious misconduct, willful disobedience to a lawful order and dishonesty or breach of trust which are just causes for dismissal under the Labor Code.[36]

Ruling of the Labor Arbiter

In a Decision[37] dated October 7, 2015, the Labor Arbiter dismissed Rodriguez's complaint for lack of merit. According

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[30] *Id*. at 45.

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

[32] *Id*. at 46.

[33] *Id.*

[34] *Id.*

[35] *Id*.

[36] *Id*.

[37] *Id*. at 104-124; penned by Labor Arbiter Lilia S. Savari.

to the Labor Arbiter, Rodriguez failed to prove by substantial evidence the unbearable working environment which supposedly forced her to go on several absences. Hence, there was no constructive dismissal. Instead, it appeared that Rodriguez simply did not want to report to the newly appointed EA.[38]

Moreover, Rodriguez's prolonged absences without turning in vital information and deleting the files from her company-issued computer and email account, causing injury to clients and SSI, constituted gross negligence which would have been a valid ground for her termination. However, SSI did not have any opportunity to dismiss her due to her continued absences.[39]

Rodriguez appealed to the National Labor Relations Commission (NLRC).

Ruling of the NLRC

In a Decision[40] dated December 29, 2015, the NLRC affirmed the Labor Arbiter's Decision with the modification that Rodriguez was held to be entitled to SIL pay. According to the NLRC, the Labor Arbiter's findings that SSI did not dismiss Rodriguez is supported by substantial evidence on record. Hence, Rodriguez is not entitled to her claim for separation pay and backwages.[41] However, the NLRC noted that the Labor Arbiter failed to dispose of Rodriguez's claim for SIL pay. On this issue, the NLRC ruled that SSI failed to controvert the allegation that Rodriguez's SIL pay remained unpaid.[42] The NLRC disposed of the case, thus:

WHEREFORE, the instant Appeal by the respondents-appellants is PARTLY GRANTED. The assailed Decision dated (*sic*) is hereby

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[38] *Id.* at 121.

[39] *Id.* at 122.

[40] *Id.* at 89-103; penned by Commissioner Cecilio Alejandro C. Villanueva with Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr. concurring.

[41] *Id.* at 99-101.

[42] *Id.* at 101-102.

AFFIRMED with modification in that respondent-appellee SINTRON SYSTEMS, INC. is hereby ordered to pay complainant-appellant Rodessa Q. Rodriguez her service incentive leave in the amount of ₱98,181.81.

SO ORDERED.[43]

Both Rodriguez and SSI filed Motions for Reconsideration, but the same were denied in the NLRC Resolution dated March 31, 2016.[44] Thereafter, both parties filed petitions for *certiorari* with the CA which were therein consolidated.

Ruling of the CA

In the Assailed Decision, the CA denied both parties' petitions and affirmed the NLRC's Decision. The CA agreed with the labor tribunals as to the lack of substantial evidence presented that Rodriguez was constructively dismissed.[45] As to the question of whether Rodriguez's actions constituted abandonment of work, the CA struck down this allegation of SSI and ruled that Rodriguez did not have any intention to sever her employer-employee relationship with SSI.[46] The CA concluded that since there was neither dismissal nor abandonment, the remedy would have been reinstatement without payment of backwages.[47] However, the CA noted that the relationship between the parties is already strained. Hence, reinstatement may no longer be ordered.[48] In the end, the CA made the parties bear their own losses.[49] As regards the award of SIL, the CA affirmed the same. In sum, the CA disposed the case, thus:

WHEREFORE, both petitions are **DENIED**. The assailed Decision dated December 29, 2015 and Resolution dated March 31, 2016 are hereby **AFFIRMED**.

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[43] *Id*. at 102.

[44] *Id*. at 84-87.

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

[46] *Id*. at 51.

[47] *Id.*

[48] *Id*. at 52.

[49] *Id*.

SO ORDERED.[50]

Both parties filed motions for reconsideration which were both denied in the Assailed Resolution. Rodriguez then filed the present petition.

In assailing the findings of the CA, Rodriguez avers that: 1) SSI committed overt and positive acts of dismissal, including Capaque's emails to clients and his declaration that she had abandoned her work;[51] 2) assuming SSI had valid grounds to dismiss her, SSI nevertheless did so without due process of law;[52] 3) she was constructively dismissed as she was forced to go on numerous absences because of the abusive treatment from Capaque and SSI;[53] 4) she did not abandon her work as she clearly had no intention to sever her employment with SSI.[54] She prays for the Court to find her as having been constructively and illegally dismissed and to order the payment of separation pay, backwages, SIL, attorney's fees and damages.[55]

In their Comment, respondents allege that: 1) Rodriguez failed to substantiate her allegations to support a finding of illegal constructive dismissal;[56] 2) nevertheless, the records of the case show that the relationship between the parties are so strained that reinstatement is no longer feasible.[57] Both Rodriguez[58] and respondents[59] made assertions showing the damaged relations between them;[60] and 3) since reinstatement is no longer possible

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[50] *Id.* at 53.

[51] *Id*. at 24.

[52] *Id*. at 24-27.

[53] *Id*. at 30-32.

[54] *Id*. at 32.

[55] *Id*. at 39.

[56] *Id.* at 295-296.

[57] *Id*. at 301.

[58] *Id*. at 295-296.

[59] *Id.* at 296-298.

[60] *Id*. at 298.

due to the strained relationship between the parties, each of them must bear their own loss. On this note, respondents claim that Rodriguez should not be awarded separation pay in lieu of reinstatement as in fact, it is more acceptable that she be reinstated and proceed with administrative investigation to determine her culpability for gross misconduct, gross negligence and loss of trust and confidence than to pay her separation pay for her misdeeds.[61]

Issues

1) Whether the CA erred in finding that there was neither illegal dismissal nor abandonment; and

2) If so, whether the CA committed reversible error in finding that reinstatement of Rodriguez is no longer feasible, hence, the parties must just bear their own losses.

Ruling of the Court

The petition must be denied.

Rodriguez's petition raises both questions of fact and law, with the core question being one of fact — how was her employment relationship with SSI severed? Put differently, Rodriguez asks the question, was she illegally dismissed?

In a Rule 45 petition of Rule 65 labor case decisions of the CA, the Court cannot address questions of facts, except in the course of determining whether the CA erred in ruling that the NLRC did or did not commit grave abuse of discretion in its assailed decision.[62] This is because first, the Court is not a trier of facts as it generally resolves only questions of law, and, second, the NLRC's decision was final and executory and can be reviewed by the CA only when the NLRC committed grave abuse of discretion amounting to a lack or excess of jurisdiction.[63]

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[61] *Id.* at 303.

[62] See *Brown Madonna Press, Inc. v. Casas*, 759 Phil. 479, 491 (2015); *Nightowl Watchman & Security Agency, Inc. v. Lumahan,* 771 Phil. 391, 403 (2015).

[63] *Brown Madonna Press, Inc. v. Casas*, *supra* note 62.

Hence, in the present case, the question to ask is not really whether Rodriguez was dismissed. Rather, it is whether the CA correctly ruled that the NLRC did not gravely abuse its discretion and affirming the latter's finding that Rodriguez was not dismissed.

The CA was correct in affirming the NLRC's ruling that Rodriguez was not dismissed.

In illegal dismissal cases, before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service.[64] Obviously, if there is no dismissal, then there can be no question as to its legality or illegality.[65] As an allegation is not evidence, it is elementary that a party alleging a critical fact must support his allegation with substantial evidence. Bare allegations of dismissal, when uncorroborated by the evidence on record, cannot be given credence.[66] Moreover, the evidence to prove the fact of dismissal must be clear, positive and convincing.[67]

Here, the Labor Arbiter, NLRC and CA unanimously found that Rodriguez failed to discharge her burden of proving, with substantial evidence, her allegation that she was dismissed by SSI, constructively or otherwise. As the CA put it:

> Moreover, Rodriguez's claim that she was constructively dismissed by SSI lacks factual and legal basis. There was no evidence to prove that indeed Capaque shouted invectives at Rodriguez during the November 18, 2013 meeting. Also, her allegation that the root cause of Capaque's mistreatment towards her was because of her refusal to sign an agreement to work for SSI for a period of three years or pay

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[64] *Philippine Rural Reconstruction Movement v. Pulgar*, 637 Phil. 244, 256 (2010).

[65] *Ledesma, Jr. v. NLRC-Second Division*, 562 Phil. 939, 951 (2007).

[66] See *Philippine Rural Reconstruction Movement v. Pulgar*, *supra* note 64.

[67] *Tri-C General Services v. Matuto*, 770 Phil. 251, 262 (2015).

a penalty of PhP 275,000.00 in lieu of the training she participated in, remains an allegation as even the complaint she filed before the PNP-CIDG, Camp Crame, Quezon City did not mention of any invectives allegedly uttered by Capaque to humiliate and insult her. She merely narrated that she was allegedly held by SSI and its employees for an hour and a half on December 20, 2013 when she went to SSI's office to demand the payment of her half month salary for November 2013 and 13th month pay.[68]

The Court has no reason to disturb such factual findings of the labor tribunals, as affirmed by the CA, being that they are supported by substantial evidence on record. Indeed, it is evident that Rodriguez was not dismissed. As the Labor Arbiter likewise found, it appears that she stopped reporting to work and successively filed applications for leave of absence (which were not approved) because she did not want to report to the newly appointed EA.[69]

The Court shall not likewise reverse the credence given by the labor tribunals and CA on SSI's version of events. Indeed, despite the mishaps of Rodriguez as substantially proven by SSI, SSI did not have the chance to actually terminate her employment because of her continued absences.[70] Instead, she was *warned*, in an electronic mail (email) sent to her by Capaque, that her unauthorized absences may be regarded as abandonment of work — a just cause for dismissal.[71] When she was on absences without approved leaves and failed to comply with SSI's orders to turn over vital company documents and information, SSI merely informed her, through the letter dated June 3, 2014, that her acts constituted serious misconduct, willful disobedience of a lawful order and dishonesty.[72]

Rodriguez is not guilty of abandonment of work

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[68] *Rollo*, p. 50.

[69] *Id.* at 121.

[70] *Id.* at 122.

[71] *Id.* at 49.

[72] *Id.* at 118.

Abandonment of employment is a deliberate and unjustified refusal of an employee to resume his employment, without any intention of returning.[73] While it is not expressly enumerated under Article 297[74] of the Labor Code as a just cause for dismissal of an employee, it has been recognized by jurisprudence as a form of, or akin to, neglect of duty.[75] It requires the concurrence of two elements: 1) failure to report for work or absence without valid or justifiable reason; and 2) a clear intention to sever the employer-employee relationship as manifested by some overt acts.[76]

The rule is that one who alleges a fact bears the burden of proving it.[77] Here, respondents failed to prove that Rodriguez abandoned her work. To be specific, they failed to prove the second element of abandonment — that she had intent to abandon. The Court quotes with affirmation the following findings of the CA:

SSI has the burden of proof to show a deliberate and unjustified refusal of the employee to resume her employment without any intention

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[73] See *Reyes v. Global Beer Below Zero, Inc.,* G.R. No. 222816, October 4, 2017, 842 SCRA 183, 203.

[74] *Termination by Employer*. – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
(e) Other causes analogous to the foregoing.

[75] *Demex Rattancraft, Inc. v. Leron*, G.R. No. 204288, November 8, 2017, 844 SCRA 461, 470.

[76] See *Samarca v. ARC-Men Industries, Inc.*, 459 Phil. 506, 515 (2003).

[77] *Cosue v. Ferritz Integrated Development Corporation*, 814 Phil. 77, 87 (2017).

of returning. It is therefore incumbent upon SSI to determine Rodriguez's interest or non-interest in the continuance of her employment. This, SSI failed to do so. In fact, Rodriguez wrote in the attached exchange of e-mail that she was surprised that Capaque said to SSI's clients that she abandoned her work. Also, the continued filing of applications for leave of absence by Rodriguez even without awaiting SSI's approval indicate that she did not intend to leave her work in SSI for good.[78]

In conclusion, The Court affirms the findings of the CA that Rodriguez was neither dismissed nor had abandoned her work

Reinstatement, separation pay and doctrine of strained relations in cases where there is neither dismissal nor abandonment.

Rodriguez prays for separation pay instead of reinstatement, "considering that reinstatement is already out of the question due to records of harassment and detention endured by the petitioner in the hands of private respondent and other co-employees."[79] Respondents, for their part, allege that Rodriguez would have been dismissed had administrative proceedings been conducted because of "the presence of substantial evidence to hold her accountable for gross misconduct, gross negligence, and loss of trust and confidence.[80] Respondents categorically submit that reinstatement is no longer feasible because the parties' relationship has gone strained.[81]

The CA, after finding that there was neither dismissal nor abandonment, ruled that the remedy of the parties should be reinstatement without backwages.[82] However, the CA concluded that such reinstatement is no longer possible due to strained relations between the parties. Hence, the parties must bear their

[78] *Rollo*, p. 51.

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

[80] *Id*. at 298.

[81] *Id*. at 301.

[82] *Id*. at 51.

own losses.[83] In letting the parties be and bear the economic losses of their respective actions because of strained relations between them, the CA effectively refused to order neither reinstatement nor separation pay in lieu thereof.

The Court cannot agree with the CA as regards the remedy it has afforded the parties.

Indeed, in cases where the parties failed to prove the presence of either dismissal of the employee or abandonment of his work, the remedy is to reinstate such employee without payment of backwages.[84] There is, however, a need to clarify the import of the term "reinstate" or "reinstatement" in the context of cases where neither dismissal nor abandonment exists. The Court has clarified that "reinstatement," as used in such cases, is merely an affirmation that the employee may return to work as he was not dismissed in the first place.[85] It should not be confused with reinstatement as a relief proceeding from illegal dismissal as provided under Article 279 of the Labor Code, to wit:

> Art. 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. (Emphasis and underscoring supplied)

Reinstatement under the aforequoted provision restores the employee who was unjustly dismissed to the position from which

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[83] *Id*. at 51-52.

[84] See *Cosue v. Ferritz Integrated Development Corporation*, *supra* note 77 at 90; *HSY Marketing, Ltd., Co. v. Villastique*, 793 Phil. 560, 570 (2016); *Exodus International Construction Corporation v. Biscocho*, 659 Phil. 142, 159 (2011); *Leonardo v. NLRC*, 389 Phil. 118, 128 (2000).

[85] *HSY Marketing, Ltd., Co. v. Villastique*, *id*. at 571; *Jordan v. Grandeur Security & Services, Inc.,* 736 Phil. 676, 692 (2014).

he was removed, that is, to his status quo ante dismissal.[86] In the present case, considering that there has been no dismissal at all, there can be no reinstatement as one cannot be reinstated to a position he is still holding.[87] Instead, the Court merely declares that the employee may go back to his work and the employer must then accept him because the employment relationship between them was never actually severed.

Moreover, as there can be no reinstatement in the technical sense of Article 279, the doctrine of strained relations likewise has no application.[88] This doctrine only arises when there is an order for reinstatement that is no longer feasible.[89] It cannot be invoked by the employer to prevent the employee's return to work nor by the employee to justify payment of separation pay. As discussed, there having been no abandonment nor dismissal, the employee-employer relationship between the parties subsists. Hence, there is no need for reinstatement.

Hence, too, there can be no payment of separation pay. Separation pay is generally not awarded to an employee whose employment was not terminated. In *Claudia's Kitchen, Inc. v. Tanguin*,[90] the Court has summed up the instances where such award of separation pay is warranted:

In sum, separation pay is only awarded to a dismissed employee in the following instances: 1) in case of closure of establishment under Article 298 [formerly Article 283] of the Labor Code; 2) in case of termination due to disease or sickness under Article 299 [formerly Article 284] of the Labor Code; 3) as a measure of social justice in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his

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[86] *Verdadero v. Barney Autolines Group of Companies*, 693 Phil. 646, 659 (2012).

[87] See *id*. at 660.

[88] *HSY Marketing, Ltd., Co. v. Villastique*, *supra* note 84 at 571.

[89] *Verdadero v. Barney Autolines Group of Companies*, *supra* note 86 at 660.

[90] 811 Phil. 784 (2017).

moral character; 4) where the dismissed employee's position is no longer available; 5) when the continued relationship between the employer and the employee is no longer viable due to the strained relations between them or 6) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved. In all of these cases, the grant of separation pay presupposes that the employee to whom it was given was dismissed from employment, whether legally or illegally. **In fine, as a general rule, separation pay in lieu of reinstatement could not be awarded to an employee whose employment was not terminated by his employer**.[91] (Emphasis and underscoring supplied)

In the present case, Rodriguez prays for the payment of separation pay in lieu of reinstatement, evidently relying on the alleged strained relations between her and SSI.[92] Under the doctrine of strained relations, such payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable.[93] On the one hand it liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[94] However, as discussed, the doctrine presupposes that the employee was dismissed. This factor is clearly absent in Rodriguez's case.

Besides, the doctrine of strained relations cannot be applied indiscriminately since every labor dispute almost invariably results in "strained relations;" otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of their disagreement. That is human nature.[95] Strained relations must be demonstrated as a fact. The

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[91] *Id.* at 799.

[92] *Rollo*, pp. 38-39.

[93] *Claudia's Kitchen v. Tanguin*, *supra* note 90 at 800.

[94] *Id.*

[95] *Capili v. NLRC*, 337 Phil. 210, 216 (1997).

doctrine should not be used recklessly or loosely applied, nor be based on impression alone.[96]

In the present case, there is no compelling evidence to support the conclusion that the parties' relationship has gone so sour so as to render reinstatement impracticable. The CA, which was the only tribunal here to have declared the presence of strained relations, failed to discuss its basis in supporting this conclusion. Instead, in a brief and sweeping statement, it just merely declared the existence of strained relations, to wit:

> Under these circumstances, when taken together, the lack of evidence of illegal dismissal and the lack of intent on the part of Rodriguez to abandon her work, the remedy is reinstatement but without backwages. However, considering that reinstatement is no longer applicable due to the strained relationship between the parties, each party must bear his or her own loss, thus placing them on equal footing.[97]

As regards the prayer for payment of backwages, the same must likewise be denied because there was no dismissal. Article 279 provides for the payment of full backwages, among others, **to unjustly dismissed employees.** The grant of backwages allows the employee to recover from the employer that which he had lost by way of wages **as a result of his dismissal**.[98] Moreover, the Court has held that where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer. Each party must bear his own loss.[99]

In sum, the Court affirms the factual findings of the lower tribunals that Rodriguez failed to substantiate her claim that she was dismissed by SSI, constructively or otherwise. SSI likewise failed to prove by substantial evidence that Rodriguez

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[96] *Claudia's Kitchen v. Tanguin, supra* note 90 at 800.

[97] *Rollo*, pp. 51-52.

[98] *Verdadero v. Barney Autolines Group of Companies*, *supra* note 86.

[99] *Exodus International Construction Corporation v. Biscocho*, *supra* note 84 at 160, citing *Leonardo v. NLRC*, *supra* note 84 at 128.

had abandoned her work. Moreover, the doctrine of strained relations does not apply in the present case and may not excuse the parties from resuming their employment relationship or justify the award of separation pay. This being the case, SSI must be ordered to reinstate Rodriguez to her former position without payment of backwages. If Rodriguez voluntarily chooses not to return to work, she must then be considered as having resigned from employment.[100] This is, however, without prejudice to the parties willingly continuing with their former contract of employment or entering into a new one.

WHEREFORE, premises considered, the petition is **DENIED**. The Assailed Decision dated February 26, 2018 and Assailed Resolution dated June 22, 2018 of the Court of Appeals in CA-G.R. SP Nos. 145853 and 145922 are **PARTIALLY AFFIRMED**. Respondents are **ORDERED TO REINSTATE** petitioner Rodessa Quitevis Rodriguez to her former position without payment of backwages, in accordance with this Decision.

SO ORDERED.

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

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[100] See similar ruling in *HSY Marketing, Ltd., Co. v. Villastique*, *supra* note 84 at 572; see also *Verdadero v. Barney Autolines Group of Companies*, *supra* note 86 at 660.

THIRD DIVISION

[G.R. No. 240475. July 24, 2019]

JONATHAN DE GUZMAN *y* AGUILAR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; IMPERATIVE TO SUSTAIN A CONVICTION IN CRIMINAL CASES, AND WHILE PROOF BEYOND REASONABLE DOUBT DOES NOT DEMAND ABSOLUTE, IMPECCABLE, AND INFALLIBLE CERTAINTY, IT STILL REQUIRES MORAL CERTAINTY.— Proof beyond reasonable doubt is imperative to sustain a conviction in criminal cases x x x [, pursuant to] Rule 133, Section 2 of the Revised Rules on Evidence x x x. This requisite quantum of proof is borne by the constitutional imperative of due process. It is also in keeping with the presumption of innocence of an accused until the contrary is proved. While proof beyond reasonable doubt does not demand absolute, impeccable, and infallible certainty, it still requires moral certainty. x x x Proof beyond reasonable doubt imposes upon the prosecution the burden of proving an accused's guilt through the strength of its own evidence. The prosecution cannot merely capitalize on the defense's supposed weaknesses. "[U]nless it discharges [its] burden[,] the accused need not even offer evidence in his [or her] behalf, and he [or she] would be entitled to an acquittal."

2. CRIMINAL LAW; REPUBLIC ACT NO. 10591 (THE COMPREHENSIVE FIREARMS AND AMMUNITION REGULATION ACT); ILLEGAL POSSESSION OF FIREARMS; ELEMENTS.— To sustain convictions for illegal possession of firearms, the prosecution must show two (2) essential elements: (1) that the firearm subject of the offense exists; and (2) that the accused who possessed or owned that firearm had no corresponding license for it.

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; MORAL CERTAINTY; NOT DULY ESTABLISHED WHEN THE PROSECUTION RELIES ON THE SINGLE TESTIMONY OF A WITNESS WHO IS FAULTED WITH A VENDETTA AND ILLEGAL ACTIVITIES COMMITTED AGAINST THE ACCUSED; CASE AT BAR.— The Regional Trial Court's reasoning and the Court of Appeals' sustaining it place far too much faith in the lone prosecution witness' flimsy, self-serving posturing. They come from a misplaced emphasis on the defense's supposed weakness and, ultimately, fail to appreciate what proof beyond reasonable doubt demands. Proving its version of events beyond reasonable doubt made it necessary for the prosecution to present evidence that not only trumped that of the defense, but even addressed all the glaring loopholes in its own claims. It was, therefore, inadequate for it to have relied on the single testimony of the police officer whose credibility had been put into question not only with respect to the veracity and accuracy of his version of events leading to petitioner's arrest, but even with respect to a supposed prior vendetta against petitioner, and an attempt to extort from him. It was the prosecution's duty to show that its version of events deserves credence, the inadequacies of SPO1 Estera notwithstanding. It abandoned the chance to discharge this duty when it declined to present other witnesses to buttress the claims of its single, grossly flawed witness. This is not to say that petitioner's own allegations against SPO1 Estera are all true. Still, the requisite of moral certainty demanded that petitioner's reservations against SPO1 Estera be addressed. In what amounted to a contest between two (2) vastly different accounts, the standard of proof beyond reasonable doubt could not have been met by the prosecution by wagering its case on no one but SPO1 Estera. x x x [T]he defense noted inconsistencies in the prosecution's version of events. x x x [T]hese inconsistencies are not mere trivial minutiae. The dates of the supposed criminal incidents and of petitioner's ensuing arrest are matters contained in the Information, and are matters that concern no less than an accused's constitutional right to be informed of the charges against him or her. A proper record of police operations would have helped establish the occurrences upon which petitioner's being taken into custody were predicated. The entire narrative upon which the prosecution rests its case

has been compromised by its reliance on a solitary witness whose credibility is itself compromised and by imagined weaknesses in the defense. The added inconsistencies noted by the defense only further weaken the prosecution's position and instill greater doubt on petitioner's guilt. x x x Here, the trial court gave extraordinary weight to the bare assertion of a police officer, who was presented as the only witness to an alleged crime that he himself claimed to have been discovered because of a public disturbance. It trivialized the defense's version of events, despite being more logical. This, coupled with an assertion of the motives of the lone prosecution witness—extortion and getting even after losing a bet—should have been enough to give pause especially because of the fundamental guarantee for every accused to be presumed innocent.

APPEARANCES OF COUNSEL

Ferancullo Evora Askali Law Firm for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

Proof beyond reasonable doubt demands moral certainty. The prosecution's reliance on nothing more than the lone testimony of a witness, who is faulted with a vendetta and illegal activities allegedly committed against the accused, hardly establishes moral certainty.

This Court resolves a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the Court of Appeals' March 21, 2018 Decision[2] and July 5, 2018

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[1] *Rollo*, pp. 8-28.

[2] *Id*. at 33-46. The Decision was penned by Associate Justice Ramon R. Garcia, and concurred in by Associate Justices Pedro B. Corales and Germano Francisco D. Legaspi of the Special Thirteenth Division, Court of Appeals, Manila.

Resolution[3] in CA-G.R. CR No. 40017 be reversed and set aside, and that a new Decision be rendered acquitting Jonathan De Guzman *y* Aguilar (De Guzman) of the charge of illegal possession of a firearm.

In its assailed Decision, the Court of Appeals affirmed with modification the March 1, 2017 Decision[4] of the Regional Trial Court, Branch 114, Pasay City convicting De Guzman. It subsequently denied his Motion for Reconsideration in its assailed July 5, 2018 Resolution.

In an Information, De Guzman was charged with illegal possession of a firearm, or of violating Republic Act No. 10591, otherwise known as the Comprehensive Firearms and Ammunition Regulation Act.[5] The Information read:

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[3] *Id*. at 30-31. The Resolution was penned by Associate Justice Ramon R. Garcia, and concurred in by Associate Justices Pedro B. Corales and Germano Francisco D. Legaspi of the Former Special Thirteenth Division, Court of Appeals, Manila.

[4] *Id*. at 47-51. The Decision was penned by Judge Edwin B. Ramizo.

[5] Republic Act No. 10591 (2013), Sec. 28 provides:

SECTION 28. Unlawful Acquisition, or Possession of Firearms and Ammunition. — The unlawful acquisition, possession of firearms and ammunition shall be penalized as follows:

(a) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a small arm;

(b) The penalty of *reclusion temporal* to *reclusion perpetua* shall be imposed if three (3) or more small arms or Class-A light weapons are unlawfully acquired or possessed by any person;

(c) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess a Class-A light weapon;

(d) The penalty of *reclusion perpetua* shall be imposed upon any person who shall unlawfully acquire or possess a Class-B light weapon;

(e) The penalty of one (1) degree higher than that provided in paragraphs (a) to (c) in this section shall be imposed upon any person who shall unlawfully possess any firearm under any or combination of the following conditions:

(1) Loaded with ammunition or inserted with a loaded magazine;

That on or about the 22nd day of October 2014, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to possess, did then and there willfully, unlawfully and feloniously have in his possession, custody and control One (1) Smith and Wesson Caliber .38 Revolver (Marked "JAD-1") loaded with Four live [ammunition] (Marked "JAM-2" to ["]JAM-5") (*sic*) without the necessary license and/or authority to possess the same.

Contrary to law.[6] (Citation omitted)

(2) Fitted or mounted with laser or any gadget used to guide the shooter to hit the target such as thermal weapon sight (TWS) and the like;
(3) Fitted or mounted with sniper scopes, firearm muffler or firearm silencer;
(4) Accompanied with an extra barrel; and
(5) Converted to be capable of firing full automatic bursts.

(f) The penalty of *prision mayor* in its minimum period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a small arm;
(g) The penalty of *prision mayor* in its minimum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a small arm or Class-A light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a small arm, the former violation shall be absorbed by the latter;
(h) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a Class-A light weapon;
(i) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a Class-A light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a Class-A light weapon, the former violation shall be absorbed by the latter;
(j) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a Class-B light weapon; and
(k) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a Class-B light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a Class-B light weapon, the former violation shall be absorbed by the latter.

[6] *Rollo*, p. 34.

On arraignment, De Guzman pleaded not guilty to the crime charged. Trial followed.[7]

The prosecution presented its lone witness, Senior Police Officer 1 Ador Estera (SPO1 Estera),[8] who testified as follows:

At around 4:00 p.m. on October 22, 2014, he and nine (9) other police officers were on patrol along Taft Avenue, Libertad, Pasay City. As they were approaching the White House Market, they noticed that people were running away from it. They went to investigate and saw a revolver-wielding man, whom they later identified as De Guzman, shouting as though quarreling with someone. They rushed to De Guzman and introduced themselves as police officers. SPO1 Estera told De Guzman to put down the gun, to which he complied. After picking up the gun, SPO1 Estera asked De Guzman if he had a license to possess it, but De Guzman kept mum. SPO1 Estera then handcuffed and frisked De Guzman, discovering in his possession a sachet of suspected *shabu*.[9]

SPO1 Estera then brought De Guzman to the Pasay City Police Station and referred him to SPO3 Allan V. Valdez (SPO3 Valdez) for further investigation. In SPO3 Valdez's presence, SPO1 Estera marked the revolver with De Guzman's initials, "JAD-1." It was then that the officer found four (4) live ammunition rounds, which he marked as "JAD-2" to "JAD-5." He also marked the sachet of suspected *shabu* as "JAD". SPO1 Estera then turned the seized items over to SPO3 Valdez.[10]

De Guzman was separately charged with illegal possession of a firearm and illegal possession of dangerous drugs. The case for illegal possession of a firearm was raffled to the Regional Trial Court, Branch 114, Pasay City, while the case for illegal

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[7] *Id*.

[8] *Id*.

[9] *Id*. at 34-35. In p. 35 of the *rollo*, the Court of Appeals erroneously referred to Pasay City as Pasig City as the location of the incident.

[10] *Id*. at 35.

possession of dangerous drugs was raffled to the Regional Trial Court, Branch 110, Pasay City.[11]

The defense alleged an entirely different version of events. It emphasized, first, that De Guzman was arrested on October 21, 2014, not on October 22, 2014. It then explained that on October 21, 2014, De Guzman and his sister, Jessica, were dressing chicken to sell at the public market. While they were taking a break at around 4:00 p.m., 10 men in civilian clothes arrived, as though looking for something. Among them, SPO1 Estera, as De Guzman later identified, approached De Guzman and asked him why he had knives. De Guzman replied that he used them for dressing chickens to be sold at the public market. SPO1 Estera then asked De Guzman if they had a mayor's permit, to which De Guzman replied that since they merely operated a small business, they did not obtain such a permit.[12]

Calling De Guzman's reply "*bastos*," an angry SPO1 Estera pulled out his gun and pointed it at him. At gunpoint, De Guzman begged SPO1 Estera for forgiveness. However, SPO1 Estera took De Guzman's knives and ordered him to lie on his stomach. He then frisked De Guzman, but he found nothing. As SPO1 Estera's companions arrived, SPO1 Estera told them that he was arresting De Guzman for having the knives in his possession. De Guzman was then brought to the Pasay City Police Station.[13]

There, SPO1 Estera allegedly demanded ₱300,000.00 from De Guzman lest he be charged with illegal possession of a firearm and illegal possession of dangerous drugs. Unable to produce the amount demanded by SPO1 Estera, De Guzman was formally charged with the threatened offenses.[14]

In testifying for his defense, De Guzman noted that he did not personally know SPO1 Estera. He recalled, however, that about a month prior to his arrest, he won a ₱50,000.00 cockfight

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[11] *Id.* at 47 and 52.

[12] *Id.* at 36 and 49.

[13] *Id.*

[14] *Id.* at 49.

bet against SPO1 Estera. He added that, after collecting his winnings, a "*kristo*" at the cockfighting arena told him that SPO1 Estera had asked for De Guzman's name and where he worked. The *kristo* admitted to telling SPO1 Estera that De Guzman had a stall at the White House Market.[15]

De Guzman also expressed perplexity at his supposedly carrying a .38 caliber revolver. He admitted to owning a firearm, a .45 caliber Amscor, which was covered by Firearm License No. 1222309512278865 and Permit to Carry Control No. JAD-1210006530. He presented as evidence both his Firearm License and Permit to Carry, along with a March 16, 2016 Certification showing that he was indeed a licensed firearm holder. He emphasized that there was no point in him carrying around an unlicensed firearm when he had a licensed gun.[16]

De Guzman's sister, Jessica, testified to corroborate De Guzman's version of events.[17]

In a March 1, 2017 Decision,[18] the Regional Trial Court, Branch 114, Pasay City convicted De Guzman. According to it, the presentation during trial of a .38 caliber revolver and ammunition, coupled with SPO1 Estera's identification of them as the same items obtained from De Guzman, established the elements for conviction of the charge of illegal possession of a firearm. It added that, in any case, De Guzman himself admitted to not having a license to own, possess, or carry a .38 caliber revolver or ammunition.[19]

The dispositive portion of the Regional Trial Court Decision read:

WHEREFORE, in view of the foregoing, the Court finds accused JONATHAN DE GUZMAN y AGUILAR a.k.a. "Jojo" GUILTY

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[15] *Id*. at 37.

[16] *Id*. at 36-37.

[17] *Id*.

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

[19] *Id*. at 50.

beyond reasonable doubt of Violation of R.A. No. 10591 (Comprehensive Firearms and Ammunition Regulation Act) and hereby sentences him to suffer the minimum penalty of imprisonment of eight (8) years and one (1) day to eight (8) years and eight (8) months of *prision mayor* in its medium period.

The firearm and [ammunition] subject matter of this case is declared forfeited in favor of the government and ordered to be turned over to the Firearms and Explosive Unit, [Philippine] National Police, Camp Crame, Quezon City for its appropriate disposition.

SO ORDERED.[20]

Aggrieved, De Guzman appealed before the Court of Appeals. He maintained that the gun and ammunition presented against him were merely "planted evidence."[21]

In its assailed March 21, 2018 Decision,[22] the Court of Appeals affirmed De Guzman's conviction with modification. As with the Regional Trial Court, the Court of Appeals lent credence to the prosecution's evidence, particularly to SPO1 Estera's recollection of events.[23]

The dispositive portion of the assailed Court of Appeals Decision read:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision dated September 2, 2016 (*sic*) of the Regional Trial Court, Branch 13, Laoag City (*sic*) is AFFIRMED with MODIFICATION in that accused-appellant Jonathan De Guzman y Aguilar a.k.a. "Jojo" is sentenced to suffer imprisonment of eight (8) years and one (1) day of *prision mayor*, as minimum, to ten (10) years, eight (8) months, and one (1) day of *prision mayor*, as maximum.

SO ORDERED.[24] (Citation omitted)

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[20] *Id*. at 51.

[21] *Id*. at 39.

[22] *Id*. at 33-46.

[23] *Id*. at 39-45.

[24] *Id*. at 46.

In the interim, the Regional Trial Court, Branch 110, Pasay City rendered a Decision on April 3, 2018,[25] acquitting De Guzman of the charge of illegal possession of dangerous drugs. It reasoned that the subsequent search on De Guzman, which supposedly yielded a sachet of *shabu*, was not founded on a prior lawful arrest for illegal possession of a firearm.[26] It noted that De Guzman was not proven to have carried a firearm—which would have justified his initial arrest—but merely had "knives which he used in his occupation in selling dressed chicken."[27] Without a prior lawful arrest, the trial court ruled that the subsequent frisking that allegedly yielded the sachet of *shabu* was an invalid search. The allegedly seized sachet was, thus, a proverbial "fruit of the poisonous tree"[28] that is inadmissible in evidence. Without proof of the actual narcotics allegedly obtained from De Guzman, his acquittal followed.[29]

Aggrieved by the Court of Appeals' March 21, 2018 Decision convicting him of illegal possession of a firearm, De Guzman filed a Motion for Reconsideration, but the Court of Appeals denied this in its July 5, 2018 Resolution.[30]

Thus, De Guzman filed this Petition.[31]

For this Court's resolution is the issue of whether or not petitioner Jonathan De Guzman *y* Aguilar is guilty beyond reasonable doubt of violating Republic Act No. 10591, or the Comprehensive Firearms and Ammunition Regulation Act.

It was a serious error for the Court of Appeals to affirm petitioner's conviction.

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

[26] *Id*. at 55.

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

[28] *Id*. at 56.

[29] *Id*. at 57.

[30] *Id.* at 30-31.

[31] *Id.* at 8-28.

Proof beyond reasonable doubt is imperative to sustain a conviction in criminal cases. Rule 133, Section 2 of the Revised Rules on Evidence provides:

> SECTION 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

This requisite quantum of proof is borne by the constitutional imperative of due process. It is also in keeping with the presumption of innocence of an accused until the contrary is proved.[32] While proof beyond reasonable doubt does not demand absolute, impeccable, and infallible certainty, it still requires moral certainty.[33] In *People v. Que*:[34]

> Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[35]

Proof beyond reasonable doubt imposes upon the prosecution the burden of proving an accused's guilt through the strength of its own evidence. The prosecution cannot merely capitalize on the defense's supposed weaknesses.[36] "[U]nless it discharges

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[32] *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 499-500 [Per J. Leonen, Third Division] citing *Macayan, Jr. v. People*, 756 Phil. 202, 213-241 (2015) [Per J. Leonen, Second Division]; CONST, Art. III, Sec. 1; CONST, Art. III, Sec. 14(2); *People v. Solayao*, 330 Phil. 811, 819 (1996) [Per J. Romero, Second Division]; and *Boac v. People*, 591 Phil. 508 (2008) [Per J. Velasco, Jr., Second Division].

[33] *Id.*

[34] G.R. No. 212994, January 31, 2018, 853 SCRA 487 [Per J. Leonen, Third Division].

[35] *Id.* at 500 citing *Macayan, Jr. v. People*, 756 Phil. 202, 213-241 (2015) [Per J. Leonen, Second Division]; CONST, Art. III, Sec. 1; CONST, Art. III, Sec. 14(2); *People v. Solayao*, 330 Phil. 811, 819 (1996) [Per J. Romero, Second Division]; and *Boac v. People*, 591 Phil. 508 (2008) [Per J. Velasco, Jr., Second Division].

[36] *Id.*

[its] burden[,] the accused need not even offer evidence in his [or her] behalf, and he [or she] would be entitled to an acquittal."[37]

To sustain convictions for illegal possession of firearms, the prosecution must show two (2) essential elements: (1) that the firearm subject of the offense exists; and (2) that the accused who possessed or owned that firearm had no corresponding license for it.[38]

The Regional Trial Court was quick to conclude that the first element was shown merely when the prosecution presented a .38 caliber revolver and ammunition, and had them identified by SPO1 Estera. Offering nothing but a singular paragraph as reasoning, it stated:

> In the instant case, the prosecution proved beyond reasonable doubt the elements of the crime. The subject firearm and ammunitions recovered from the accused were duly presented to the Court and identified by SPO1 Estera, the one who arrested the accused. The same were marked as Exhibits "C" and "D" to "D-4".[39]

On the second element, the Regional Trial Court noted not only a Certification issued by the Firearms and Explosive Division of the Philippine National Police belying petitioner's license or registration to possess, but also petitioner's own declaration that he had no such license to possess a .38 caliber revolver:

> [A]ccused even admitted in his testimony that he has no license to own, possess or carry any caliber .38 or ammunition which are the subject matter of this case.[40]

For its part, when it sustained petitioner's conviction, the Court of Appeals faulted the defense for failing to present

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[37] *People v. Ganguso*, 320 Phil. 324, 335 (1995) [Per *J.* Davide, Jr., First Division].

[38] *Evangelista v. People*, 634 Phil. 207, 227 (2010) [Per *J.* Del Castillo, Second Division] citing *People v. Eling*, 576 Phil. 665 (2008) [Per *J.* Chico-Nazario, Third Division].

[39] *Rollo*, p. 50.

[40] *Id.*

witnesses other than petitioner's sister to support its version of events, pointing out that her testimony was bound to be biased.[41] In the same vein, it condoned the prosecution's reliance on nothing more than SPO1 Estera's testimony, explaining that corroborating testimonies may be dispensed with since there was no basis to suspect that SPO1 Estera "twisted the truth, or that his . . . observation was inaccurate."[42]

The Regional Trial Court's reasoning and the Court of Appeals' sustaining it place far too much faith in the lone prosecution witness' flimsy, self-serving posturing. They come from a misplaced emphasis on the defense's supposed weakness and, ultimately, fail to appreciate what proof beyond reasonable doubt demands.

Proving its version of events beyond reasonable doubt made it necessary for the prosecution to present evidence that not only trumped that of the defense, but even addressed all the glaring loopholes in its own claims. It was, therefore, inadequate for it to have relied on the single testimony of the police officer whose credibility had been put into question not only with respect to the veracity and accuracy of his version of events leading to petitioner's arrest, but even with respect to a supposed prior vendetta against petitioner, and an attempt to extort from him. It was the prosecution's duty to show that its version of events deserves credence, the inadequacies of SPO1 Estera notwithstanding. It abandoned the chance to discharge this duty when it declined to present other witnesses to buttress the claims of its single, grossly flawed witness.

This is not to say that petitioner's own allegations against SPO1 Estera are all true. Still, the requisite of moral certainty demanded that petitioner's reservations against SPO1 Estera be addressed. In what amounted to a contest between two (2) vastly different accounts, the standard of proof beyond reasonable doubt could not have been met by the prosecution by wagering its case on no one but SPO1 Estera.

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

[42] *Id.* at 43.

The prosecution could have presented the testimonies of disinterested witnesses to prove and expound on the different facets of its narrative: (1) the fleeing of people from the market; (2) petitioner's going amok or apparent quarrel with another person; (3) the police officer's pacification of petitioner; (4) petitioner's delivery to the police station; and (5) the turnover to SPO3 Valdez and SPO3 Valdez's own investigation. It never bothered to do so. Instead, it saw it fit to rely on no one but the same person who is also alleged to have extorted from an unwitting seller at a public market.

It is not for this Court or any other tribunal to impose technique on or to suggest strategy to a party. However, as we are now compelled to grapple with the sufficiency of a lone witness' testimony and ascertain if the lower courts were right to take that, and that alone, as enough to convict, our attention is drawn to how the prosecution's evidence is egregiously wanting. The prosecution's manifest deficiencies themselves cannot help but draw attention to how the prosecution could have proceeded more judiciously and how the lower courts have themselves been so credulous.

It was also an error for the Regional Trial Court to say that petitioner's own declaration that he had no license to own, possess, or carry a .38 caliber revolver was enough to establish the second element for conviction. This is not merely an inordinate reliance on what is wrongly seen as the defense's weakness, but an outright distortion of what petitioner meant when he said he had no such license.

Petitioner declared that he had a .45 caliber Amscor, covered by Firearm License No. 1222309512278865 and Permit to Carry Control No. JAD-1210006530. He presented both of these documents in court, along with a March 16, 2016 Certification stating that he was indeed a licensed firearm holder. Petitioner's point was that he had no reason to brandish an unlicensed firearm when he already had a perfectly legitimate, licensed gun.[43] He

[43] *Id.*

was making his own positive assertion, not an admission against interest.

Rather than take petitioner's declaration for what it was, the Regional Trial Court saw it fit to read more into what he said and conclude that he had incriminated himself. It did not only make much of a supposed weakness in the defense; rather, it itself conjured that weakness.

Moreover, the defense noted inconsistencies in the prosecution's version of events. Most notably, it emphasized that petitioner was not even arrested on October 22, 2014, as the Information had alleged.[44] There was also no record on the police station's blotter attesting to the conduct of the patrol that supposedly preceded the arrest.[45] Yet, the Court of Appeals dismissed these inconsistencies as minor details.[46]

However, these inconsistencies are not mere trivial minutiae. The dates of the supposed criminal incidents and of petitioner's ensuing arrest are matters contained in the Information, and are matters that concern no less than an accused's constitutional right to be informed of the charges against him or her. A proper record of police operations would have helped establish the occurrences upon which petitioner's being taken into custody were predicated.

The entire narrative upon which the prosecution rests its case has been compromised by its reliance on a solitary witness whose credibility is itself compromised and by imagined weaknesses in the defense. The added inconsistencies noted by the defense only further weaken the prosecution's position and instill greater doubt on petitioner's guilt.

The Court of Appeals has been grossly inattentive to crucial details. In the opening paragraph of its assailed Decision, while identifying the object of the appeal before it, it referred to a

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[44] *Id*. at 36.

[45] *Id*. at 42.

[46] *Id*.

Decision of the "Pasig City"[47] Regional Trial Court, rather than of the *Pasay City* Regional Trial Court. Moreover, in the dispositive portion—the most crucial, controlling portion of its assailed Decision—rather than properly refer to the March 1, 2017 Decision of the Regional Trial Court, Branch 114, Pasay City, the Court of Appeals instead referred to "[t]he Decision dated September 2, 2016 (*sic*) of the Regional Trial Court, Branch 13, Laoag City[.] (*sic*)."[48]

These demonstrated the Court of Appeals' heedlessness, with the latter error being made in no less than the most critical portion of its assailed Decision. While these are not per se badges of an accused's innocence, or points that engender reasonable doubt, they nevertheless raise serious questions on whether the Court of Appeals reviewed the entirety of petitioner's case with the requisite care and diligence consistent with an inquiry on proof beyond reasonable doubt. Such conspicuous gaffes make the Court of Appeals' conclusions on petitioner's guilt even more tenuous.

It is worth emphasizing that petitioner has since been acquitted of the charge of illegal possession of dangerous drugs that had been brought against him along with the charge of illegal possession of a firearm. The case against petitioner for violating the Comprehensive Dangerous Drugs Act was premised on exactly the same facts that are the basis of this case.

In ruling on petitioner's guilt for violating the Comprehensive Dangerous Drugs Act, the Regional Trial Court, Branch 110, Pasay City declared that petitioner's prior arrest had no basis as he "was not in fact carrying a firearm, but knives which he used in his occupation in selling dressed chicken."[49]

In the case before the Regional Trial Court, Branch 110, the facts as asserted by the prosecution were found to be so unreliable as to warrant petitioner's acquittal. While not binding in this

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[47] *Id*. at 33.

[48] *Id*. at 46.

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

case, the trial court's finding still raises the commonsensical question of why the same factual allegations should be the basis of conviction here. The contemporaneous findings of another trial court, which inquired into essentially the same set of facts as those involved here, militate against petitioner's guilt. They highlight the reasonable doubt that the prosecution failed to surmount.

Here, the trial court gave extraordinary weight to the bare assertion of a police officer, who was presented as the only witness to an alleged crime that he himself claimed to have been discovered because of a public disturbance. It trivialized the defense's version of events, despite being more logical. This, coupled with an assertion of the motives of the lone prosecution witness—extortion and getting even after losing a bet—should have been enough to give pause especially because of the fundamental guarantee for every accused to be presumed innocent.

Our courts should be zealously sensitive in protecting our citizens' rights even as we participate in prosecuting and reducing criminality. We should always imagine the predicament of the accused, especially those with very little financial resources who may be faced with an intimidating atmosphere when charged with a crime they did not commit. In such situations, it will only be their word against that of a police officer. They will then only have the conscientiousness and the practical wisdom of a judge to rely upon. That will spell the difference between serving time for a crime they did not commit and witnessing justice being done.

This Court also takes notice and expresses its concern about the haphazard way that the Court of Appeals handled the appeal. Judicial efficiency and speedy justice should not be obtained at the expense of inaccuracy and injustice.

The Court of Appeals should be as concerned with deciding accurately so that this Court will not be flooded with cases where mistakes could have easily been spotted by an appellate court. After all, that is why the Court of Appeals exists: to be

the initial forum for appeal so that only policy-determining and transcendental cases reach the highest court.

WHEREFORE, the Petition is **GRANTED**. The March 21, 2018 Decision and July 5, 2018 Resolution of the Court of Appeals in CA-G.R. CR No. 40017 are **REVERSED and SET ASIDE**. Petitioner Jonathan De Guzman *y* Aguilar is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 240621. July 24, 2019]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN (SEVENTH DIVISION) and JAIME KISON RECIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FOR THE REMEDY OF *CERTIORARI* TO BE GRANTED, PETITIONERS MUST SATISFACTORILY SHOW THAT THE COURT OR QUASI-JUDICIAL AUTHORITY GRAVELY ABUSED THE DISCRETION CONFERRED UPON IT; GRAVE ABUSE OF DISCRETION, WHEN PRESENT.— [T]o 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 to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. There is grave abuse of discretion when: (1) an act is done contrary to the Constitution, the law, or jurisprudence; or (2) it is executed whimsically, capriciously, or arbitrarily out of malice, ill-will, or personal bias.

2. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; AMENDMENT OF INFORMATION; PROCEDURE.— The proper procedure for the amendment of an Information is governed by Section 14, Rule 110 of the Revised Rules of Criminal Procedure x x x. Under this provision, the prosecution is given the right to amend the information, regardless of its nature, so long as the amendment is sought before the accused enters his plea, subject to the qualification under the second paragraph thereof. However, once the accused enters his plea during arraignment, the prosecution is already prohibited from seeking a substantial amendment, particularly citing those that may prejudice the rights of the accused. One of these rights is the constitutional right of the accused to be informed of the nature and cause of accusation against him, a right which is given life during the arraignment of the accused. The theory in law is that since the accused officially begins to prepare his defense against the accusation on the basis of the recitals in the information read to him during arraignment, then the prosecution must establish its case on the basis of the same information.

3. ID.; ID.; ID.; ID.; ID.; SUBSTANTIAL AMENDMENT AND FORMAL AMENDMENT, DISTINGUISHED.— While there is no precise definition under the Revised Rules on Criminal Procedure of what should be deemed as a substantial amendment, case law instructs that substantial amendments consist of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. On the other hand, formal amendments which can be made at any time do not alter the nature of the crime, affect the essence of the offense, surprise, or divest the accused of an opportunity to meet the new accusation. Verily, they are amendments which merely state with additional precision something which is already contained in the original

Information, and which, therefore, adds nothing essential for conviction of the crime charged. Hence, the following are considered as mere formal amendments: *(a)* new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (*b*) an amendment which does not charge another offense different or distinct from that charged in the original one; (*c*) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; and (*d)* an amendment which does not adversely affect any substantial right of the accused, such as his right to invoke prescription.

4. ID.; ID.; ID.; ID.; ID.; FORMAL AMENDMENT; AN AMENDMENT WHICH ADDS NOTHING ESSENTIAL FOR THE ACCUSED'S CONVICTION OF THE CRIME CHARGED OR SEEKS TO AMEND THE INFORMATION'S RECITAL OF FACTS CONSTITUTING THE OFFENSE CHARGED, IS ONE OF FORM; CASE AT BAR.— In this case, the Court finds that the amendment of the Information sought by the prosecution is one of form, and not of substance, as it adds nothing essential for Recio' s conviction of the crime charged nor does it seek to amend the Information's recital of facts constituting the offense charged. On the contrary, the amendment simply sought to correct the total amount of the disbursement vouchers reflected in the Information to make it conform to the evidence on record. Moreover, a plain reading of the amount stated, *i.e.,* **₱7,843,54.33** cannot but convince the Court that the same is erroneous and mathematically inexistent, and therefore, cannot be proved. A basic rule in writing figures consisting of four (4) or more digits requires the use of commas to separate thousands; thus, to place the first comma, count three (3) spaces or digits to the left of the decimal point, and continue doing so after every three digits. Here, the comma was written immediately to the left of the second digit from the decimal point. In other words, the Information obviously bears a typographical error as the error in the amount is apparent to the naked eye. x x x [T]he Court has observed that the Information charged Recio and his co-accused with violation of Section 3 (e) of RA 3019 when, through their actions characterized by manifest partiality, Variance was given unwarranted benefit, advantage, and preference. x x x Hence, regardless of which is

the correct amount - either the clearly erroneous ₱7,843,54.33 which is stated in the Information, or ₱7,842,941.60, the amount which the Ombudsman sought to reflect in the Information via an amendment thereof - the same is not a necessary element for a violation of Section 3 (e) of RA 3019 under the second mode. The Court also notes that Recio was well aware of the amount of ₱7,842,94.60 even during the early stages of the preliminary investigation as he was given a copy of the complaint and the disbursement vouchers indicating said amount. x x x Clearly, Recio will not be prejudiced by the amendment sought considering that the same did not involve a completely new fact or matter previously unknown to him and thereby deprive him of an opportunity to meet the same, nor require him to undergo a material change or modification in his defense. Finally, the Court observes that copies of the complaint, disbursement vouchers, and the January 21, 2016 Joint Resolution of the Ombudsman were part of the records of this case before the SB**,** and that the prosecution had specifically argued that the amendment sought would only reflect the total amount stated in the aforementioned documents.

APPEARANCES OF COUNSEL

Office of the Special Prosecutor for petitioner.
Galang Jorvina Muñez & Associates Law Offices for private respondent Recio.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for *certiorari*[1] are the Resolutions dated April 27, 2018[2] and May 22, 2018[3] of the Sandiganbayan (SB) in SB-17-CRM-0063 which denied the Motion for Leave

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[1] *Rollo*, pp. 129-151.

[2] See Minute Resolution signed by Associate Justices Ma. Theresa Dolores C. Gomez-Estoesta (Chairperson), Zaldy V. Trespeses, and Bayani H. Jacinto; *id*. at 160-161.

[3] See Minute Resolution; *id*. at 163-164.

of Court to File Amended Information[4] and the subsequent Motion for Reconsideration[5] filed by petitioner People of the Philippines, through the Office of the Ombudsman (Ombudsman), on the ground that the amendment sought is substantial.

The Facts

The instant case stemmed from an Information[6] filed before the SB charging respondent Jaime Kison Recio (Recio) with violation of Section 3 (e) of Republic Act No. (RA) 3019,[7] entitled the "Anti-Graft and Corrupt Practices Act." Verily, the Information accuses Recio, then Executive Director III of the National Parks and Development Committee (NPDC), of entering into numerous security service contracts with Variance Protective and Security Agency (Variance) from 2002 to 2010 absent the required public bidding, thereby giving the latter unwarranted benefits. The accusatory portion thereof reads:

> That on 30 January 2004 to 8 October 2004, or thereabout, in the City of Manila, and within this Honorable Court's jurisdiction, public officer JAIME K. RECIO, Executive Director III, National Parks Development Committee, City of Manila, while in the performance of his official functions, acting with evident bad faith, manifest partiality, or gross inexcusable negligence, did then and there wilfully, unlawfully and criminally give unwarranted benefits, preference, or advantage to Variance Protective and Security Agency (Variance), a private corporation, when he signed Disbursement Vouchers facilitating the release of payment to Variance for security services purportedly rendered from 1 January 2004 to 15 September 2004, amounting to **₱7,843,54.33**, knowing fully well that Variance was not legally entitled thereto considering that the public bidding and other procurement activities required under Republic Act No. 9184 and its implementing rules and regulations were not conducted prior to the procurement of Variance's security service for said period, to the damage and prejudice of the government.

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[4] Dated March 27, 2018. *Id*. at 166-170.

[5] Dated May 3, 2018. *Id*. at 171-176.

[6] See *id*. at 136.

[7] Approved on August 17, 1960.

CONTRARY TO LAW.[8]

During trial and before the prosecution presented its last witness on April 4, 2018, it filed a Motion for Leave of Court to File Amended Information[9] dated March 27, 2018 seeking to amend the amount stated in the Information from **₱7,843,54.33** to **₱7,842,941.60**, which is the amount reflected in the disbursement vouchers.[10] In opposition thereto, Recio argued that the amendment is not merely formal but substantial, which would be prejudicial to his right to be informed of the charges against him.[11]

The SB Ruling

In a Resolution[12] dated April 27, 2018, the SB denied the prosecution's motion for lack of merit.[13] It ruled that the mistake in the amount of the *alleged undue injury* stated in the Information is too substantial to have been left uncorrected for more than a year, during which time evidence to prove the allegations in the Information had already been presented. Moreover, it held that the alleged difference could not be ruled out as a mere typographical error, especially considering that the amount involved was only alleged numerically and had not been spelled out in words where the difference would have been readily apparent.[14]

Dissatisfied, the Ombudsman moved for reconsideration,[15] which the SB denied in a Resolution[16] dated May 22, 2018. Hence, this petition.[17]

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[8] See *rollo*, p. 136.

[9] *Id*. at 166-170.

[10] See *id*. at 137. See also *id*. at 166.

[11] See *id*. at 160.

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

[13] *Id*. at 161.

[14] See *id*. at 160-161.

[15] See motion for reconsideration dated May 3, 2018; *id*. at 171-176.

[16] *Id*. at 163-164.

[17] *Id*. at 129-151.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the SB gravely abused its discretion in denying the Ombudsman's Motion for Leave of Court to File Amended Information.

The Court's Ruling

The petition is meritorious.

At the outset, it must be stressed that 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 to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[18] There is grave abuse of discretion when: (1) an act is done contrary to the Constitution, the law, or jurisprudence; or (2) it is executed whimsically, capriciously, or arbitrarily out of malice, ill-will, or personal bias.[19]

Guided by the foregoing considerations and as will be shown below, the SB gravely abused its discretion when it denied the Ombudsman's Motion for Leave of Court to File Amended Information despite the absence of any resulting prejudice to the rights of the accused.

The proper procedure for the amendment of an Information is governed by Section 14, Rule 110 of the Revised Rules of Criminal Procedure, *viz*.:

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[18] *Gadia v. Sykes Asia, Inc.*, 752 Phil. 413, 420-421 (2015), citing *Omni Hauling Services, Inc. v. Bon*, 742 Phil. 335, 342 (2014).

[19] See *Information Technology Foundation of the Philippines v. Commission on Elections*, 464 Phil. 173, 190 (2004); citations omitted.

Section 14. *Amendment or Substitution*. - **A complaint or information may be amended**, in form or in substance, without leave of court, at any time before the accused enters his plea. **After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.**

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party. (Emphases and underscoring supplied)

Under this provision, the prosecution is given the right to amend the information, regardless of its nature, so long as the amendment is sought before the accused enters his plea, subject to the qualification under the second paragraph thereof. However, once the accused enters his plea during arraignment, the prosecution is already prohibited from seeking a substantial amendment, particularly citing those that may prejudice the rights of the accused. One of these rights is the constitutional right of the accused to be informed of the nature and cause of accusation against him, a right which is given life during the arraignment of the accused. The theory in law is that since the accused officially begins to prepare his defense against the accusation on the basis of the recitals in the information read to him during arraignment, then the prosecution must establish its case on the basis of the same information.[20]

While there is no precise definition under the Revised Rules on Criminal Procedure of what should be deemed as a substantial amendment, case law instructs that substantial amendments consist of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court.[21] On the other

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[20] See *Mendez v. People*, 736 Phil. 181, 192 (2014); citations omitted.

[21] See *Corpus, Jr. v. Pamular*, G.R. No. 186403, September 5, 2018, citing *Teehankee, Jr. v. Madayag*, 283 Phil. 956, 966 (1992). See also *Mendez v. People*, *id*., citing *Almeda v. Villaluz*, 160 Phil. 750, 757 (1975).

hand, formal amendments which can be made at any time do not alter the nature of the crime, affect the essence of the offense, surprise, or divest the accused of an opportunity to meet the new accusation. Verily, they are amendments which merely state with additional precision something which is already contained in the original Information, and which, therefore, adds nothing essential for conviction of the crime charged.[22] Hence, the following are considered as mere formal amendments: (*a*) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (*b*) an amendment which does not charge another offense different or distinct from that charged in the original one; (*c*) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; and (*d*) an amendment which does not adversely affect any substantial right of the accused, such as his right to invoke prescription.[23]

In this case, the Court finds that the amendment of the Information sought by the prosecution is one of form, and not of substance, as it adds nothing essential for Recio's conviction of the crime charged nor does it seek to amend the Information's recital of facts constituting the offense charged. On the contrary, the amendment simply sought to correct the total amount of the disbursement vouchers[24] reflected in the Information to make it conform to the evidence on record. Moreover, a plain reading of the amount stated, *i.e.*, **₱7,843,54.33** cannot but convince the Court that the same is erroneous and mathematically inexistent, and therefore, cannot be proved. A basic rule in writing figures consisting of four (4) or more digits requires the use of commas to separate thousands; thus, to place the first comma, count three (3) spaces or digits to the left of the

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[22] See *id*.; citations omitted.

[23] See *id*.; citing *Teehankee, Jr. v. Madayag*, *supra* note 21.

[24] See copies of Disbursement Vouchers dated January 30, 2004 to October 8, 2004; *rollo*, pp. 204-230.

decimal point, and continue doing so after every three digits.[25] Here, the comma was written immediately to the left of the second digit from the decimal point. In other words, the Information obviously bears a typographical error as the error in the amount is apparent to the naked eye.

More importantly, the Court has observed that the Information charged Recio and his co-accused with violation of Section 3 (e) of RA 3019 when, through their actions characterized by manifest partiality, Variance was given unwarranted benefit, advantage, and preference. In *Ampil v. Ombudsman*,[26] the Court discussed the modes of committing the aforesaid crime, to wit:

> [I]t should be noted that **there are two ways by which Section 3 (e) of RA 3019 may be violated** - the first, by causing undue injury to any party, including the government, or **the second, by giving any private party any unwarranted benefit, advantage, or preference**. Although neither mode constitutes a distinct offense, an accused may be charged under either mode or both. The use of the disjunctive "or" connotes that the two modes need not be present at the same time. In other words, **the presence of one would suffice for conviction**.
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> x x x **Under the second mode, damage is not required.**[27] (Emphases and underscoring supplied)

Hence, regardless of which is the correct amount — either the clearly erroneous ₱7,843,54.33 which is stated in the Information, or ₱7,842,941.60, the amount which the Ombudsman sought to reflect in the Information via an amendment thereof — the same is not a necessary element for a violation of Section 3 (e) of RA 3019 under the second mode.

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[25] See <https://www.grammarbook.com/numbers/numbers.asp>, <https://grammar.yourdictionary.com/grammar-rules-and-tips/rules-for-writing-numbers.html>, and <https://www.englishgrammar.org/rules-writing-numbers> (visited July 10, 2019). Note that the International System of Units does not recommend the use of commas or periods, and instead recommends the use of space to separate groups of three digits (see <https://www.englishgrammar.org/rules-writing-numbers> [visited July 10, 2019]).

[26] 715 Phil. 733 (2013).

[27] *Id*. at 758-759; citing *Sison v. People*, 628 Phil. 573, 584-585 (2010).

The Court also notes that Recio was well aware of the amount of ₱7,842,941.60 even during the early stages of the preliminary investigation as he was given a copy of the complaint[28] and the disbursement vouchers indicating said amount. Furthermore, the Joint Resolution[29] dated January 21, 2016 of the Ombudsman which resolved to indict Recio of the aforesaid crime clearly enumerates, in tabulated form,[30] the specific amount of, including the period covered by, the disbursement vouchers signed by him, which is sufficient to inform him of the total amount thereof. Clearly, Recio will not be prejudiced by the amendment sought considering that the same did not involve a completely new fact or matter previously unknown to him and thereby deprive him of an opportunity to meet the same, nor require him to undergo a material change or modification in his defense.

Finally, the Court observes that copies of the complaint, disbursement vouchers, and the January 21, 2016 Joint Resolution of the Ombudsman were part of the records of this case before the SB, and that the prosecution had specifically argued that the amendment sought would only reflect the total amount stated in the aforementioned documents. Under these circumstances, the SB should have been more circumspect and compared the amount indicated in the Information with the available documents especially considering the apparent and glaring error in the amount stated in the Information.

All told, the amendment sought by the Ombudsman in this case involves mere matters of form that are allowed under Section 14, Rule 110 of the Revised Rules of Criminal Procedure. Accordingly, the Court finds the SB to have gravely abused its discretion in denying the Motion for Leave of Court to File Amended Information.

WHEREFORE, the petition for *certiorari* is **GRANTED**. The Resolutions dated April 27, 2018 and May 22, 2018 of the Sandiganbayan in SB-17-CRM-0063 are **ANNULLED** and **SET**

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[28] Dated October 7, 2013. *Rollo*, pp. 177-182.

[29] See *id*. at 184-203. Approved by Ombudsman Conchita Carpio Morales.

[30] See *id*. at 194-199.

ASIDE. The prosecution is hereby granted the necessary leave of Court to file the amended Information.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 241834. July 24, 2019]

FERNANDO B. ARAMBULO,[*] *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEAL IN CRIMINAL CASES; HOW ELEVATED TO THE SUPREME COURT. —** As a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court; except when the CA imposed a penalty of *reclusion perpetua* or life imprisonment, in which case, the appeal shall be made by a mere notice of appeal before the CA. [P]etitioner availed of a wrong mode of appeal by filing a petition for review on *certiorari* before the Court, despite having been sentenced to suffer life imprisonment by the CA. Nonetheless, in the interest of substantial justice, the Court will treat the instant petition as an ordinary appeal in order to resolve the substantive issue at hand with finality.

2. **ID.; ID.; ENTIRE CASE OPEN FOR REVIEW. —** [I]n criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision

[*] "Arambullo" in some parts of the *rollo*.

based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and **cite the proper provision of the penal law**.

3. **CRIMINAL LAW; RA 9208 OTHERWISE KNOWN AS THE "ANTI-TRAFFICKING IN PERSONS ACT OF 2003," AS AMENDED BY RA 10364, OTHERWISE KNOWN AS THE "EXPANDED ANTI-TRAFFICKING IN PERSONS ACT OF 2012" (RA 9208); TRAFFICKING IN PERSONS; DEFINED. —** Section 3 (a) of RA 9208 defines the term "Trafficking in Persons" as the "**recruitment**, transportation, transfer or harboring, or receipt of persons **with or without the victim's consent or knowledge**, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the persons, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person **for the purpose of exploitation which includes at a minimum**, the exploitation or the prostitution of others or other forms of sexual exploitation, **forced labor or services**, slavery, servitude or the removal or sale of organs." The same provision further provides that "**[t]he recruitment**, transportation, transfer, harboring or receipt **of a child for the purpose of exploitation shall also be considered as 'trafficking in persons'** even if it does not involve any of the means set forth in the preceding paragraph." The crime becomes qualified when any of the circumstances found under Section 6 of the law is present.

4. **ID.; ID.; QUALIFIED TRAFFICKING IN PERSONS; CONVICTION THEREOF REQUIRES ACCUSED TO HAVE COMMITTED ANY OF THE PUNISHABLE ACTS UNDER THE LAW. —** It must be clarified that Section 3 (a) of RA 9208 merely provides for the general definition of "Trafficking in Persons" as the specific acts punishable under the law are found in Sections 4 and 5 of the same (including Sections 4-A, 4-B, and 4-C if the amendments brought about by RA 10364 are taken into consideration). This is evinced by Section 10 which provides for the penalties and sanctions for committing the enumerated acts therein. Notably, Section 10 (c) of RA 9208 (renumbered as Section 10 [e] under RA 10364)

of the law also provides for penalties for "Qualified Trafficking in Persons" under Section 6. Nonetheless, since Section 6 only provides for circumstances which would qualify the crime of "Human Trafficking," reference should always be made to Sections 4, 4-A, 4-B, 4-C, or 5 of the law. Hence, convictions for "Qualified Trafficking in Persons" shall rest on: (*a*) the commission of any of the acts provided under Sections 4, 4-A, 4-B, 4-C, or 5; and (*b*) the existence of any of the circumstances listed under Section 6. Otherwise stated, one cannot be convicted of "Qualified Trafficking in Persons" if he is not found to have committed any of the punishable acts under the law.

5. ID.; ID.; RA 9208 IN ITS ORIGINAL FORM, SECTION 4 ON ACTS OF TRAFFICKING IN PERSONS; RECRUITING MINORS FOR THE PURPOSE OF COMMITTING A SERIES OF ROBBERIES; VICTIM'S CONSENT, MEANINGLESS. — While petitioner correctly pointed out that he cannot be convicted under Section 4 (k) (4) of RA 9208 as amended by RA 10364 since said provision was only enacted on February 28, 2013, or ***after*** the period stated in the Information when he committed the acts imputed against him, this will not *ipso facto* result in his acquittal, as his acts of recruiting minors for the purpose of committing a series of robberies reasonably fall under Section 4 (a) of RA 9208 in its original form, which reads: Section 4. *Acts of Trafficking in Persons*. - It shall be unlawful for any person, natural or juridical, to commit any of the following acts: (a) **To recruit**, transport, transfer; harbor, provide, or receive **a person by any means**, including those done under the pretext of domestic or overseas employment or training or apprenticeship, **for the purpose of** prostitution, pornography, sexual exploitation, **forced labor**, slavery, **involuntary servitude** or debt bondage; Relatedly, Section 3 (d) of RA 9208 in its original form defines the term "forced labor and slavery" as "***the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion***, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception." x x x Notably, the ultimate facts constitutive of these circumstances were clearly alleged and contained in the Information. In this regard, case law instructs that "[t]he victim's consent is rendered meaningless due to the coercive, abusive, or deceptive means employed by perpetrators of human trafficking. Even without the use of coercive, abusive, or deceptive

means, a minor's consent is not given out of his or her own free will." x x x Hence, petitioner's conviction for Qualified Trafficking in Persons - not under Section 4 (k) (4) of RA 9208 as amended by RA 10364 as erroneously ruled by the CA, but under Section 4 (a) of RA 9208 in its original form in relation to Section 6 (a) and (c) of the same law - must be upheld.

6. ID.; ID.; QUALIFIED TRAFFICKING IN PERSONS; PENALTY AND DAMAGES. — Anent the proper penalty to be imposed, Section 10 (c) of RA 9208 states that persons found guilty of Qualified Trafficking shall suffer the penalty of life imprisonment and a fine of not less than ₱2,000,000.00 but not more than ₱5,000,000.00. Thus, the CA correctly sentenced petitioner to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00. Finally, the Court orders petitioner to pay each of the victims, AAA, BBB, and CCC, the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence. Further, the Court deems it proper to impose on all monetary awards due to the victims legal interest at the rate of six percent (6%) per annum from finality of this Decision until full payment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 22, 2018 and the Resolution[3] dated August 23, 2018 of the Court of Appeals (CA) in CA-G.R. CR

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[1] *Rollo*, pp. 13-31.

[2] *Id*. at 35-48. Penned by Associate Justice Carmelita Salandanan Manahan with Associate Justices Remedios A. Salazar-Fernando and Stephen C. Cruz, concurring.

[3] *Id*. at 50-54.

No. 37921, which affirmed with modification the Decision[4] dated May 26, 2015 of the Regional Trial Court of the City of Calamba, Laguna, Branch 35 (RTC) in Criminal Case No. 19571-12-C, and accordingly, found petitioner Fernando B. Arambulo (petitioner) guilty beyond reasonable doubt of the crime of Qualified Trafficking in Persons, defined and penalized under Section 4 (k) (4) in relation to Section 6 (a) and (c) of Republic Act No. (RA) 9208,[5] otherwise known as the "Anti-Trafficking in Persons Act of 2003," as amended by RA 10364,[6] otherwise known as the "Expanded Anti-Trafficking in Persons Act of 2012."

The Facts

This case stemmed from an Information[7] filed before the RTC charging petitioner with the crime of Qualified Trafficking in Persons, the accusatory portion of which states:

> That in or about September 2011 up to January 12, 2012 in the City of Calamba, Province of Laguna and within the jurisdiction of the Honorable Court, the above-named accused for money, profit and consideration, did then and there willfully, unlawfully and feloniously recruit minors AAA, 13 years old, BBB, 16 years old, CCC, 14 years old, for the purpose of committing robbery, to the damage and prejudice of the aforesaid minors and in violation of the aforementioned law.

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[4] *Id*. at 72-79. Penned by Judge Gregorio M. Velasquez.

[5] Entitled "AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES," approved on May 26, 2003.

[6] Entitled "AN ACT EXPANDING REPUBLIC ACT NO. 9208, ENTITLED 'AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES,'" approved on February 6, 2013.

[7] Not attached to the *rollo*.

CONTRARY TO LAW.[8]

Essentially, the prosecution alleged that petitioner and his minor son, Dominique Dimple Arambulo[9] (Dominique), invited the latter's three (3) schoolmates who were also minors, namely AAA, BBB, and CCC,[10] to their house sometime in 2011. It was then revealed that the purpose of the meeting was to discuss petitioner's plans to commit robberies with the help of AAA, BBB, and CCC. Upon learning about this, CCC expressed his desire to leave but petitioner got angry and punched him; thus, he was forced to join the group. AAA, BBB, and CCC then similarly testified that not only was petitioner the mastermind of the series of robberies they subsequently committed against various people, but he was also the driver of their getaway tricycle.[11]

In his defense, petitioner and Dominique similarly testified that the filing of the instant case was merely an act of retaliation by a certain Lt. Hoseña,[12] one (1) of the alleged victims of the aforesaid robberies, following the dismissal of the theft and obstruction of justice cases filed by the latter against petitioner.[13]

The RTC Ruling

In a Decision[14] dated May 26, 2015, the RTC found petitioner guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of twenty (20) years and one (1)

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[8] *Rollo*, pp. 35-36. See also *id*. at 72.

[9] "Dominic Arambulo" in some parts of the *rollo*.

[10] The identities of the minor victims or any information which could establish or compromise their identities shall be withheld pursuant to Section 7 of RA 9208, as amended by RA 10364. See also *People v. Monsanto*, G.R. No. 241247, March 20, 2019.

[11] See *rollo*, pp. 36-38. See also *id*. at 72-74.

[12] "Lt. Roceña" in some parts of the *rollo*.

[13] *Rollo*, p. 38. See also *id*. at 75.

[14] *Id*. at 72-79.

day, as minimum, to twenty-two (22) years, as maximum, and to pay a fine in the amount of ₱2,000,000.00.[15]

The RTC found that the prosecution, through the consistent, direct, and unequivocal testimonies of AAA, BBB, and CCC, was able to establish that petitioner had indeed recruited them into performing criminal activities, *i.e.*, various robberies. In this regard, the RTC opined that petitioner's aforesaid acts constitute Qualified Trafficking in Persons not only because the victims were minors, but also because it is considered "in large scale" as it involved three (3) or more victims.[16]

Aggrieved, petitioner appealed[17] to the CA. In his brief, petitioner pointed out, *inter alia,* that the crime being imputed to him is defined and penalized under Section 4 (k) of RA 9208, as amended by RA 10364, which was approved on February 6, 2013, published on February 13, 2013, and thus, only took effect on February 28, 2013. Significantly, such provision did not exist in the original version of RA 9208. Hence, since the acts for which he was being made accountable for occurred sometime in or about September 2011 to January 12, 2012, or before the amendatory law took effect, he could not be convicted of the crime charged.[18]

The CA Ruling

In a Decision[19] dated January 22, 2018, the CA affirmed the RTC ruling with modification, finding petitioner guilty beyond reasonable doubt of Qualified Trafficking in Persons as defined and penalized under Section 4 (k) subparagraph 4, in relation to Section 6 (a) and (c), of RA 9208, as amended, and accordingly, sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00, with interest

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[15] *Id*. at 78.

[16] See *id.* at 75-78.

[17] See Brief for the Accused-Appellant dated March 21, 2016; *id*. at 55-71.

[18] See *id*. at 62-65.

[19] *Id*. at 35-48.

at the rate of six percent (6%) per annum from finality of the ruling until fully paid.[20]

Mainly upholding the factual findings of the RTC, the CA held that the prosecution had established the commission of the crime charged, and that he was properly informed of the nature and cause of the accusation against him.[21]

Petitioner moved for reconsideration[22] but the same was denied in a Resolution[23] dated August 23, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld petitioner's conviction for Qualified Trafficking in Persons.

The Court's Ruling

Preliminarily, the Court notes that petitioner elevated the matter before the Court through a petition for review on *certiorari*. As a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court;[24] except when the CA imposed a penalty of *reclusion perpetua* or life imprisonment, in which case, the appeal shall be made by a mere notice of appeal before the CA.[25] Clearly, petitioner availed

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[20] *Id*. at 47.

[21] *Id*. at 39-46.

[22] See motion for reconsideration dated March 9, 2018; *id.* at 98-107.

[23] *Id*. at 50-54.

[24] See Section 3 (e), Rule 122 of the Revised Rules on Criminal Procedure, which reads:

Section 3. *How appeal taken*. —

x x x x x x x x x

(e) Except as provided in the last paragraph of Section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45.

[25] See Section 13 (c), Rule 124 of the Revised Rules on Criminal Procedure, which reads:

of a wrong mode of appeal by filing a petition for review on *certiorari* before the Court, despite having been sentenced to suffer life imprisonment by the CA. Nonetheless, in the interest of substantial justice, the Court will treat the instant petition as an ordinary appeal in order to resolve the substantive issue at hand with finality.[26]

In line with such treatment, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and **cite the proper provision of the penal law**.[27]

Guided by the foregoing considerations and as will be explained hereunder, the Court affirms petitioner's conviction, albeit under a provision of law different from what is stated in the CA ruling.

Section 3 (a) of RA 9208 defines the term "Trafficking in Persons" as the "**recruitment**, transportation, transfer or harboring, or receipt of persons **with or without the victim's consent or knowledge**, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the persons, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person **for the purpose of**

Section 13. *Certification or appeal of case to the Supreme Court*. —

x x x x x x x x x

(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed ot the Supreme Court by notice of appeal filed with the Court of Appeals.

[26] See *Ramos v. People*, 803 Phil. 775, 782-783 (2017).

[27] *Manansala v. People*, 775 Phil. 514, 520 (2015); citations omitted.

exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, **forced labor or services**, slavery, servitude or the removal or sale of organs." The same provision further provides that "**[t]he recruitment**, transportation, transfer, harboring or receipt **of a child for the purpose of exploitation shall also be considered as 'trafficking in persons'** even if it does not involve any of the means set forth in the preceding paragraph."[28] The crime becomes qualified when any of the circumstances found under Section 6 of the law is present.

It must be clarified that Section 3 (a) of RA 9208 merely provides for the general definition of "Trafficking in Persons" as the specific acts punishable under the law are found in Sections 4 and 5 of the same (including Sections 4-A, 4-B, and 4-C if the amendments brought about by RA 10364 are taken into consideration). This is evinced by Section 10 which provides for the penalties and sanctions for committing the enumerated acts therein. Notably, Section 10 (c) of RA 9208 (renumbered as Section 10 [e] under RA 10364) of the law also provides for penalties for "Qualified Trafficking in Persons" under Section 6. Nonetheless, since Section 6 only provides for circumstances which would qualify the crime of "Human Trafficking," reference should always be made to Sections 4, 4-A, 4-B, 4-C, or 5 of the law. Hence, convictions for "Qualified Trafficking in Persons" shall rest on: (*a*) the commission of any of the acts provided under Sections 4, 4-A, 4-B, 4-C, or 5; and (*b*) the existence of any of the circumstances listed under Section 6. Otherwise stated, one cannot be convicted of "Qualified Trafficking in Persons" if he is not found to have committed any of the punishable acts under the law.

In an attempt to absolve himself from criminal liability, petitioner similarly contends in his appellant's brief[29] filed before the CA and in the instant petition[30] that the acts imputed to

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[28] See *People v. XXX*, G.R. No. 235652, July 9, 2018.

[29] See *rollo*, pp. 55-71.

[30] See *id*. at 20-24.

him, *i.e.*, recruiting minors to commit a series of robberies, constitute the crime defined and penalized under Section 4 (k) (4) of RA 9208, as amended by RA 10364. He then posits that since this specific provision was only introduced by the amendatory law in 2013 as the original iteration of Section 4 of RA 9208 did not contain the same, and the acts imputed to petitioner were committed sometime in September 2011 to January 12, 2012 as indicated in the Information against him, it may be said that at the time he committed said acts, there was no specific provision in RA 9208 in its original form which specifically defines and penalizes the said acts as Trafficking in Persons. As such, his conviction must be set aside.

Petitioner's contention is untenable.

While petitioner correctly pointed out that he cannot be convicted under Section 4 (k) (4)[31] of RA 9208 as amended by RA 10364 since said provision was only enacted on February 28, 2013, or ***after*** the period stated in the Information when he committed the acts imputed against him,[32] this will not *ipso facto* result in his acquittal, as his acts of recruiting minors for the purpose of committing a series of robberies reasonably fall under Section 4 (a) of RA 9208 in its original form, which reads:

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[31] Section 4. *Acts of Trafficking in Persons*. – It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

x x x x x x x x x

(k) To recruit, transport, harbor, obtain, transfer, maintain, hire, offer, provide, adopt or receive a child for purposes of exploitation or trading them, including but not limited to, the act of buying and/or selling a child for any consideration or for barter for purposes of exploitation. Trafficking for purposes of exploitation of children shall include:

x x x x x x x x x

(4) The use, procuring or offering of a child for illegal activities or work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals[.]

[32] This is in accordance with the maxim "*lex prospicit, non respicit*" — the law looks forward, not backward — which in legal parlance, means that a new law has a prospective, not a retroactive effect. As applied to the

Section 4. *Acts of Trafficking in Persons*. — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) **To recruit**, transport, transfer; harbor, provide, or receive **a person by any means**, including those done under the pretext of domestic or overseas employment or training or apprenticeship, **for the purpose of** prostitution, pornography, sexual exploitation, **forced labor**, slavery, **involuntary servitude** or debt bondage; (Emphases and underscoring supplied)

Relatedly, Section 3 (d) of RA 9208 in its original form defines the term "forced labor and slavery" as "***the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion***, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception."

In this case, the courts *a quo* correctly found — through the consistent, direct, unequivocal, and thus, credible testimonies of AAA, BBB, and CCC — that the prosecution had clearly established the existence of the elements[33] of violation of Section

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realm of criminal law, penal laws should not have retroactive application, lest they acquire the character of an *ex post facto* law which is proscribed under the Constitution. An exception to this rule, however, is when the law is advantageous to the accused. Obviously, the exception would find no application if an act which was not punishable at the time it was committed becomes punishable under the auspices of a new law. (See *Valeroso v. People*, 570 Phil. 58, 61 [2008].)

[33] For a successful prosecution of Trafficking in Persons, the following elements must be shown: "(1) the *act* of '**recruitment**, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders;' (2) **the *means* used** which include '**threat or use of force, or other forms of coercion**, abduction, fraud, deception, **abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another**;' and (3) the **purpose of trafficking is exploitation which includes** 'exploitation or the prostitution of others or other forms of sexual exploitation, **forced labor or services**, slavery, servitude or the removal or sale of organs."' (*People v. Hirang*, 803 Phil. 277, 289 [2017], citing *People v. Casio*, 749 Phil. 458, 472- 473 [2014].)

4 (a) in relation to Section 6 (a) and (c)[34] of RA 9208 in its original form, as evinced by the following: (*a*) petitioner, through his minor son, Dominique, recruited three (3) other minors AAA, BBB, and CCC; (*b*) based on AAA, BBB, and CCC's testimonies, petitioner was able to do so by taking advantage of their vulnerability as minors, particularly through enticement, violence, and use of force and coercion; and (*c*) petitioner recruited them for the purpose of engaging them to perform illicit work/services, *i.e.*, commit a series of robberies. Notably, the ultimate facts constitutive of these circumstances were clearly alleged and contained in the Information. In this regard, case law instructs that "[t]he victim's consent is rendered meaningless due to the coercive, abusive, or deceptive means employed by perpetrators of human trafficking. Even without the use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will."[35]

In light of the foregoing, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.[36] Hence, petitioner's conviction for Qualified Trafficking in Persons — not under Section 4 (k) (4) of RA

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[34] Section 6. *Qualified Trafficking in Persons.* — The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

x x x x x x x x x

(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group[.]

[35] *People v. Casio*, *supra* note 33, at 475-476.

[36] *Peralta v. People*, G.R. No. 221991, August 30, 2017, 838 SCRA 350, 360, citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

9208 as amended by RA 10364 as erroneously ruled by the CA, but under Section 4 (a) of RA 9208 in its original form in relation to Section 6 (a) and (c) of the same law—must be upheld.

Anent the proper penalty to be imposed, Section 10 (c) of RA 9208 states that persons found guilty of Qualified Trafficking shall suffer the penalty of life imprisonment and a fine of not less than ₱2,000,000.00 but not more than ₱5,000,000.00. Thus, the CA correctly sentenced petitioner to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00.

Finally, the Court orders petitioner to pay each of the victims, AAA, BBB, and CCC, the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence.[37] Further, the Court deems it proper to impose on all monetary awards due to the victims legal interest at the rate of six percent (6%) per annum from finality of this Decision until full payment.[38]

WHEREFORE, the petition is **DENIED**. The Decision dated January 22, 2018 and the Resolution dated August 23, 2018 of the Court of Appeals in CA-G.R. CR No. 37921 are **AFFIRMED with MODIFICATION** in that petitioner Fernando B. Arambulo is hereby found **GUILTY** beyond reasonable doubt of Qualified Trafficking in Persons, defined and penalized under Section 4 (a) in relation to Section 6 (a) and (c) of Republic Act No. 9208. Accordingly, he is sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱2,000,000.00. He is likewise **ORDERED** to pay each of the victims, AAA, BBB, and CCC, the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages, both with legal interest at the rate of six percent (6%) per annum from finality of this Decision until fully paid.

SO ORDERED.

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

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[37] See *People v. XXX*, *supra* note 28.

[38] See *People v. Jugueta*, 783 Phil. 806 (2016).

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

Page

Page

C. OTHERS

D. BOOKS
(Local)

II. FOREIGN AUTHORITIES

B. BOOKS

INDEX

INDEX

in accordance with his or her direct participation in the questionable conduct his or her subordinates may have committed; the provisions of E.O. No. 226 clearly indicate that the law seeks to penalize the failure of superiors to take any disciplinary actions against their subordinates who have committed a crime or irregularity. (Office of the Ombudsman *vs*. P/Supt. Mendoza, G.R. No. 219772, July 17, 2019) p. 104

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Section 3(e) — As to the violation of Sec. 3(e) of R.A. No. 3019, the following are the elements of this crime: (1) that the accused is a public officer discharging administrative, judicial or official functions; (2) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. (Chipoco *vs*. Office of the Ombudsman, G.R. No. 239416, July 24, 2019) p. 747

ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (R.A. NO. 9208, AS AMENDED BY R.A. NO. 10364, OTHERWISE KNOWN AS THE "EXPANDED ANTI-TRAFFICKING IN PERSONS ACT OF 2012")

Trafficking in persons — Convictions for "Qualified Trafficking in Persons" shall rest on: (a) the commission of any of the acts provided under Secs. 4, 4-A, 4-B, 4-C, or 5; and (b) the existence of any of the circumstances listed under Section 6; otherwise stated, one cannot be convicted of "Qualified Trafficking in Persons" if he is not found to have committed any of the punishable acts under the law. (Arambulo *vs*. People, G.R. No. 241834, July 24, 2019) p. 828

— It must be clarified that Sec. 3 (a) of R.A. No. 9208 merely provides for the general definition of "Trafficking in Persons" as the specific acts punishable under the law

are found in Secs. 4 and 5 of the same (including Secs. 4-A, 4-B, and 4-C if the amendments brought about by R.A. No. 10364 are taken into consideration); this is evinced by Section 10 which provides for the penalties and sanctions for committing the enumerated acts therein; notably, Sec. 10 (c) of R.A. No. 9208 (renumbered as Sec. 10 [e] under R.A. No. 10364) of the law also provides for penalties for "Qualified Trafficking in Persons" under Sec. 6; since Sec. 6 only provides for circumstances which would qualify the crime of "Human Trafficking," reference should always be made to Secs. 4, 4-A, 4-B, 4-C, or 5 of the law. (*Id*.)

— Sec. 3 (a) of R.A. No. 9208 defines the term "Trafficking in Persons" as the "recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the persons, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs"; the same provision further provides that "the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph"; the crime becomes qualified when any of the circumstances found under Sec. 6 of the law is present. (*Id*.)

— Section 4. Acts of Trafficking in Persons. – It shall be unlawful for any person, natural or juridical, to commit any of the following acts: (a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for

the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage; relatedly, Sec. 3 (d) of R.A. No. 9208 in its original form defines the term "forced labor and slavery" as "the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception." (*Id*.)

APPEALS

Appeals for criminal cases — As a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on certiorari under Rule 45 of the Rules of Court; except when the CA imposed a penalty of *reclusion perpetua* or life imprisonment, in which case, the appeal shall be made by a mere notice of appeal before the CA. (Arambulo *vs*. People, G.R. No. 241834, July 24, 2019) p. 828

— In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors; the appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law. (*Id*.)

Petition for review on certiorari to the Supreme Court under Rule 45 — In a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court, only questions of law may be raised; the Court not being a trier of facts will not take cognizance of factual issues which require the presentation and appreciation of the parties' evidence. (Rep. of the Phils. [represented by DPWH] *vs*. Sps. Darlucio, G.R. No. 227960, July 24, 2019) p. 609

16, Art. III of the 1987 Philippine Constitution; this constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial; any party to a case may demand expeditious action from all officials who are tasked with the administration of justice. (Bautista *vs*. Sandiganbayan [Sixth Div.], G.R. Nos. 238579-80, July 24, 2019) p. 726

— In the determination of whether the defendant has been denied his right to a speedy disposition of a case, the following factors may be considered and balanced: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay. (*Id*.)

— It is settled that the right to speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient; pertinent jurisprudence dictates that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. (*Id*.)

— The period devoted for fact-finding investigations prior to the filing of a formal complaint should be excluded in the determination of whether or not inordinate delay exists. (*Id*.)

CERTIORARI

Petition for — A petition for *certiorari* is a special civil action that may lie only to rectify errors of jurisdiction and not error of judgment; in this regard errors of jurisdiction arise from grave abuse of discretion or such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. (Chipoco *vs*. Office of the Ombudsman, G.R. No. 239416, July 24, 2019) p. 747

were intended by the law to be made immediately after, or at the place of apprehension. (People *vs*. Manabat *y* Dumagay, G.R. No. 242947, July 17, 2019) p. 250

— The chain of custody requires that law enforcers or any person who came in possession of the seized drugs must observe the procedure for proper handling of the seized substance to remove any doubt that it was changed, altered, modified, or planted before its presentation in court as evidence. (People *vs*. Villojan, Jr. *y* Besmonte, G.R. No. 239635, July 22, 2019) p. 386

— The chain of evidence is constructed by proper exhibit handling, storage, labeling, and recording, and must exist from the time the evidence is found until the time it is offered in evidence; the strict observance of the chain of custody finds greater significance in buy-bust operations where there are undeniably serious abuses by law enforcement officers. (*Id*.)

— The repeated breach of the chain of custody rule here was a fatal flaw which had destroyed the integrity and evidentiary value of the *corpus delicti*; we have clarified that a perfect chain may be impossible to obtain at all times because of varying field conditions; in fact, the Implementing Rules and Regulations of R.A. No. 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. (People *vs*. Burdeos *y* Oropa, G.R. No. 218434, July 17, 2019) p. 90

— To prove that the illegal drugs presented in court are the very same drugs seized from accused, the prosecution must establish that there had been no break in any of the four (4) links in the chain. (People *vs*. Villojan, Jr. *y* Besmonte, G.R. No. 239635, July 22, 2019) p. 386

— While the Court has clarified that under varied field conditions, strict compliance with the requirements of Sec. 21 of R.A. No. 9165 may not always be possible

the substance illegally possessed and sold is the same substance offered in court as exhibit. (*Id*.)

Illegal sale of dangerous drugs — Basic is the rule that, for a conviction of the crime of illegal sale of dangerous drugs to stand, the prosecution should have proven the following elements beyond reasonable doubt: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and payment; the prosecution has the burden to prove beyond reasonable doubt that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti*. (People *vs*. Villojan, Jr. *y* Besmonte, G.R. No. 239635, July 22, 2019) p. 386

(People *vs*. Advincula *y* Piedad, G.R. No. 201576, July 22, 2019) p. 277

(People *vs*. Manabat *y* Dumagay, G.R. No. 242947, July 17, 2019) p. 250

— In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. (People *vs*. Dela Cruz, G.R. No. 229053, July 17, 2019) p. 178

Section 21 — In cases of non-compliance with the procedure for inventory and photographing, Sec. 21(a), Art. II of the IRR of R.A. No. 9165 imposed the twin requirements of *first,* there should be justifiable grounds for the non-compliance, and *second,* the integrity and the evidentiary value of the seized items should be properly preserved; Failure to show these two conditions renders void and invalid the seizure of and custody of the seized drugs. (People *vs*. Advincula *y* Piedad, G.R. No. 201576, July 22, 2019) p. 277

— The presence of the three witnesses required by Sec. 21 is precisely to protect and to guard against the pernicious practice of policemen in planting evidence; without the

sought before the accused enters his plea, subject to the qualification under the second paragraph thereof; however, once the accused enters his plea during arraignment, the prosecution is already prohibited from seeking a substantial amendment, particularly citing those that may prejudice the rights of the accused; one of these rights is the constitutional right of the accused to be informed of the nature and cause of accusation against him, a right which is given life during the arraignment of the accused. (*Id*.)

— While there is no precise definition under the Revised Rules on Criminal Procedure of what should be deemed as a substantial amendment, case law instructs that substantial amendments consist of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court; on the other hand, formal amendments which can be made at any time do not alter the nature of the crime, affect the essence of the offense, surprise, or divest the accused of an opportunity to meet the new accusation. (*Id*.)

Preliminary investigation — A preliminary investigation is conducted for the purpose of determining whether a crime has been committed, and whether there is probable cause to believe that the accused is guilty thereof and should be held for trial; it is not the occasion for full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. (Jabinal *vs*. Hon. Overall Deputy Ombudsman, G.R. No. 232094, July 24, 2019) p. 653

Probable cause — Defined as "the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation"; as probable cause is simply based on opinion and reasonable belief, it does not require absolute certainty. (Chipoco *vs*. Office of the Ombudsman, G.R. No. 239416, July 24, 2019) p. 747

documents and the validity thereof are doubtful and require judicial construction; (iii) there must have been no breach or the "ripening seeds" of one between persons whose interests are adverse; (iv) there must be an actual controversy or the "ripening seeds" of one between persons whose interests are adverse; (v) the issue must be ripe for judicial determination; and (vi) adequate relief is not available through other means or other forms of action or proceeding. (*Id*.)

DENIAL

Defense of — As against AAA's positive and categorical testimony, appellant only interposes denial and alibi; but denial is the weakest of all defenses; it easily crumbles in the face of positive identification by accused as the perpetrator of the crime. (People *vs*. Blackened, G.R. No. 229836, July 17, 2019) p. 202

DUE PROCESS

Two notice rule — Procedural due process requires the employer to give the concerned employee at least two notices before terminating his employment; the first is the notice which apprises the employee of the particular acts or omissions for which his dismissal is being sought along with the opportunity for the employee to air his side, while the second is the subsequent notice of the employer's decision to dismiss him. (Cuartocruz *vs*. Active Works, Inc., G.R. No. 209072, July 24, 2019) p. 463

EMINENT DOMAIN

Just compensation — Defined as the full and fair equivalent of the property taken from its owner by the expropriator; the measure is not the taker's gain, but the owner's loss; the word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent for the property to be taken shall be real, substantial, full, and ample. (Rep. of the Phils. [represented by DPWH] *vs*. Sps. Darlucio, G.R. No. 227960, July 24, 2019) p. 609

EMPLOYMENT, TERMINATION OF

Abandonment of employment — Abandonment of employment is a deliberate and unjustified refusal of an employee to resume his employment, without any intention of returning; while it is not expressly enumerated under Art. 297 of the Labor Code as a just cause for dismissal of an employee, it has been recognized by jurisprudence as a form of, or akin to, neglect of duty. (Rodriguez *vs*. Sintron Systems, Inc., G.R. No. 240254, July 24, 2019) p. 779

—— It requires the concurrence of two elements: 1) failure to report for work or absence without valid or justifiable reason; and 2) a clear intention to sever the employer-employee relationship as manifested by some overt acts. (*Id*.)

Backwages — Art. 279 provides for the payment of full backwages, among others, to unjustly dismissed employees; the grant of backwages allows the employee to recover from the employer that which he had lost by way of wages as a result of his dismissal; the Court has held that where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer. (Rodriguez *vs*. Sintron Systems, Inc., G.R. No. 240254, July 24, 2019) p. 779

Dishonesty — Defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. (Bookmedia Press, Inc. *vs*. Sinajon, G.R. No. 213009, July 17, 2019) p. 35

Doctrine of strained relations — Given such strained relations, the reinstatement of the respondents is already rendered impractical; since separation pay *in lieu* of reinstatement is awarded, the end point of respondents' backwages will no longer be their actual reinstatement but the finality of the instant decision; respondents' backwages should

— In cases where the parties failed to prove the presence of either dismissal of the employee or abandonment of his work, the remedy is to reinstate such employee without payment of backwages; there is, however, a need to clarify the import of the term "reinstate" or "reinstatement" in the context of cases where neither dismissal nor abandonment exists; "reinstatement," as used in such cases, is merely an affirmation that the employee may return to work as he was not dismissed in the first place; it should not be confused with reinstatement as a relief proceeding from illegal dismissal as provided under Art. 279 of the Labor Code. (Rodriguez *vs*. Sintron Systems, Inc., G.R. No. 240254, July 24, 2019) p. 779

— In illegal dismissal cases, before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. (*Id*.)

Just causes — An employer may terminate an employment for any of the following causes: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) Gross and habitual neglect by the employee of his duties; (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and (e) Other causes analogous to the foregoing. (Bookmedia Press, Inc. *vs*. Sinajon, G.R. No. 213009, July 17, 2019) p. 35

— If the dismissal is based on a just cause, then the non-compliance with procedural due process should not render the termination from employment illegal or ineffectual; instead, the employer must indemnify the employee in the form of nominal damages; therefore, the dismissal of respondent should be upheld, and petitioners cannot be held liable for the payment of either backwages or separation pay; the law and jurisprudence allow the award

rape is generally unwitnessed and very often only the victim is left to testify for him or herself. (People *vs*. ZZZ, G.R. No. 228828, July 24, 2019) p. 629

— Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. (People *vs*. ZZZ, G.R. No. 228828, July 24, 2019) p. 629

(People *vs*. Credo *y* De Vergara, G.R. No. 230778, July 22, 2019) p. 345

Proof beyond reasonable doubt — In a criminal case, the prosecution must discharge the burden of proving the accused's guilt beyond reasonable doubt to secure a conviction for the crime charged; proof beyond reasonable doubt does not require absolute certainty that excludes error; rather, this standard requires moral certainty, or that degree of proof which produces conviction in an unprejudiced mind. (People *vs*. Dela Cruz, G.R. No. 229053, July 17, 2019) p. 178

— Proving its version of events beyond reasonable doubt made it necessary for the prosecution to present evidence that not only trumped that of the defense, but even addressed all the glaring loopholes in its own claims; it was, therefore, inadequate for it to have relied on the single testimony of the police officer whose credibility had been put into question not only with respect to the veracity and accuracy of his version of events leading to petitioner's arrest, but even with respect to a supposed prior vendetta against petitioner, and an attempt to extort from him. (De Guzman *y* Aguilar *vs*. People, G.R. No. 240475, July 24, 2019) p. 800

— While proof beyond reasonable doubt does not demand absolute, impeccable, and infallible certainty, it still requires moral certainty; proof beyond reasonable doubt imposes upon the prosecution the burden of proving an accused's guilt through the strength of its own evidence;

kind of relief. (Victoria Mfg. Corp. Employees Union *vs*. Victoria Mfg. Corp., G.R. No. 234446, July 24, 2019) p. 673

— Emanating from the sovereign authority that organizes courts, jurisdiction over the subject matter is conferred by law; it is determined by the allegations in the complaint based on the character of the relief sought; if the relief sought is the payment of a certain sum of money, the complaint must be filed before the court on which the law bestows the power to grant money judgments of that amount; if the complaint is filed before any other court, the only power that court has is to dismiss the case. (*Id*.)

— Lack of jurisdiction is a serious defect that may be raised anytime, even for the first time on appeal, since it is a defense that is not subject to waiver; however, by way of exception, the doctrine of estoppel by laches, pursuant to the ruling in *Tijam, et al. v. Sibonghanoy*, may operate to bar jurisdictional challenges; in that case, lack of jurisdiction was raised for the first time only in a motion for reconsideration filed before the CA fifteen (15) years after the commencement of the action; prior thereto, the party that belatedly raised the jurisdictional issue had actively participated in the proceedings before the trial and appellate courts, seeking affirmative relief and, thereafter, submitting the case for adjudication on the merits. (*Id*.)

— The general rule remains to be that jurisdiction is not to be left to the will or stipulation of the parties; it cannot be lost by *estoppel*; it is clear that *estoppel* will not operate to confer jurisdiction upon a court, save in the most exceptional of cases; without a law that grants the power to hear, try, and decide a particular type of action, a court may not, regardless of what the parties do or fail to do, afford any sort of relief in any such action filed before it; it follows then that, in those cases, any judgment or order other than one of dismissal is void for lack of jurisdiction. (*Id*.)

hearing after due notice to the Register of Deeds and all other interested parties as shown in the memorandum of encumbrances noted in the original or transfer certificate of title on file in the office of the Register of Deeds; and e) after due notice and hearing, the court may direct the issuance of a new duplicate certificate which shall contain a memorandum of the fact that it is issued in place of the lost or destroyed certificate and shall in all respects be entitled to the same faith and credit as the original duplicate. (*Id*.)

Foreshore lands — Foreshore lands are defined as those lands adjacent to the sea or immediately in front of the shore, lying between the high and low water marks and alternately covered with water and left dry according to the ordinary flow of the tides; foreshore lands are usually indicated by the middle line between the highest and the lowest tides; foreshore lands belong to the public domain and cannot be the subject of free patents or Torrens titles. (Batayola Baguio *vs*. Heirs of Ramon Abello, G.R. No. 192956, July 24, 2019) p. 408

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

Barangay conciliation proceedings — Although mandatory, the Court, in *Lansangan v. Caisip*, explained that "non-referral of a case for barangay conciliation when so required under the law is not jurisdictional in nature, and may therefore be deemed waived if not raised seasonably in a motion to dismiss or in a responsive pleading." (Sps. Belvis, Sr. *vs*. Sps. Erola, G.R. No. 239727, July 24, 2019) p. 761

— Sec. 412 of R.A. 7160 requires, when applicable, prior resort to barangay conciliation proceedings as a pre-condition for the filing of a complaint in court; in relation thereto, Sec. 415 of the same law holds that the parties must personally appear in said proceedings, without the assistance of counsel or any representative; failure to comply with the barangay conciliation proceedings renders the complaint vulnerable to a motion to dismiss for

— To entitle petitioner spouse to a declaration of the nullity of his or her marriage, the totality of the evidence must sufficiently prove that respondent spouse's psychological incapacity was grave, incurable and existing prior to the time of the marriage. (*Id.*)

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042)

Application of — Sec. 10 of R.A. No. 8042 provides that the employer and the recruitment or placement agency are jointly liable for money claims arising from the employment relationship or any contract involving overseas Filipino workers; if the recruitment or placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages; In providing for the joint and solidary liability of private recruitment agencies with their foreign principals, R.A. No. 8042 precisely affords OFWs with a recourse and assures them of immediate and sufficient payment of what is due them. (Cuartocruz *vs*. Active Works, Inc., G.R. No. 209072, July 24, 2019) p. 463

MOTIONS

Motion to dismiss — In filing a motion to dismiss on the ground of failure to state a cause of action, a defendant hypothetically admits the truth of the facts alleged in the complaint; since allegations of evidentiary facts and conclusions of law are normally omitted in pleadings, the hypothetical admission extends only to the relevant and material facts well pleaded in the complaint, as well as inferences fairly deductible therefrom. (Sps. Fernandez *vs*. Smart Communications, Inc., G.R. No. 212885, July 17, 2019) p. 15

MURDER

Commission of — Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying

procedures under Sec. 21 of R.A. No. 9165; in this connection, the presumption of regularity in the performance of official duty cannot overcome the stronger presumption of innocence in favor of the accused; the right of the accused to be presumed innocent until proven guilty is a constitutionally protected right; it would be a patent violation of the Constitution to uphold the importance of the presumption of regularity in the performance of official duty over the presumption of innocence, especially in this case where there are more than enough reasons to disregard the former. (People *vs*. Galuken *y* Saavedra, G.R. No. 216754, July 17, 2019) p. 73

— The presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty; and even in that instance, the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused; otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. (People *vs*. Advincula *y* Piedad, G.R. No. 201576, July 22, 2019) p. 277

(People *vs*. Manabat *y* Dumagay, G.R. No. 242947, July 17, 2019) p. 250

— 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. (People *vs*. Burdeos *y* Oropa, G.R. No. 218434, July 17, 2019) p. 90

PROPERTY

Builders in good faith — In exceptional cases, the Court has applied Art. 448 to instances where a builder, planter, or sower introduces improvements on titled land if with the knowledge and consent of the owner; there are cases where Art. 448 of the Civil Code was applied beyond the recognized and limited definition of good faith, *e.g.*, cases

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. (People *vs*. XXX, G.R. No. 235662, July 24, 2019) p. 689

— Under the foregoing provisions, rape is qualified when: a) the victim is under eighteen (18) years of age; and b) committed by the victim's parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity within the third civil degree, or by the common-law spouse of the victim's parent; but, in order for an accused to be convicted of qualified rape, the Information itself must allege that the victim is under eighteen (18) years of age at the time of rape and the accused is the victim's parent, ascendant, step- parent, guardian, or relative by consanguinity or affinity within the third civil degree, or common-law spouse of the victim's parent. (People *vs*. Blackened, G.R. No. 229836, July 17, 2019) p. 202

Statutory rape — Statutory rape is committed by sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or the lack of it, to the sexual act; proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape; for the absence of free consent is conclusively presumed when the victim is below the age of twelve (12); at that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. (People *vs*. Blackened, G.R. No. 229836, July 17, 2019) p. 202

RAPE WITH HOMICIDE

Elements of — The elements of special complex crime of rape with homicide are the following: (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman. (People *vs*. ZZZ, G.R. No. 228828, July 24, 2019) p. 629

— Factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance. (People *vs.* ZZZ, G.R. No. 228828, July 24, 2019) p. 629

— If the testimonial inconsistencies do not hinge on any essential element of the crime, such inconsistencies are deemed insignificant and will not have any bearing on the essential fact or facts testified to; these inconsistencies, if at all, even indicate that the witness was not rehearsed. (People *vs.* Blackened, G.R. No. 229836, July 17, 2019) p. 202

— The evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination. (People *vs.* Mancao, G.R. No. 228951, July 17, 2019) p. 162

— There could be no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence. (People *vs.* Almosara, G.R. No. 223512, July 24, 2019) p. 550

— When the credibility of the eyewitness is at issue, due deference and respect shall be given to the trial court's factual findings, its calibration of the testimonies, its assessment of their probative weight, and its conclusions based on such factual findings, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case. (*Id.*)